

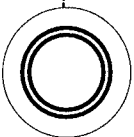
Request No. Two

Is Applicant's Request Necessary?

- None of the separately requested accommodations, if granted, would allow the applicant to continue operation. Several are *factors*, not requirements.
- Accommodation necessary to afford a disabled individual an equal opportunity to use and enjoy a dwelling?
 - Does the facility require the requested accommodation, at the requested population level to achieve financial viability or a supportive recovery environment?

City of Edmonds v. Washington State Building Council,
18 F.3d 802, 803(9th Cir. 1994)

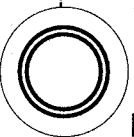
Necessity - Factors Considered



NBMC 20.98.025(C) four factors to show necessity:

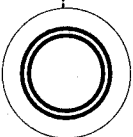
- Whether accommodation will affirmatively enhance quality of life of individuals with a disability
- Whether the disabled individuals will be denied an equal opportunity to enjoy the housing type of their choice without the accommodation
- Whether the accommodation is necessary for financial viability
- Whether existing supply of facilities of similar nature and operation is sufficient to provide individuals with equal opportunity to live in a residential setting.

Elements of Request No. Two



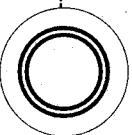
- 18 residents – maximum occupancy
- Waiver of use permit occupancy requirements
- Exemption from parking requirements of NBMC 20.66.030
- Residents and visitors - same parking requirements as other residential uses
- Treat NCR as legal nonconforming use
- Apply California Building Code requirements in place at time of facility establishment
- Waiver of overconcentration considerations involving APA standard of one or two residential care facilities per block
- Waiver of consideration of proximity of facility to schools, playgrounds, day care center, and alcoholic beverage outlets

Necessity of Requested Accommodations



- Individual requests not necessary, and not reasonable
 - Applicant has not submitted evidence that it requires the requested accommodations to be financially viable
 - Applicant has not submitted evidence that it requires accommodations for therapeutic benefit
 - Staff analysis does not indicate that, but for the exemption, facility could continue to operate

Necessity – Facility Size

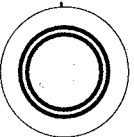


Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597
(4th Cir. 1997)

Increasing size of facility from eight to 15 would provide financial benefit to the *facility operator*, but was not necessary to provide disabled residents with housing.

Plaintiff did not carry its burden to show that the accommodation was necessary to provide disabled with an equal opportunity to use and enjoy a dwelling.

Necessity – Facility Size

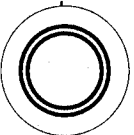


Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597
(4th Cir. 1997)

Significant factors:

- Thirty similar facilities operating in jurisdiction, with vacancy rates of 18 - 23%
- Plaintiff failed to present evidence that expansion was necessary for financial viability
- Plaintiff failed to show expansion would be therapeutically beneficial for residents

Necessity – Facility Size

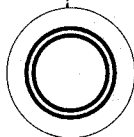


Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597
(4th Cir. 1997)

“If Bryant Woods Inn’s position were taken to its limit, it would be entitled to construct a 10-story building housing 75 residents, on the rationale that the residents had handicaps.”

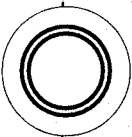
Bryant Woods Inn, 124 F.3d at 605

Necessity



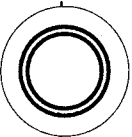
- 18 residents – no evidence of viability or therapeutic benefit presented. Alternate housing exists.
- Waiver of occupancy restrictions – not necessary for the requested 18 residents.
- Parking requirements – Facility already has sufficient onsite parking for 18 residents.
- Visitor parking – no evidence that visitor parking conditions prevent therapeutic benefit or housing.

Necessity, cont'd.



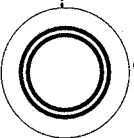
- Nonconforming use – City has always treated NCR as nonconforming use. Waiver not necessary.
- California Building Code – application of code provisions in place at time of establishment – not necessary, because already a CBC requirement.
- Waiver of factors to consider – proximity of schools, parks, other facilities, and ABOs.

Necessity, cont'd.



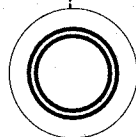
- NBMC Section 20.91A.060(D) - Factors are to be *considered* when determining whether a use will be compatible with the character of the surrounding neighborhood, or whether continued use will contribute to changing the residential character of the neighborhood.
- Is waiving the factors necessary to afford disabled individual equal opportunity to use and enjoy a dwelling?

Necessity, cont'd.



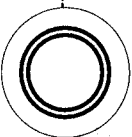
- Reports of lack of supervision and violations of state law by applicant.
- Required finding in NBMC Section 20.91A.060(A) cannot be made. Operational standard required by NBMC Section 20.91A.050(C)(4) (no person involved in the operation of the facility shall have a pattern or practice of violating state or local law) cannot be met.
- Waiving the requested factors not necessary, because would not result in continued facility operation.

Request No. Two Reasonable?



- Undue financial or administrative burden?
- Would granting requested accommodations result in fundamental alteration of the City's zoning program?

Fundamental alteration?

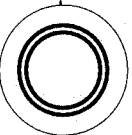


- Waiver of overconcentration factor: Preventing overconcentration was a fundamental purpose of the zoning program. Waiving all consideration of overconcentration not reasonable.

- *U.S. v. City of Chicago Heights*, 161 F.Supp.2d 819, 837 (N.D. Ill. 2001):

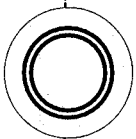
“There may be situations in which the distance between the homes is so little, where there is already more than one group home within 1000 feet, or where the homes are so similar in nature or operation, under which a request for a special use permit would fundamentally alter the City’s purpose of avoiding clustering and preserving the residential character of certain neighborhoods.”

Fundamental alteration?



- Parking requirements – NBMC Section 20.66.010 – **purposes:**
 - (1) ensure the off-street parking and loading facilities are provided for new land uses and alterations of existing uses;
 - (2) establish parking standards consistent with needs of use and feasibility; and
 - (3) ensure that off-street parking and loading facilities are designed to ensure efficiency, protect public safety and insulate surrounding land uses from adverse impacts.
- Applicant has history of parking violations, and provides counseling to visitors who do not reside onsite. Granting the waiver would undermine the basic purpose the requirement was put in place to achieve.
- See Staff Report comparison of Home Occupation restrictions – onsite parking retained, no substantial increase in pedestrian or automobile traffic.

Fundamental alteration?



- Waiver of considerations of proximity to schools, parks and alcoholic beverage outlets.
 - *Could* be situations in which it would not undermine a basic purpose of the Zoning Code to waive consideration of these factors. These are factors only, and they are considered by the Hearing Officer on a case-by-case basis.

**Documents Received at July 7, 2009 Group
Residential Use Permit and Reasonable
Accommodation Hearing**



**City of Newport Beach
2005-2009
Consolidated Plan**

Prepared By: 
Associates, Inc.

NB 20596

Homeless Needs

Table 6-12
Special Needs Populations (HUD Table 1B)

Elderly	HIGH
Frail Elderly	HIGH
Severe Mental Illness	Medium
Developmentally Disabled	Medium
Physically Disabled	Medium
Persons w/ Alcohol/Other Drug Addictions	HIGH
Persons w/HIV/AIDS	HIGH
Other	-

Non-Housing Community Development Needs Assessment

Table 7-3
HUD Consolidated Plan Table 2B

ADA Improvements	HIGH	3	\$250,000
Homeless Facilities	medium		\$0
Non-Residential Historic Preservation	medium		\$0
Child Care Centers	low		\$0
Senior Centers	low		\$0
Handicapped Centers	low		\$0
Youth Centers	low		\$0
Health Facilities	low		\$0
Neighborhood Facilities	low		\$0
Parking Facilities	low		\$0
Parks and/or Recreation Facilities	low		\$0
Public Facility Subtotal			\$250,000
Street Improvements*	medium		\$0
Flood Drain Improvements	low		\$0
Water/Sewer Improvements	low		\$0
Solid Waste Disposal Improvements	low		\$0
Other Infrastructure Needs	low		\$0
Infrastructure Subtotal			\$0
* Street Improvements include sidewalks and street lighting			
Homeless Services	HIGH	300	\$159,000
Substance Abuse Services	HIGH	250	\$50,000
Senior Services	HIGH	9,000	\$100,000
Health Services	medium		\$0
Employment Training	medium		\$0
Youth Services	medium		\$0
Child Care Services	medium		\$0
Services for the Disabled	medium		\$0
Transportation Services	low		\$0
On-fault Removal	low		\$0
Anti-Crime	low		\$0
Public Services Subtotal			\$309,000
** Lead Hazard Screening is included under Affordable Housing			
Other Section 108 Loan Repayment	HIGH	1	\$968,000
C/I Infrastructure Development	medium		\$0
ED Assistance to For-Profit	low		\$0
Commercial/Industrial Rehab	low		\$0
Micro-Enterprise Assistance	low		\$0
ED Technical Assistance	low		\$0
Economic Development Subtotal			\$968,000
PLANNING / ADMINISTRATION	HIGH	n/a	\$408,000
TOTAL NON-HOUSING FUNDING:			\$1,935,000
CDBG HOUSING FUNDING (CDBG Enforcement)			\$125,000
TOTAL CDBG FUNDING			\$2,060,000

Strategic Plan

Table 13-2 Five Year Strategy - Special Needs Populations			
PROPOSED PRIORITIES/ FIVE YEAR ACCOMPLISHMENT GOALS	PROPOSED ACTIVITIES	PERFORMANCE MEASURES	5-YEAR GOALS
Goal #1: Increase accessibility of persons with disabilities to public facilities.	The City will provide funding for ADA improvements to public facilities throughout the City to ensure accessibility to residents with disabilities. Projects include: • Harbor Village Sidewalk Improvements	Number of Public Facilities	3
Goal #2: Improve supportive services for elderly residents.	The City will provide support services to seniors to enable seniors to remain independent. This will be accomplished by providing funding (CDBG) to public service agencies that provide services to seniors. The following programs will be funded as part of this strategy: • FISH Harbor Area, Inc - Mobile Meals Program	Number of Persons assisted	350
Goal #3: Increase supportive services for persons suffering from substance abuse.	The City will provide support services to persons suffering from substance abuse. This will be accomplished by providing funding (CDBG) to public service agencies that provide services to persons suffering from substance abuse. The following program will be funded as part of this strategy: • Serving People in Need (SPIN) - Substance Abuse Rehabilitation Program	Number of Persons assisted	25
Goal #4: Increase supportive services for persons living with HIV/AIDS.	The City will provide support services to persons living with HIV/AIDS. This will be accomplished by providing funding (CDBG) to public service agencies that provide services to persons living with HIV/AIDS. The following program will be funded as part of this strategy: • Mercy House - Emmanuel House Transitional Housing Program	Number of Persons assisted	200

City of Newport Beach
Rev. 3/1/05

XIII-10

2005 - 2009 Consolidated Plan

NB 20773

City of Newport Beach, California

**Five Year Consolidated Plan
FY 2000 - 2004**

**One-Year Action Plan
FY 2000 - 2001**

Submitted to:

**U.S. Department of Housing and Urban Development
Los Angeles Area Office
611 West Sixth Street
Los Angeles, California 90017-3127**

**CITY OF NEWPORT BEACH
2000-2004 Consolidated Plan Document**

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NB 25698

Beach is a community with significant public resources in the form of the upper and lower bay, ocean, public beach and public piers which also attract many visitors.

The City has assigned a high priority to providing accessibility improvements to increase accessibility for handicapped persons to public buildings, piers and restrooms. Since the improvements are City-wide, it is estimated that a majority of disabled persons with mobility limitations will benefit.

Objective: The City intends to provide \$30,000 in CDBG funds for removal of architectural barriers during the 2000-2001 program year to provide handicapped accessibility to public buildings, parks, piers and restrooms in compliance with the Americans with Disabilities Act (ADA). The City will consider future funding of this category on an annual basis during the next five year period.

Objective: To provide assistance to the elderly.

Activity: In order to address the non-housing special needs, the City will consider allocating funds to assist persons with disabilities to become mobile and accessible to public buildings and resources. The costs shall include building modifications, elevators and curb cuts.

Activity: While the family environment is the ideal situation to provide for the needs of the elderly, this is not always possible. Therefore, the City may continue to fund social service agencies that provide meals to frail elderly and needy homebound persons and families.

Obstacles: Limitations on funding prohibit fully supporting mobile meals programs to the elderly. ADA requirements do not have accompanying funding, costs of compliance are high and significant design constraints may exist.

Persons with Alcohol or Drug Addiction:

Persons with alcohol and other drug addictions often need supportive counseling after their initial rehabilitation in order to practice their rehabilitated lifestyle. Many require job referral services and educational guidance.

Objective: To provide social service funds which benefit low and moderate income persons within the community.

Activity: The City may continue to fund social service agencies that provide counseling, therapy and support services to low and moderate income persons who suffer from alcohol and drug addiction.

Obstacles: The availability of funding and social service agencies that can provide the services are the major obstacles in assisting these persons.

Persons with AIDS:

At last report, there were 150 cumulative AIDS cases reported in Newport Beach. Of the cases reported in the survey, 4.2% were Newport Beach residents. Persons who are HIV positive are a serious "at risk" population in the Orange County metropolitan area. As stated in the City's Housing Element Implementation Actions, the City shall allocate a portion of its CDBG funds to provide services for the homeless.

Objective: To provide social service funds which may assist the needs of persons and families with AIDS within the community.

Activity: The City may continue to fund social service agencies that provide shelter and support services to extremely low, low and moderate income persons who may suffer from AIDS.

Activity: The City may continue to fund social service agencies that provide counseling, therapy and support services to low and moderate income persons who suffer from AIDS.

Public Housing:

There are no public housing units located in the City of Newport Beach.

See Table 1B - Special Needs/Non-Homeless

AFFORDABLE HOUSING

Priority Analysis and Strategy Development

As stated in the City's Housing Element goals and policies, it is the intent of the City to preserve and increase housing affordability through rental housing for the very low and lower income persons, households and families and provide incentives and direct assistance to the housing industry, within the limitations of available resources, to facilitate the provision of housing for the extremely low, low and moderate income.

The desirability of Newport Beach as a residential community and the lack of developable land have resulted in extremely high land cost. The utilization of CDBG and other housing funds help to produce additional housing in the City for the extremely low, low and moderate income persons and families. Priorities are based on the housing needs identified in the

7

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U. S. Government: Housing & Urban
Development - CDRC
2002 - 2003

8

NB 21164

SPECIAL NEEDS POPULATION OBJECTIVES

The Strategic Plan must address the needs of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families. The Strategic Plan specifically calls for the City to:

1. Increase accessibility to public facilities
2. Improve supportive services to elderly residents
3. Improve supportive services to those with substance addictions
4. Improve supportive services to those living with HIV / AIDS

INCREASE ACCESSIBILITY TO PUBLIC FACILITIES

The City did not undertake any activities during the program year that address this objective. Funds will be used to address this objective in future program years of this Consolidated Plan. For example, \$50,000 has been budgeted to ADA Compliance in the 2003-2004 program year.

IMPROVE SUPPORTIVE SERVICES TO ELDERLY RESIDENTS

South County Senior Services

ONE-YEAR GOAL: 113 ELDERLY ONE-YEAR ACCOMPLISHMENTS: 113 ELDERLY ON TARGET? 90%

This social service agency provided meals on site and also delivered meals to homebound seniors throughout Newport Beach. This service allows seniors who may otherwise become institutionalized remain in their homes and maintain their self-sufficiency.

FISH Harbor Mobile Meals

ONE-YEAR GOAL: 75 ELDERLY ONE-YEAR ACCOMPLISHMENTS: 43 ELDERLY ON TARGET? 57%

This social service agency delivered meals to homebound seniors throughout Newport Beach. This service allows seniors who may otherwise become institutionalized remain in their homes and maintain their self-sufficiency.

IMPROVE SUPPORTIVE SERVICES TO THOSE WITH SUBSTANCE ADDICTIONS

Serving People in Need (SPIN) – Substance Abuse Rehabilitation Program

ONE-YEAR GOAL: 1 RESIDENT ONE-YEAR ACCOMPLISHMENTS: 1 RESIDENT ON TARGET? 100%

This program provided access to recovery programs to homeless and low income individuals who otherwise could not afford such services. The program includes one month of room and board, counseling, and supplemental services focused on employment, medical assistance, and legal assistance. One Newport Beach resident benefited from services during the program year at a cost of \$10,000. Funds were used operational costs and therefore benefited non-resident clientele as well.



**CITY OF NEWPORT BEACH
ONE-YEAR ACTION PLAN
PROGRAM YEAR 2005-2006**

NB 20545

/0

2. STRATEGIC PLAN

Newport Beach Program Objectives: Special Needs

The City's Consolidated Plan must describe the needs of persons who are not homeless but who require supportive housing. These "special need" populations include elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents.

1. Increase accessibility to public facilities

The City will continue to provide funding for ADA Sidewalk Improvements to public facilities throughout the City to ensure accessibility to residents with disabilities. In the upcoming program year, the City will provide \$50,000 for such improvements.

2. Improve support services to elderly residents

Seniors are the largest and fastest growing "special need" population in Newport Beach. The City will provide support to seniors to enable them to remain independent. In the upcoming program year, the City will provide \$15,000 of CDBG funding to FISH Harbor Area, Inc. to administer their Mobile Meals Program and \$7,000 to South County Senior Services, Inc. to administer their Home-Delivered Meal Program. Both programs deliver nutritious meals to homebound seniors throughout Newport Beach. This service allows seniors who may otherwise become institutionalized remain in their homes and maintain their self-sufficiency.

3. Improve support services to those with substance addictions

Persons suffering from substance addictions are a target population of the City's Anti-Poverty Strategy. Once a person has begun the recovery process, there is a higher chance they will become self-sufficient. In the upcoming program year, the City will continue to support the efforts of Serving People in Need (SPIN) by funding their Substance Abuse Rehabilitation Program with \$8,000 of CDBG funding. This program provides access to recovery programs to homeless and low-income individuals whom otherwise could not afford such services. The program includes one month of room and board, counseling, and supplemental services focused on employment, medical assistance, and legal assistance.

4. Improve support services to HIV/AIDS population.

In the 2005-2006 program year, the City will provide \$4,500 of CDBG funds to Emmanuel House, a transitional housing program for adults living with HIV or AIDS, the only project of its kind in Orange County. Mercy House administers the project. Funds will be used to provide staff salaries and program supplies. The program expects to assist 40 clients in Orange County.



2005-2009
CONSOLIDATED PLAN

NB 25402

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Homeless Needs

Table 6-3
County of Orange
Continuum of Care Gaps Analysis

Individuals					
Beds/Units	Emergency Shelter	2,961	483	2,478	L
	Transitional Shelter	2,961	436	2,525	M
	Permanent Supportive Housing	13,040	6,617	6,423	H
	Total	18,962	8,206	10,756	
Supportive Service Slots	Job Training	4,442	1,589	2,853	L
	Case Management	5,922	1,589	4,333	M
	Substance Abuse Treatment	2,961	1,372	1,589	H
	Mental Health Care	2,961	1,372	1,589	H
	Housing Placement	5,922	1,589	4,333	H
	Life Skills Training	5,922	1,589	4,333	H
Sub-Populations	Chronic Substance Abusers	2,508	958	1,550	H
	Seriously Mentally Ill	2,472	78	2,394	H
	Dually-Diagnosed	372	23	349	H
	Veterans	1,954	54	1,900	M
	Persons with HIV/AIDS	1,339	31	1,308	M
	Victims of Domestic Violence	592	275	317	M
	Youth (17-21)	2,711	59	2,652	H
	Other - Physical Disabilities	481	6	475	M

Persons in Families with Children					
Beds/Units		Estimated Need	Current Inventory	Unmet Need/Gap	Relative Priority
	Emergency Shelter	6,909	376	6,533	L
	Transitional Shelter	6,909	902	6,007	M
	Permanent Supportive Housing	85,196	43,230	41,966	H
	Total	99,014	44,870	54,144	
Supportive Service Slots	Job Training	3,455	1,707	1,749	L
	Case Management	13,819	1,707	12,112	M
	Child Care	4,880	922	3,958	H
	Substance Abuse Treatment	5,389	1,707	3,682	H
	Mental Health Care	3,455	1,707	1,748	H
	Housing Placement	13,819	1,707	12,112	H
	Life Skills Training	13,819	1,707	12,112	M
Sub-Populations	Chronic Substance Abusers	492	0	492	M
	Seriously Mentally Ill	288	0	288	H
	Dually-Diagnosed	12	0	12	H
	Veterans	415	0	415	L
	Persons with HIV/AIDS	281	0	281	M
	Victims of Domestic Violence	1,042	327	715	M
	Other (Physically Disabled)	691	6	685	H

Source: Continuum of Care (CoC) Community Forum Collaborative

Strategic Plan

Table 13-2
Five Year Strategy - Special Needs Populations

PROPOSED PRIORITIES/ FIVE YEAR ACCOMPLISHMENT GOALS	PROPOSED ACTIVITIES	PERFORMANCE MEASURES	5-YEAR GOALS
Goal #1: Increase accessibility of persons with disabilities to public facilities.	The City will provide funding for ADA improvements to public facilities throughout the City to ensure accessibility to residents with disabilities. Projects include: • Balboa Village Sidewalk Improvements	Number of Public Facilities	3
Goal #2: Improve supportive services for elderly residents.	The City will provide support services to seniors to enable seniors to remain independent. This will be accomplished by providing funding (CDBG) to public service agencies that provide services to seniors. The following programs will be funded as part of this strategy: • FISH Harbor Area, Inc - Mobile Meals Program.	Number of Persons assisted	330
Goal #3: Increase supportive services for persons suffering from substance abuse.	The City will provide support services to persons suffering from substance abuse. This will be accomplished by providing funding (CDBG) to public service agencies that provide services to persons suffering from substance abuse. The following program will be funded as part of this strategy: • Serving People In Need (SPIN) - Substance Abuse Rehabilitation Program.	Number of Persons assisted	25
Goal #4: Increase supportive services for persons living with HIV/AIDS.	The City will provide support services to persons living with HIV/AIDS. This will be accomplished by providing funding (CDBG) to public service agencies that provide services to persons living with HIV/AIDS. The following program will be funded as part of this strategy: • Mercy House - Emmanuel House Transitional Housing Program	Number of Persons assisted	200

City of Newport Beach
 Res. 5/11/05

XIII-10

2005 - 2009 Consolidated Plan

NB 25600



City of Newport Beach
PY 2006-2007
Consolidated Annual Performance
and Evaluation Report

September 2007



City of Newport Beach • 3300 Newport Boulevard • Newport Beach, CA 92652-8915

NB 25840

15

Executive Summary

This report is the Second Year Consolidated Annual Performance and Evaluation Report (CAPER) which outlines the City's progress in meeting the goals and objectives outlined in the City's Five-Year Consolidated Plan for fiscal years 2005 - 2009. The Strategic Plan objectives and goals in the Five-Year Consolidated Plan are summarized below, including the achievement for program year (PY) 2006-2007.

STRATEGIC PLAN OBJECTIVES	FIVE-YEAR GOALS	PY 2006-07 ACHIEVEMENTS
Foster & Maintain Affordable Housing		
Increase supply of affordable housing units through new construction	120 households	0 households
Maintain current level of Section 8 Vouchers & rent restricted units	105 households	1,014 households
Ensure universal access to fair housing	305 households	191 households
Special Needs Population Objectives		
Increase accessibility to public facilities	3 public facilities	1 public facility
Improve supportive services to elderly residents	350 persons	161 persons
Improve supportive services to those with substance addictions	25 persons	14 persons
Improve supportive services to those living with HIV / AIDS	200 persons	1 person
Homeless Objectives		
Preserve the supply of emergency and transitional units available	1,250 persons	52 persons
Assist homeless and those at risk of homelessness	300 persons	229 persons
Assist homeless battered women and children	250 persons	37 persons
Community Development Objectives		
Eliminate blight, blighting influences, and prevent deterioration of property	2,500 households	498 households
Improve health and safety through rehabilitation of community facilities	3 public facilities	1 public facility
Preserve neighborhoods and provide economic empowerment to lower income residents	3 public facilities	1 public facility

A detailed breakdown of the two year accomplishments using CDBG funds can be found in the Summary of Annual Objectives in Attachment "A".

Development of the 2006-2007 CAPER

As required by the United States Department of Housing and Urban Development (HUD), the City of Newport Beach has prepared the Consolidated Annual Performance and Evaluation Report (CAPER) for public review and comment prior to its submittal to HUD. This document contains an assessment of the City's performance in meeting Fiscal Year 2006-2007 housing and community development goals as outlined in the previously adopted Fiscal Year 2006-2007 One-Year Action Plan. To the greatest extent feasible, the data collection efforts required by the CAPER reflects information for housing and community development projects that occurred in the City's jurisdiction, even if the City was not the lead agency.

2. STRATEGIC PLAN

Overview

The following is a summary of the Five Year Strategic Plan and how the activities proposed for the upcoming program year will work toward achieving the goals included in the Strategic Plan. The full version of the Strategic Plan is in the City's 2005-2009 Consolidated Plan and can be obtained from the City's Planning Department.

The strategic goals are divided between Newport Beach program objectives and HUD-specified objectives. The Newport Beach program goals were developed based on the specific needs found within the community. The HUD-specified goals are mandated by the federal government and designed to meet common needs found in communities throughout the country. An activity will appear more than once given that some local and federal goals overlap. All activities proposed for the 2006 program year will strive to serve low- and moderate-income persons. No activities will seek eligibility under the "urgent need" eligibility.

Newport Beach Program Objectives

Affordable Housing Funding Priorities and Strategies:

1. Increase supply of housing units affordable to moderate-income households through new construction.
2. Maintain existing level of Section 8 housing vouchers and rent-restricted units within the City.
3. Ensure universal access to fair housing choice within the city.
4. Special Needs Funding Priorities and Strategies:
5. Increase accessibility of persons with disabilities to public facilities.
6. Improve supportive services for elderly residents.
7. Increase supportive services for persons suffering from substance abuse.
8. Increase supportive services for persons living with HIV/AIDS.
9. Homeless Funding Priorities and Strategies:
10. Preserve the supply of emergency and transitional housing.
11. Improve services for homeless persons and prevent those at-risk of becoming homeless from losing their house.

**Transcript of July 7, 2009 Group Residential
Use Permit and Reasonable Accommodation
Hearing**

CERTIFIED COPY

PUBLIC HEARING ON
NEWPORT COAST RECOVERY, LP
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
TUESDAY, JULY 7, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 3:00 p.m., and
ending at 6:07 p.m., on Tuesday, July 7, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

1 APPEARANCES:

2
3 For The City of Newport Beach:

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11 DAVE KIFF, Assistant City Manager
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LAWYER'S NOTES[illegible]

1 NEWPORT BEACH, CALIFORNIA; TUESDAY, JULY 7, 2009

2 3:00 P.M. - 5:50 P.M.

3
4 MR. ALLEN: All right. We'll commence the
5 hearings on Newport Coast Recovery. We have two today,
6 as you noticed on the agenda. The first hearing that is
7 scheduled -- and incidentally, I'm Thomas W. Allen, the
8 Hearing Officer designated by the City for purposes of
9 hearing the group home applications.

10 The first hearing we have today is a remand
11 from the City Council to this Hearing Officer after the
12 Hearing Officer denied the Use Permit application of
13 Newport Coast Recovery. And then subsequent evidence was
14 discovered that the City Council wanted the Hearing
15 Officer to review.

16 And so we're going to have a very limited
17 public hearing with respect to that particular remand and
18 then move on to the second hearing, which is a reasonable
19 accommodation hearing at the request of Newport Coast
20 Recovery to continue the operation they presently have.

21 So my suggestion here is we have until 5:45 to
22 conclude these hearings. The first hearing is a very
23 limited one solely on the issue of some after-acquired
24 evidence. And so I think Mr. Kiff will probably comment
25 similarly, but the idea is to restrict the amount of

4

1 testimony that we give solely and exclusively to the
2 narrow issue on the after-acquired evidence so that we
3 can move that hearing through as rapidly as possible, and
4 then move forward with the more comprehensive matter of
5 the reasonable accommodation request for today.

6 So with that, I'm going to turn it over to
7 Mr. Kiff to commence the presentation.

8 MR. KIFF: Thank you, Mr. Allen.

9 As background for you, Mr. Allen, and for the
10 audience, on January 12th of this year, you denied this
11 Applicant, Newport Coast Recovery's request for a use
12 permit at 1216 West Balboa. The operator, Newport Coast,
13 appealed that decision to the City Council. On April
14 14th of 2009, the City Council acted to return the issue
15 to you to consider evidence acquired after the January
16 12th hearing.

17 As you noted, part one of today's agenda is a
18 reopen the Use Permit hearing to consider that evidence.
19 Part two is the reasonable accommodation hearing. That's
20 a new hearing by the same Applicant at the same location.

21 For the Use Permit hearing, I'm going to make
22 are very brief presentation about the after-acquired
23 evidence. Then, as has been your past practice, the
24 Applicant is welcomed to make comments. Then the public
25 hearing would be open. As you stated, the testimony is

1 limited to facts or knowledge about the after-acquired
2 evidence.

3 The comments are limited to 3 minutes, unless
4 you determine otherwise. You can close the public
5 hearing at that point. The Applicant can return to rebut
6 or clarify comments made. And then an opportunity for
7 questions and answers from you to the Applicant or to
8 City staff, and then you can make a determination. At
9 that point, after the determination, we move to the
10 reasonable accommodation hearing.

11 So with that, I want to make staff's
12 presentation about the after-acquired evidence. There is
13 a finding that the Municipal Code requires the Hearing
14 Officer to make at the -- in order to grant a Use Permit.

15 And one is that the use conforms to all
16 applicable provisions of a certain section of the Code.
17 But that one of these conditions -- and it's within
18 Newport Beach Municipal Code Section 20.91A.060 -- and
19 this is condition eight, it says, "That no owner or
20 manager shall have any demonstrated pattern of operating
21 similar facilities in violation of the law."

22 So this is a finding that we believe we could
23 make in January, as a staff. And making that
24 recommendation is a finding that we believe we cannot
25 make right now.

1 So -- and this comes about as a result of a
2 discussion of a call that was made to me on or about
3 April 1, March 30th of 2009, where a mother claimed to
4 have had a 17-year-old child in treatment at Newport
5 Coast Recovery for substance abuse.

6 Among the troubling issues that she raised with
7 me were that apparently Newport Coast Recovery knowingly
8 accepted at least up to two minor boys for treatment at
9 Newport Coast Recovery in apparent violation of their
10 license from ADP. Newport Coast, to my knowledge, has a
11 license to treat adult men, not minors.

12 The mother alleged that, sorry, a subsequent
13 investigation by the Department of Social Security
14 services which governs youth and youth facilities brought
15 forth a claim by a Newport Coast staff member that they
16 held an adolescent waiver that allows treatment of minors
17 for the Newport Coast facility.

18 Adolescent waiver is granted by ADP on a
19 condition basis, but my follow-up call with ADP resulted
20 in them telling me that there's no record of Newport
21 Coast ever having an adolescent waiver authorizing
22 Newport Coast to treat adolescents.

23 The mother alleged that one of the minors was
24 instructed by Newport Coast staff to lie about his age if
25 asked. And that one of the minor boys was taken off-site

1 in another resident's personal vehicle where the minor
2 relapsed. The minor boy was removed from Newport Coast's
3 facility is taken to a sober living facility in Costa
4 Mesa without notifying the minor's parents.

5 At this point, the Newport Beach and Costa Mesa
6 police were involved. Found the child. And Newport
7 Coast told our police department that they would not take
8 the child back to the Newport Coast Recovery facility
9 because he was a minor, in effect, abandoning the minor
10 away from his parents, who were both -- the father in
11 Central Valley, and the mother in Nevada. So that's a
12 case that -- case one that was brought to my attention.

13 The second one involves another family from
14 Bend, Oregon, About the son's time with Newport Coast
15 Recovery. I'll summarize that. The son had come out of
16 a detoxification facility known as the Pat Moore
17 Foundation in Costa Mesa after a 72 hour stay.

18 The son was encouraged by the director at
19 Newport Coast to come to Newport Coast Recovery. The
20 father paid a \$10,000 deposit in advance of the son's
21 stay. The son left Newport Coast Recovery shortly
22 thereafter, about five days, because he claimed there was
23 no effective treatment there, and that he was basically
24 unsupervised.

25 The son's friends were able to check him in and

1 out. The son left one evening, and the staff at Newport
2 Coast didn't know he was gone until the next day. The
3 father has had issues attempting to get his money back.

4 The Newport Coast Web site pledges a certain
5 level of care, involving, for instance, meals and quality
6 home cooked meals. But basically, the son was given \$55
7 a week Albertson's card with meals prepared on his own.

8 The son and the father assert that when the son
9 came back to get his papers that he had signed, he wasn't
10 given all those papers back.

11 Newport Coast Recovery, they also alleged, lost
12 the son's passport and a car title, despite it being in
13 the safe.

14 The father in this case also walked in
15 attempting to find the operator, Mr. Newman, and walked
16 through the building through an open door with no
17 controls over the facility.

18 The father also spoke of researching Newport
19 Coast further on the Internet, and noting that a number
20 of things on the Web site exaggerates the qualities and
21 qualifications. A case in point stating that Newport
22 Coast has a different, higher, rating from the Better
23 Business Bureau than Newport Coast actually has. Staff
24 attempted to verify this and found up to four instances
25 where they this may be true. I'm not going to summarize

1 those four. Those are in the staff report.

2 These are also potential violations of the ADP
3 license. Exaggerating the claims of your qualifications,
4 if that's what's going on, is something that ADP is now
5 investigating with Newport Coast Recovery.

6 We don't have an investigation report back on
7 that, nor do we have an investigation report back from
8 ADP on the instance of the minor being held there. I
9 need to make the record clear on. That we do, however,
10 have a violation issued by the Department of Social
11 Services for housing minors on-site without that license.

12 So with that, that concludes the information I
13 have as after-acquired evidence.

14 MR. ALLEN: And this was all evidence that was
15 submitted to the City Council at the time they considered
16 their the appeal and then remanded it; correct?

17 MR. KIFF: No, Mr. Allen. The evidence
18 submitted to the -- the evidence considered by the City
19 Council in their remand involves the two minors only.
20 The second family coming for the happened later.

21 MR. ALLEN: Okay. Anything else from staff?

22 MR. KIFF: No, sir.

23 MR. ALLEN: Then the Applicant would have the
24 opportunity to make a presentation on this issue?

25 MR. BRANCART: Thank you very much. I name is

10

1 a Chris Brancart. I represent the Applicant in this
2 case, Newport Coast Recovery.

3 Let me begin with a general objection, if I
4 may, to the Hearing Officer. The information that's been
5 provided to you by City staff came in a multi-volume
6 staff report comprising hundreds of pages. In
7 anticipation of this report being both lengthy and also
8 having a lot of new information in it, Counsel for the
9 Applicant requested of City staff that they be provided
10 with 10 days, 10 days before this hearing, in order to
11 examine the material that's presented to you upon which
12 you're asked to based your opinion, and we're asked to
13 respond to.

14 The response from the City is no, they would
15 not give us 10 days to prepare for this hearing and, in
16 addition, provided the report to my Counsel, who you've
17 met before, Mr. Polin, at 5 o'clock his time on
18 Wednesday, the day, of course, before the 4th of July
19 holiday.

20 I think it's important that you, as a Hearing
21 Officer, understand that not only are you being asked to
22 make determinations based on what can be described only
23 as rank hearsay, but you're also being asked to make
24 determinations upon a voluminous staff report in a
25 procedural posture that's substantially and highly

1 prejudices the Applicant.

2 Let me make a second set of observations and
3 express concerns. You are being asked now, contrary to
4 what City Council instructed, to reopen the record here
5 and have new evidence presented before you. City Council
6 was very specific in the remand here to the Hearing
7 Officer that it was to deal with one allegation and one
8 allegation only, and that was the housing of minors.

9 That evidence comes to you as both solicited by
10 the City and also through other means and is presented to
11 us as late as 15 minutes ago. So we're not only being
12 asked to respond to a report consisting of hundreds of
13 pages without adequate time to prepare, in spite of, I
14 think, a very reasonable request to have 10 days to
15 prepare for this report, but we're being asked now to
16 accept the City's position that they should be allowed to
17 reopen the record, a record that was clearly set before
18 the City Council and, contrary to City Council's
19 instructions, now undertake additional inquiries about
20 after-acquired evidence.

21 But that's not my biggest problem of what's
22 happening here. My biggest problem with what's happening
23 here is the City has been on notice that Newport Coast
24 Recovery cannot respond to these types of allegations
25 that allege violations of licensure, because this process

12

1 does not adequately protect or safeguard the
2 confidentiality and the integrity of the confidential
3 issues concerning both these individuals receiving
4 treatment.

5 We cannot respond. And there is, one would
6 say, a certain bullying quality to this, because the City
7 has been told repeatedly we cannot respond to issues that
8 concern treatment of individuals, because we do not have
9 in place here in this process the types of safeguards
10 which are inherent in any DSS and ADP hearing concerning
11 licensure or the violations of licensure.

12 We cannot respond to that, because to do so
13 would violate not only our ethical obligations to these
14 individuals but also to the regulatory restrictions. So
15 we will not and cannot respond.

16 But let me say there's something that's more
17 fundamentally wrong with what's happening here with the
18 after-acquired evidence, sir. You are Hearing Officer
19 asked to adjudicate and make findings in connection with
20 a zoning decision.

21 What you've been presented with is information
22 based strictly on hearsay reports that has been hardly
23 provided to us by the City that there have been, perhaps,
24 some violations of licensure law. That is not a zoning
25 issue. That is a licensure issue.

13

1 And that is what's fundamentally wrong about
2 what's occurring here today is that this body, despite
3 your knowledge of the Ordinance, despite good efforts by
4 good people, this body is not qualified to protect both
5 the safeguards of the individuals involved in protecting
6 their confidentiality, nor is it competent to render the
7 decisions to quote the Ordinance, whether or not, indeed,
8 there was a violation of law.

9 Sir, there is only two entities that are
10 qualified do that, and that is ADP and DSS, those
11 agencies of the State of California. Mr. Kiff made
12 reference to that, that we don't know what the outcome of
13 those determinations are. We don't know what the outcome
14 of those determinations are.

15 And the City presented hearsay information that
16 we cannot respond to because of inadequate
17 confidentiality provisions. And this body, as a Hearing
18 Officer sitting to adjudicate a zoning matter, is not in
19 a position to render those determinations. There are
20 only two people who are competent to do that, ADP and
21 DSS.

22 Nor is this an empty gesture. A moot point.
23 Because as Mr. Kiff has told you, ADP and DSS is
24 investigating these matters right now and can do it
25 confidently, can do it with the expertise required, and

1 is the only two agencies that are charged to render this
2 decision.

3 The last point I would make is this. Let me
4 make two more. There is a certain quality of retaliation
5 that goes on, and the vigor with which the City has
6 undertaken to solicit these complaints from individuals
7 that touch upon confidential information, that bear on
8 licensing, that the City knows Newport Coast Recovery
9 cannot and will not respond to consistent with its
10 ethical and legal and licensing obligations. Most of
11 these solicitations occur after Newport Coast Recovery
12 challenges the City, whether it be through the HUD
13 process or seeks a permit.

14 There was one substantive piece of evidence
15 that was presented by Mr. Kiff, and that is that there
16 was a notice of violation that was issued by DSS. What
17 Mr. Kiff did not tell you in connection with that Notice
18 of Violation is that after it was issued, DSS conducted a
19 top-to-bottom inspection of the operation at Newport
20 Coast Recovery, and they cleared that violation.

21 If you have questions.

22 MR. ALLEN: Maybe let me just -- this was
23 a -- I have not seen any of this information. Nobody's
24 made any -- there's nothing in writing alleging any of
25 this. This is all brand new from you to me. And so, I

15

1 would like to just review it quickly.

2 You say ADP and DSS are, in fact, investigating
3 this now. Do you know that for a fact?

4 MR. BRANCART: Mr. Kiff said that as well, is
5 that if -- when there are allegations or complaints of
6 any kind that come to a licensed -- about a licensed
7 facility, they are referred to the Complaint Intake Unit.

8 The Complaint Intake Unit then will assign an
9 investigator. And after gathering information, there's
10 an administrative procedure by which the administrative
11 agencies, referring to their supervisors, sometimes legal
12 Counsel, will then make a determination of whether or not
13 there's warrant to be a hearing, at which time the proper
14 confidentiality, the safeguards are in place. We're not
15 here talking about minors, and what the circumstances
16 dealing with person's treatment, or the nature of their
17 treatment. And that's the process by which these types
18 of determinations are made.

19 So that's the administrative procedure, and my
20 point is this. We -- strike that.

21 This is not the forum that we can nor will we
22 defend ourselves consistent with our ethical and
23 licensure obligations. We can't do it. The City knows
24 that, and the City been told that.

25 And so they can come and say whatever

16

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1 allegations, based upon hearsay statements, that the City
2 wants to summarize to you as inflammatory as they are,
3 and they know we cannot respond consistent with both the
4 ethical and licensure obligations.

5 The second thing that I find so problematic
6 about this process is -- and the City Council discussed
7 this in the presence of all the City staff that you see
8 here today. And the City Council asked time and again,
9 "But is the Hearing Officer the right person to make this
10 determination?" referring to the two minors' issue.
11 Twice it was asked by City Council.

12 I think the mayor asked it and one of the City
13 Council members asked it. The point being is that
14 there's a recognition that -- there's the recognition
15 that this is not the body that is either
16 qualified -- without disparaging you -- competent, given
17 the nature of the allegations, nor is the body that has
18 the procedural safeguards in place that those types of
19 determinations can be made.

20 Nor is this a, "Okay. Well, then no one will
21 ever know," right? I mean, ADP and DSS is in the process
22 of following their ordinary administrative processes to
23 make these types of determinations. That's one point.

24 The second point I want to just emphasize again
25 is, if you read the City Council record, it's clear that

17

1 we've been remanded here for a very specific purpose.
2 There was an after-acquired evidence presentation to the
3 City Council made by City staff at the time of the City
4 Council vote. The vote of the City Council was to remand
5 on a determination about that.

6 What we now have here today is -- and received
7 as recently as 15 minutes ago, is some additional
8 material that's being presented. There was no motion or
9 request that you reopen the record on this issue, nor is
10 there any fair and adequate opportunity to respond to
11 this.

12 I mean, for example, issues are talked
13 about the Web site. If there was a fair opportunity to
14 respond, one would say, for example, when the Web site
15 was up, it was accurate. It may not be accurate today.
16 And there are other things that could be said.

17 But, you know, how does one organize a response
18 when you're given this material this way, and it's told
19 explicitly by City Council, "This is not the issue that
20 you're to take up here."

21 Thank you.

22 MR. ALLEN: Okay. Thank you.

23 City response?

24 MS. WOLCUTT: Thank you. Katherine Wolcott,
25 Deputy City Attorney.

1 I'm going to respond to some of what the
2 Applicant's Counsel has said, and outside Counsel,
3 Mr. Bobko, will respond to some of the other issues.

4 The Applicant's Counsel has discussed the fact
5 that we are presenting after-acquired information here,
6 some of which was presented to the City Council, and some
7 of which came up after the City Council
8 remanded -- directed that this be remanded to you for a
9 rehearing.

10 The after-acquired evidence that came up after
11 the remand order was given by the Council is relevant to
12 the reasonable accommodation consideration. It's
13 efficient to remand it all at the same time, given the
14 lack of time considered.

15 The Applicant has also stated that there was a
16 retaliatory tone to this, that we had solicited these
17 unsolicited complaints. Mr. Kiff received these calls
18 unsolicited, entirely unsolicited, from members of the
19 public who were looking for the proper person to make
20 their complaint. And I believe that the mother of the
21 minors found Mr. Kiff by doing a Web search and finding
22 his name attached to a staff report, which was related to
23 the Newport Coast Recovery.

24 Mr. Kiff can say himself how the adult former
25 resident of Newport Coast Recovery located him and how

1 they came to make contact. But it was not through some
2 kind of retaliatory search for that information.

3 Mr. Brancart agrees that one of the substantive
4 pieces of the evidence that we have is that Social
5 Services did an inspection and issued an NOV. The
6 request for -- when you're considering whether or not all
7 this information is hearsay, I made the request directly
8 to the Social Services Inspector that I've dealt with in
9 the past. I requested that he inspect Newport Coast
10 Recovery and confirm whether or not the allegations that
11 minors had been housed there was true.

12 The Social Services Operator was named Michael
13 Valentine. You've seen correspondence from him in the
14 staff report. He confirmed that minor had been housed at
15 Newport Coast Recovery. He confirmed that there was no
16 Social Services license to house minors at that facility.
17 And he also confirmed, after inspecting the facility,
18 that no minors were there at that time.

19 I believe that's what Mr. Brancart is referring
20 to when he says that they have done a top-to-bottom
21 inspection, and the facility has been cleared. I think
22 the statement "the facility has been cleared" is a little
23 misleading in this context. There may not have been
24 minors there then, but there were minors there before.
25 Social Services confirmed it. That is a violation of

1 state law.

2 Mr. Brancart has said that this is not a zoning
3 matter. However, our Municipal Code section
4 20.91A.050.C4 states that it's a requirement as an
5 operating standard for a Use Permit that no person that's
6 affiliated with the operation of the facility has a past
7 pattern or practice of running the facilities in
8 violation of state or local law. It doesn't have to be a
9 zoning issue.

10 There is a reason that that requirement is in
11 the Code, and that is so that we do not have situations
12 such as this. It's to protect and prevent this sort of
13 situation from occurring. Therefore, we feel that it is
14 within the Hearing Officer's jurisdiction to hear what
15 violations of state law the Applicant has performed in
16 the past.

17 Confidentiality issues. The facility does have
18 a duty to protect the confidentiality -- the identity of
19 individuals who are in recovery at their facility at the
20 time. I don't believe that protecting an identity of the
21 facility residents prevents the Applicant from defending
22 itself if it is able to do so from the allegations we've
23 made.

24 And I believe -- oh, was to the 10-day request,
25 there was no precedent for the Applicant requesting to

21

1 receive the staff report 10 days in advance. We did make
2 every effort to provide it far enough in advance to give
3 them a reasonable amount of time. We recognize it is a
4 lot of material to wade through and to absorb.

5 However, the Applicant received it prior to 5
6 p.m. Eastern Standard Time. That would be 1:30 -- I
7 believe it was 2 o'clock our time here. So it was around
8 5 o'clock Eastern Standard Time, and it was six days
9 before the hearing.

10 That is the almost the exact equivalent of the
11 time that our Planning Commission, our City Council, all
12 applicants who are other applicants for discretionary
13 permits with the City, and all applicants for
14 discretionary permits Counsel generally receive staff
15 reports. It is City's established pattern and practice,
16 and we stuck to it.

17 That's all I have to add right now. Thank
18 you.

19 MR. BOBKO: If I may, Kitt Bobko, outside
20 Counsel for the City.

21 I just want to add one thing to what
22 Ms. WOLCUTT just said, and that's with regard to the
23 confidentiality and Counsel's suggestion that it is
24 completely impossible to defend against these
25 allegations.

22

1 There are two things with that. The first is
2 in is that no one, the City -- as between the City and
3 defendant -- or the Applicant, I'm sorry, the Applicant
4 has the best knowledge of what happened. The City is
5 dealing with knowledge that it's gained by these people
6 coming forward and giving stories.

7 But there's certainly no dearth of evidence or
8 information on the Applicant's behalf. All of the
9 alleged incidents occurred at the Applicant's facility.
10 And if anyone knows the in's and out's when people came,
11 when they left, what was alleged and what actually
12 happened, it's the Applicant. So this idea that the
13 Applicant is completely in the fog about what has
14 occurred I think is a little bit misleading.

15 Secondly, with regard to the confidentiality,
16 certainly if the Applicant wishes to come forward with
17 exculpatory statements and whatnot, it could submit those
18 to the Hearing Officer under seal. It could redact
19 names. There are a number of ways that we could protect
20 anyone who needs to be protected. And, in fact, the City
21 has gone to great length to do so in communicating with
22 the Applicant.

23 So this idea that they have been dragged up
24 here kicking and screaming completely defenseless to
25 these allegations I think is a bit of an overstatement.

1 And certainly the Applicant has experienced enough to
2 know that there are ways, if they wanted to, that they
3 could rebut some of the allegations.

4 With regard to your competence, your Honor, we
5 are not asking you to pass judgment over any of these
6 matters as a question of law. What we are asking you to
7 do, is within the context of the City's Municipal Code,
8 decide whether these allegations amount to a violation of
9 law.

10 We are -- the City has not, as, again, Counsel
11 for the Applicant has suggested, done this out of a fit
12 of retribution. Quite to the contrary. When Staff first
13 recommended this Applicant or when staff first made its
14 report for this Applicant, the application was
15 recommended to be approved. And then it was only after
16 this information came to Staff that it had to go back and
17 suggest to the Council.

18 And again, I'd like to make one minor
19 correction as well. The Council didn't see this
20 evidence. The Council was presented with a proffer of
21 evidence, which I believe was about five or six bullet
22 points. So the Council actually has not seen this
23 evidence. You will be the first person to see this
24 evidence.

25 But we're not asking you to draw conclusions of

24

1 law about that evidence. What we're asking you to do is,
2 within the bounds of Municipal Code, decide whether this
3 is something that bears upon this Applicant's ability to
4 use the land as it is -- as he's asking to use it. And
5 from the weight of evidence and from the testimony I
6 believe you're going to here in a few moments, I don't
7 think there's any way that you can conclude that it
8 doesn't bear upon that land use.

9 But again, we can concede that this is not
10 about questions of law with regard to licensure or
11 whether or not this person is fit to hold a license from
12 the state. In fact, you are not competent to make that
13 decision.

14 The only thing we're asking you to decide is
15 whether or not there is enough evidence, given the
16 parameters of our Municipal Code, to decide whether this
17 person can use the land as he is asking to use it.

18 Thank you.

19 MR. ALLEN: Mr. Bobko, what the finding that we
20 were, as the City, was required to make was that no one
21 manager shall have demonstrated a pattern of operating
22 facilities in violation of the law. And it's being
23 suggested that now we have a pattern of operating a
24 facility in violation of the law.

25 Doesn't that require that I make a finding

1 that, in fact, there was a violation of the law by the
2 way they operated this facility, vis-a-vis, these minors?

3 MR. BOBKO: I think that ADP has probably
4 already done that work for you.

5 Go ahead, Mr. Kiff.

6 MR. KIFF: Do you mean DSS, Mr. Bobko?

7 MR. BOBKO: I'm sorry. Thank you. That's good
8 staff. I think DSS has already done that for you.

9 I think that the evidence, though, again, in
10 order to give the Applicant his due process and to allow
11 him to -- again, we heard the word "hearsay" come up.
12 And of course, you know, that's a problem when you have
13 administrative hearings of people who are scattered all
14 about, but this is the opportunity to question that.

15 And if you, in your wisdom, believe that the
16 evidence does not amount or does not show that there has
17 been a violation of law, in addition to what DSS has
18 already decided, then certainly it's within your purview
19 to find that there isn't a pattern and practice of
20 violating the law.

21 But this hearing, again, is about a land use.
22 And the Applicant is here. All of the people who are
23 going to speak and give testimony are here. And you will
24 have an opportunity to hear that testimony first hand, as
25 will you, and be able to rebut it at the end. So the

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1 idea that this is all hearsay and this is, again, smoke
2 and mirrors and retribution I think is a bit of an
3 overstatement.

4 MR. ALLEN: I see. Are there people here that
5 are going to testify further about this -- one or more of
6 these matters?

7 MR. KIFF: It's my understanding, yes,
8 Mr. Allen.

9 MR. ALLEN: Okay. Because the hearsay issue
10 itself concerns me. Generally speaking, making a finding
11 such as we're required to make or not make here solely on
12 hearsay is generally not acceptable practice. And so, I
13 would really like to hear about that.

14 MR. BOBKO: Your Honor, unlike a court
15 proceeding, in an administrative hearing, the rules of
16 evidence do not apply. So although we are doing our
17 level best to make sure that everyone is afforded their
18 due process -- and again, to echo some of the things that
19 Ms. WOLCUTT said, you know, the staff report was not
20 shoveled out in the darkness in order to give it to
21 opposing Counsel on the weekend of the 4th of July.

22 To the contrary, staff worked to their fingers
23 to the bones to try to compile all of the evidence and
24 get everything done and get it out as quickly as they
25 could. And the July 7th date was not selected by the

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1 City. The City has been trying to have this hearing
2 since May. The July 7th date was selected by opposing
3 Counsel.

4 So the idea that the City is, you know, doing
5 anything that is going to curtail the ability of the
6 Applicant to respond is, again, I think an overstatement.

7 But getting back to your original question
8 about the rules of evidence, they simply don't apply in
9 an administrative hearing. And we have presented
10 e-mails.

11 If the Applicant, now that he has seen -- the
12 Applicant has seen the names, has any specific
13 information that they would like to include about those
14 e-mails, which were provided ahead of time, they may do
15 that. They can question the facts included in those
16 e-mails. They can even question anyone who gets up and
17 speaks now. But a strict hearsay rule, in fact, does not
18 apply today.

19 MR. ALLEN: Thank you.

20 MR. BOBKO: And I'm sure opposing Counsel will
21 disagree.

22 MR. BRANCART: May I be very, very brief?

23 MR. ALLEN: Yes, very brief. And then let me
24 understand what we're planning to do from here with
25 regard to this work.

1 MR. BRANCART: I believe that after this,
2 you're going to solicit comments from members of the
3 public on this narrow issue of after-acquired evidence
4 and then return to reasonable accommodation.

5 MR. ALLEN: I understand, but are there people
6 here set to testify with respect to violations that
7 occurred with respect to these two separate instances
8 that we have?

9 MR. BRANCART: I am unaware of them.

10 MR. ALLEN: I'm not asking you, frankly. I'm
11 asking Staff.

12 MR. KIFF: Mr. Allen, Ms. Christina Willis is
13 here, the parent of one of the minors, as is the minor.

14 MR. BRANCART: Now the plot thickens. Do we
15 take testimony in connection with a licensure matter
16 dealing with confidentiality? Obviously, they are free
17 to speak and say whatever they want in a public forum.
18 Newport Coast Recovery's process and obligations remain
19 the same. We cannot and will not respond. Obviously,
20 there's safeguards where it could be.

21 Can I turn back to what's at hand here, though?
22 As I recall, the City, when we actually focus on what
23 you're asked to do here, it's to make a finding whether
24 or not there is a demonstration of a pattern, a pattern,
25 a pattern of a violation of the law.

1 The only thing that's been represented to you
2 is, one, no finding of violation of the law. There could
3 potentially be licensure violations by not obtaining a
4 waiver prior to the housing the minor. Could be. ADP
5 and DSS will let us know.

6 Second, there was a Notice of Violation, which
7 does not constitute a violation of law. It can
8 constitute a violation of a certain regulatory provision
9 within licensure and an allegation that that occurred,
10 but then there is a follow-up inspection, and then a
11 Notice of Violation is cured.

12 Third point, we're looking here for you to make
13 this finding of a pattern of violation. The only thing
14 that you've received is Notice of Violation of a
15 potential failure to comply with a regulatory requirement
16 of pre-obtaining a waiver for a temporary housing of
17 minors, which is not, quote, law as it's generally
18 understood, about rather arises out of whatever narrow
19 particular licensure requirements that has happened here.

20 I'm going say this. I'm going to set
21 aside -- I'm going to set aside my objection that we
22 can't respond. I'm going to set aside for just a moment,
23 for the sake of argument, that this is not the place
24 where these determinations are made.

25 And I'm going to suggest that, as it's been

1 presented to you as a Hearing Officer to determine, have
2 you had -- can you make a finding that there is a
3 demonstrated pattern, pattern of violating the law based
4 upon the hearsay statements that you've been presented?
5 And I'm going to suggest to you no, that there is not.

6 Now, at the end of the day, when the competent
7 officials make these determinations, and they can handle
8 the issues dealing with hearsay and presentation of
9 documents, and experts can look at these things who knows
10 these licensure and waiver requirements, what have you,
11 then we will know. But at this point, we are not there
12 and this is not the forum here to go ahead and make those
13 determinations.

14 Last thing I want to say about -- last thing I
15 want to say about this -- and I don't think this should
16 be lost on us, because I think it goes to the apparent
17 unfairness that runs throughout this process, and that
18 is, this is not what we're here for. I go back and urge
19 you, as a Hearing Officer, to take a look at the remand
20 order from the City Council, and it's quite narrowly
21 drawn, and it's not what we're doing here right now.

22 MR. ALLEN: How does the Staff respond to that
23 last point? The City Council said to remand the matter
24 back to the Hearing Officer to only consider the newly
25 acquired evidence. Is that the newly acquired evidence

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1 that was presented to them, or is that other evidence
2 that you've obtained since?

3 MR. BOBKO: Your Honor, we submit that Council
4 didn't know what the evidence was. So when they said
5 "newly acquired evidence," that's exactly what we told
6 them, that there had been people that had come forward.
7 But again, we didn't present them this evidence. We
8 presented them with a proffer of evidence. And they
9 looked at it, and they said, "Yeah, that sounds like
10 something that you should consider as the Hearing
11 Officer."

12 So I disagree with Mr. Brancart in that the
13 Council had this -- such clarity in what they were asking
14 you to review. What they told them was, in order to
15 prevent them from being bias or tainted when this comes
16 back up to them on Appeal, as I'm sure it will if we get
17 that far, was not to tell them precisely what it was that
18 we had discovered, but to only give them, again, a
19 proffer of what we had learned, and suggested to them
20 that it was important, and that you should consider it.

21 So to suggest that they knew precisely the
22 boundaries of the evidence that we collected and that
23 they meant to curtail that, I think, again, is a bit of
24 an overstatement.

25 MR. ALLEN: All right. Thank you.

1 Anything further that we intend to present or
2 review on this?

3 MR. KIFF: No, sir, not beyond the public
4 testimony.

5 MR. ALLEN: Pardon?

6 MR. KIFF: No.

7 MR. ALLEN: I'm not in a position to render a
8 decision on this today. There's been a lot of issues
9 that have been presented that I did not know about, that
10 I just am hearing today for the very first time.

11 And so, it's appropriate to do a complete and
12 final job to make a presentation back to the City Council
13 and not make a decision based upon what I've been
14 presented with here today, because I think there are some
15 significant issues that need to be considered.

16 Can we select a date fairly shortly but,
17 nevertheless, to give sufficient time to the Applicants,
18 so that they don't have concern over their lack of
19 information within the 10-day period and get back before
20 us and make a more complete presentation on this?

21 MR. BOBKO: We appreciate there's a lot of
22 issues here. One concern that the City has is that the
23 continuance would prejudice -- is that there are people
24 who have come today, as this has been a noticed hearing
25 for quite a while, and are willing to give testimony.

1 We think that it would prejudice the City by
2 not allowing those people to speak today. Because then,
3 of course, my learned opponent will say that, "Why,
4 that's all hearsay. Those people have just sent us
5 e-mails, and we had no chance to respond."

6 So I think that it would be fairest for all
7 involved if those persons, if they wish, be allowed to
8 come speak. And then the Applicant will have first-hand
9 knowledge of what testimony was given. There will be no
10 hearsay objection later on. And you will have the
11 benefit of actually hearing these people and being able
12 to question them today, something that might not happen
13 if we continue this to another date.

14 MR. ALLEN: I completely agree with that. I
15 didn't want to curtail the public hearing aspect of it.
16 I just wanted to indicate that I wasn't ready to make a
17 decision based upon what we're hearing right now. But I
18 agree with you. We should open it up and let these
19 people testify.

20 MR. BOBKO: Okay. Very good.

21 MR. ALLEN: Does anyone else have anything else
22 to say before we open the public hearing?

23 Okay. The public hearing is open. And as
24 Mr. Kiff indicated a few minutes ago, each person has
25 three minutes to speak. And so be sure to identify

1 yourself, spell your last name for the record, when you
2 come to the podium.

3 MS. WILLIS: My name is Christina Willis,
4 W-i-l-l-i-s, and I'm the parent of -- one of the parents
5 of the children that were put into the facility.

6 Unaware of the fact that they were not suppose
7 to take minors at the time, I was in a very bad position.
8 Wanted help for my son. And Mr. Newman spoke to me at
9 least five times just on the drive down to get me down
10 there.

11 Since we took my son out after everything bad
12 that had gone and happened during the time that they were
13 there, I had actually checked in two children, one of
14 which was not mine, with his parents' consent, anyway.

15 This is the letter from Barbara Alms which
16 shows that it is being investigated through ADP. This is
17 the Web site, which has been falsely -- I mean, it's not
18 what they say at all. And my son can testify to that as
19 well. He lived it.

20 I think Mike Newman, quite frankly, the Newport
21 Coast Recovery is -- they are crooks. They have taken
22 money from several of those parents. On my account is
23 \$35,000. They refuse to pay the \$10,000 back, which I
24 have here letters from my attorney. I've tried
25 everything, every avenue. That's why I'm here today.

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1 I don't think he should be allowed to be in
2 business and take people's money when their children are
3 hurting and they are not giving them any help. He went
4 home and since got a felony charge for drugs, which I can
5 show you as well, because they don't help you. And I
6 don't believe they belong in business.

7 I've tried every avenue that I can, from
8 attorneys to whatever. They won't respond. They don't
9 answer calls. So the other parent that's dealing with
10 the same thing, same response. Nothing. He'll even
11 called Mr. Newman in the middle of the night. "Why were
12 you calling me? Why are you holding my money hostage?"

13 We've had to deal with this, and we have
14 families. As you can see, I'm getting ready to have baby
15 number four or five -- number five, sorry. So you lose
16 count after a while. No.

17 My son went from a straight A student. He was
18 a great kid. He had a downfall in his life. I went to
19 them for help. Did not receive that help. Took the
20 other child hoping -- because they are partners in crime,
21 they are best friends, they do everything together,
22 hoping that the two of them would come back sober
23 together and move on with their lives.

24 That child has since had to go to another
25 program. I can't afford to send my child to another

1 program. They have taken my money and they've run.
2 Plain and simple. Nobody returns calls. Nobody cares
3 whether or not -- but they have got my money.

4 And I'm not the only parent. There's two
5 others that I know of one of, which is a good friend of
6 mine, which is the other child's parent, who also -- is
7 waiting for \$10,000. He was sent two separate checks,
8 which I'm assuming Mr. Newman knows how to go around the
9 law, two separate checks for \$5,000. Neither of them are
10 any good. He goes to the bank every day trying to cash
11 those checks. Nothing.

12 So I feel personally duped. My son has
13 suffered because of it. His friend has suffered because
14 of it. And it's an ongoing battle for us, because I
15 could never get the help that was needed for him. You
16 know, my family had to take time off, had to drag my
17 other children, find them sitters, all that stuff to be
18 here every weekend. On the weekend I came up, there was
19 supposed to be a family meeting. Family meeting never
20 happened.

21 So everything I was promised and within their
22 brochure online -- I mean, that's the best way that I
23 could do it. It sounded amazing to me, which would make
24 you want to go and take your child and think, "Wow, this
25 is it. This is our answer." Mr. Newman called me five

1 times, and I have phone records to prove it, on the drive
2 down. Just on the drive down, in the short time, trying
3 to make sure that we're going to get there.

4 We got there. Everything -- it was late at
5 night. They sat with us. They assured us for, I would
6 say, a good 2 1/2 hours. They saw the reluctance on my
7 face, because it looked like a shady, scuzzy place. The
8 people looked like convicts that work there. Not all of
9 them. There's two very -- three very nice people in
10 there.

11 I later heard a lot of things through my son
12 and through his friend, things that shouldn't have been
13 going on there. My son was getting in cars with people.
14 Didn't know anything about it. No one ever told me. He
15 was supposed to be the facility 24/7 as far as I knew.

16 Getting in the car, going and driving. And
17 they don't even drug test them when they come back. They
18 could have been doing anything they wanted. That is not
19 the way it was supposed to be. That was not what we were
20 told. That was not what we were promised. It's not
21 hearsay. He's right here. He'll answer any question you
22 have.

23 We just don't want to see other people going
24 through what we have been through. At the worse time in
25 their life when they're down and out, and their children

1 are suffering, I don't want to see someone else have to
2 go through this, ever. It's not fair, and it's not fair
3 that they took my money and they ran and they gave me
4 nothing in return. Nothing.

5 It was lost money. It was my life's savings,
6 and they know it. They knew that. And they were okay
7 taking it. And I was okay with giving it as long as my
8 kid got the help. I later find out he was not even
9 supposed to be there. The other child was diabetic, I
10 tried making sure for the life I of me that that child
11 was going to get his shots. They assured us, "Everything
12 was going to be okay."

13 The reason I ran into Mr. Kiff online was
14 looking up incidents with Newport to try to find out, am
15 I the only one this is happening to? That's when I read
16 that there were other people that had diabetes that had
17 not gotten their shots, or whatever needed to be done,
18 and suffered. The ambulance had been called two or three
19 times because of that. Their neglectful. It's plain and
20 simple as that.

21 MR. ALLEN: Do they still have your \$10,000?

22 MS. WILLIS: Yes, they do. And
23 nobody -- nobody will contact me now, but, boy, they sure
24 wanted to get me down there. I mean, when I pulled
25 up -- to be honest with you, it was Mike Newman waiting

1 outside for me, even. "How are you?" He was the
2 sweetest guy in the world. I thought this is amazing.
3 Didn't last. Apparently, he never even visits the
4 facility once a month, and that's for donuts when the
5 parents come to visit.

6 MR. ALLEN: Okay. Thanks.

7 Where are we with time here?

8 MS. OBORNY: It was about five or six
9 minutes.

10 MR. ALLEN: Okay.

11 MS. WILLIS: Can we get Chris' mother on the
12 phone?

13 MR. KIFF: We could, yes.

14 MS. WILLIS: I think that that's very
15 important. And you're welcome to take those.

16 MR. KIFF: Okay.

17 MS. WILLIS: I do need them back, though.

18 MR. KIFF: Okay.

19 MR. ALLEN: Thank you.

20 Anyone else wish to speak?

21 MS. OBERMAN: Good afternoon, your Honor, and
22 Counsel and staff. Denys Oberman speaking on behalf of
23 the group of residents located in the Central Balboa
24 Peninsula.

25 We've listened to this and the allegations with

1 regard to the hearsay illegal operation, et cetera.
2 There is definitely a pattern of illegal operations in a
3 variety of respects. There was an illegal operation in
4 the form of an illegal facility that operated for several
5 years across the Street at 1219 West Balboa and was
6 reported by the citizens. The City is aware of it.

7 And actually, in one of these prior Use Permit
8 hearings, the operator actually admitted that he had run
9 this type of facility, and that he had, quote, ended up
10 closing it down. So that is one element of operation
11 that was illegal.

12 Secondly, there have been a number of other
13 code violations that impact health and safety. There
14 have been fire code violations. There have been fires,
15 and the City staff can certainly speak to all these
16 issues. There are a number of other -- so the bottom
17 line of it is, these are not isolated incidents or series
18 of incidents. They are representative of violations that
19 have occurred over the past five or more years on the
20 part of this operator.

21 There are many families, both within this
22 community and families who had young adults and maybe
23 children that were in the program, that are afraid to
24 come forward. There they afraid for a number of reasons.
25 We've previously expressed fear for retaliation. That's

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1 been pooh-poohed. There has been -- there have been
2 continued confrontations on the part of the operator, his
3 management, and the residents in the facility whenever
4 complaints have been submitted. So that fear is real.

5 There are incidents -- why is it when we talk
6 about fairness and equity, that when residents come
7 forward or others, parents of patients or clients that
8 make testimony, that that testimony is characterized as
9 hearsay, when that testimony is based on direct
10 experience and direct observation?

11 If this degree of evidence is insufficient to
12 demonstrate a pattern, there are a number of other people
13 that will come forward within this community and parents
14 sending young adults here from outside the community who
15 will testify if they are afforded the same types of
16 protections that this business operator that is operating
17 illegally is, at least a similar level of protection.

18 And lastly, I want to say that it's my
19 understanding that this City does have a duty to uphold
20 state law. Is that correct or incorrect? I'd like to
21 inquire. We've reviewed the state law. We reviewed it
22 with a far variety of lawyers for the City, for various
23 residents, and residents groups, et cetera.

24 The City does have a duty to uphold the state
25 law, and also the City has a duty -- it has a duty to

1 protect the health and safety of the residents. And that
2 is within the purview of this hearing protocol and we
3 believe within your purview.

4 And that we hope and recommend that you act,
5 and we'd like to see you act today so there's no undue
6 continued burden on the City and its residents, and act
7 to abate this use and also deny the request for
8 reasonable accommodation.

9 Thank you.

10 MR. MATHENA: Good afternoon. Larry Mathena.

11 Just a couple points, hopefully, that will be
12 helpful. As someone in the public who's attended most of
13 these hearings, I just want to go on record -- and I
14 would be happy to testify as a member of the public
15 somewhat knowledgeable -- that from my perspective, in no
16 know way, shape or form has the City or the City staff
17 done anything in a retaliatory manner or in a manner
18 designed to undermine the position of group home
19 operators.

20 In fact, if anything, I could probably, with a
21 little preparation, testify for an extremely long period
22 of time about how the City, in fact, has tied itself into
23 a knot to do exactly the opposite. So any claim of
24 retaliation on behalf of the City, I believe, is utterly
25 fallacious.

1 Number two, you know, I do accept that there's
2 a need to find a potential additional grounds for denial.
3 And let's back up and keep in mind you, in your wisdom,
4 did deny this operator a Use Permit way back when. And
5 the only issue before us is, in light of additional
6 evidence, whether or not, frankly, there's additional
7 grounds to deny that operator its Use Permit. One of the
8 grounds is, evidently, patterns of law violations.

9 Two different points. The law as quoted does
10 not make a difference between regulatory or
11 administrative law versus some grander law. You clearly
12 have in front of you sufficient evidence to indicate a
13 violation of that, whether or not the state and the
14 regulatory authorities involved in enforcing that law
15 deem it meaningful enough to apply penalties or sanctions
16 against this particular operator.

17 Finally, I would observe that in terms of both
18 this particular caseload and everything else and the many
19 times I've been involved in the City's activities
20 associated with group homes, that no way, shape or form
21 has the City violated its normal operating processes in
22 any shape or manner. In some ways, I could object to
23 that personally, but I will choose not to.

24 MR. ALLEN: Does anyone have any more testimony
25 bearing directly on the point of what the City Council

1 remanded for the Hearing Officer to hear?

2 MR. BRANCART: Yes, sir. I believe that the
3 Applicant speaks again before you close.

4 MR. ALLEN: Yes, you can speak again after we
5 conclude the public hearing.

6 Anyone else need to speak?

7 Okay. Thank you. Then we'll close the public
8 hearing, and Mr. Kiff, we just completed the public
9 hearing. And our normal course from here is to allow
10 rebuttal by both the Applicant and the City; correct?

11 MR. KIFF: Well, Mr. Allen, with all due
12 respect, I'd make a request to reopen the public hearing
13 and allow the other parent to speak. She is not with us
14 today. She did offer to call in. I typically would have
15 put her on the speaker phone here, but Mr. Polin is using
16 our speaker phone, respectfully. So this is -- that's
17 why I ran out was to get her contact information. I just
18 spoke with her. She's prepared to speak.

19 MR. ALLEN: So how would we do that then?
20 Handle that one and have Mr. Polin to go on hold?

21 MR. KIFF: No. I'm going to put her on my cell
22 phone, if you're willing to.

23 MR. ALLEN: That's fine, as long as we can hear
24 her for the record.

25 MR. KIFF: Hello? Ms. Golden, this is Dave

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1 Kiff. I have you on speaker phone in our hearing room
2 before Mr. Thomas Allen, who is our Hearing Officer.
3 We're now in the public comment period of the discussion
4 about Newport Coast Recovery. I'm not going to ask you
5 any questions. You're invited now, though, to make any
6 comments you believe the Hearing Officer should hear.

7 MS. GOLDEN: Okay. Thank you so much for
8 giving me an opportunity to.

9 MR. ALLEN: I appreciate it.

10 MR. KIFF: I'm sorry. You'll want to identify
11 yourself for the record first.

12 MS. GOLDEN: Oh, sure. Judy Lynn Golden,
13 Christopher Van Dan's (phonetic) mother.

14 MR. KIFF: Go ahead, then, please.

15 MS. GOLDEN: First of all, I would like to say
16 that I think it's just unbelievable that Tina and my
17 husband have not been reimbursed all of the money that
18 they paid for a fraudulent contract.

19 They did -- I will say that he did put,
20 yesterday -- asked him to put \$1500 into an account for
21 my husband. And this was after, I would say, probably at
22 least 200 phone calls. I think that the way they -- I'm
23 sure you've already heard, and everybody's said what they
24 had to pay, but I had to pay \$5,000 (unintelligible).

25 When he took off and left at about 12 o'clock

1 on the 29th, no one ever even contacted my ex-husband.
2 No one had contacted my ex-husband or let him know our
3 child was missing, that he got back at about 9:30, 10
4 o'clock the next morning. And one of the workers there
5 had actually contacted my daughter and told her.

6 And when I called, my roommate -- when I
7 called, it was Judd Wheatfield (phonetic). And my
8 roommate calls me back. And this was a long time ago.
9 She's no longer with me. He called me back and said,
10 "The reason why I missed your call is because I was on
11 the phone on the other line with your ex-husband. If you
12 want to know about your son, call him," and he then hung
13 up on me.

14 Keep in mind, okay, he's into drugs, no form of
15 ID, takes shots of insulin every day. And I felt like we
16 got no idea where our child was. When we finally
17 got -- we had weekends, not even actual weekdays, and had
18 no idea we could reach him. And when both my husband and
19 I contacted them, "We put him on four-month no
20 visitation." They also said, "Quit calling here."

21 That's when I got in contact with Kathy
22 Wolcutt, and everybody was really starting to -- we -- we
23 had no idea for 2 1/2 days where our son was.

24 Then we only found out that he was at Reckers
25 (phonetic), which was another place that he is not

1 allowed to have trips. And when I got over there, when I
2 go back down there to pick up my son, it was like walking
3 into a terrible prison movie.

4 When I got there, I got there and
5 (unintelligible) after I got my son's things -- Al
6 Pacino. He had clothes with him, colognes with him. He
7 had all sorts of things that they didn't pack. And then
8 they take him back, so I find my kid in Costa Mesa.

9 And when I got there, it was the most scary
10 situation that I ever walked into. And that's
11 what (unintelligible.) And so I guess I think it was a
12 very scary situation. They took advantage of everyone
13 concerned, especially these two kids.

14 I mean, they really did number on the
15 financial. I pray to God that he got himself help and
16 got (unintelligible), because to take that kind of
17 money -- \$45,000. And they say on their Web site where,
18 "Oh, weekend special \$15,000." And when we were in
19 there, some people were in there for \$12,000, \$15,000,
20 (unintelligible). They said to us for forty-five. It
21 was just a travesty.

22 And the people that we had explained their
23 prison -- prison sentences too, I mean, it was
24 just -- it was not a good situation. I would just -- we
25 put my son into better rehab called --

1 MR. ALLEN: Okay.

2 MS. GOLDEN: -- in Northern California to get
3 him help.

4 MR. KIFF: Jody, our time limit is up. I'm
5 going to --

6 MS. GOLDEN: I appreciate it.

7 MR. KIFF: Hold on one moment, please.

8 MR. ALLEN: Can you hear me?

9 Would you please ask her how old her son was
10 when he entered the facility?

11 MR. KIFF: Jody, will you tell the Hearing
12 Officer how old your son was when he entered the
13 facility?

14 MS. GOLDEN: Yes, he was 17 years old.

15 MR. ALLEN: Thank you.

16 MS. GOLDEN: And he was told, "If anyone asks,
17 tell them you're 18."

18 MR. KIFF: Okay. Any other questions of her?

19 MR. ALLEN: No more questions for me.

20 MR. KIFF: That would conclude our testimony.

21 MS GOLDEN: Okay. Thank you very much,
22 Mr. Kiff. I appreciate it.

23 MR. KIFF: Hold on here.

24 MR. BRANCART: So that it's stated on the
25 record, and I want to be plain, Newport Coast Recovery

1 will not violate its ethical obligations or
2 confidentiality provisions to cross-examine an individual
3 or their parents regarding any treatment they have. I
4 want to add a rebuttal comment, and I want on that plain
5 and on the record. That's not the way it's done.

6 MR. ALLEN: Let's see. We've closed the public
7 hearing now. Although we reopened it temporarily for the
8 purposes that important to call.

9 Which parents were and child were the ones that
10 the evidence was present at the time the City Council
11 made its order to remand?

12 MR. KIFF: Mr. Allen, both parents spoke. Both
13 parents provided the information at roughly the same
14 time. This involved two minors so you heard from.

15 MR. ALLEN: These two?

16 MR. KIFF: That's correct. You heard from the
17 second minor here on the phone with Ms. Jody Golden, and
18 the first minor with Ms. Willis.

19 MR. ALLEN: Okay. All right. Let's see. I've
20 forgotten our practice, whether we have the Applicant
21 speak first in response to public hearing comments or
22 whether we have the City. Whichever, please, go forward.

23 MR. KIFF: It's the Applicant.

24 MR. BRANCART: The finding you're asked to make
25 is that there has been a demonstration or pattern of

1 violation of the law. In connection with that, I believe
2 it's incumbent on the Hearing Officer to make the
3 following subsidiary findings.

4 One, that this has been a fair process by which
5 you have received a fair -- fair presentation of the
6 evidence; in other words, that you determine that there
7 are no confidentiality or ethical obligations that would
8 in any way preclude someone in Newport Coast Recovery
9 from responding to this information and all of this
10 information.

11 And that is a determination that will have to
12 be made, obviously, in light of not only municipal codes
13 that apply here, as well as zoning codes -- I'm sorry, as
14 well the licensing codes, and other confidentiality
15 provisions.

16 Second, that it has been demonstrated here by
17 the City that there was a violation. What we've heard
18 is, of course, information that's been provided. But
19 none of it necessarily rises to a violation of law.
20 That's the second -- that is the second subsidiary
21 finding you, as a Hearing Officer, have to make.

22 "As a Hearing Officer, I hereby determine that
23 these state provisions were violated. I determined that
24 adequate evidence existed for the violation of these, and
25 that I'm competent to render these decisions and hear the

1 evidence that supports it, and this was a fair
2 presentation of the evidence, despite the fact that the
3 Applicant could not comment on what the evidence was
4 presented."

5 As part of that, I would add this. We've heard
6 two things -- without breaching confidentiality, but I do
7 believe I heard two people that expressed a concern that
8 they had not received monies back from them. It is -- if
9 that is true, and the very best light of the -- presented
10 to the individuals, we may have a breach of contract.
11 And that may be something that's occurring in dozens,
12 perhaps hundreds, of businesses here in the City of
13 Newport Beach within this week.

14 But a breach of contract, if, indeed, that is
15 what occurred here, and Newport Coast Recovery vehemently
16 disputes it, is not a violation of law.

17 I'm going to end on this note. Thank you.

18 MR. ALLEN: City's response?

19 MR. KIFF: Mr. Allen, respectfully, it's Staff
20 assertion -- obviously we have Counsel here for Staff, as
21 well as for the operator.

22 We brought these two cases towards you in good
23 faith, as they were brought to us by both parents. We
24 also brought forth to you in attachment one of your staff
25 report that says -- that includes the document on

1 Department of Social Services letterhead that says,
2 "Subject: Notice of operation in violation of law."

3 It's a pretty clear document that's in front of
4 you. I very much respect your thought that this
5 could -- it would be arguably fair to allow the Applicant
6 additional time to respond to that, but -- and we're
7 amenable to your wishes there.

8 But it's clear to us, as Staff, that the
9 document in front of you is -- makes us unable to make
10 the finding whereby this operator to, quote section
11 20.91A.050, that "the property shall be operated in
12 compliance with applicable state and local law."

13 This is an example where the property is not in
14 operated in compliance with applicable law and state law
15 specifically. I think that's concludes
16 Staff -- Mr. Bobko has a remark.

17 MR. BOBKO: I want to get back to the due
18 process issue for just a moment.

19 MR. ALLEN: Due process?

20 MR. BOBKO: Yes.

21 MR. ALLEN: Okay.

22 MR. BOBKO: Your Honor, again, my opponent says
23 that this is not a fair presentation, and that they will
24 not answer the evidence. And frankly, were I in his
25 shoes, I would make the same claim. I don't know how you

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1 could possibly respond to that evidence.

2 I, again, reiterate that if they wanted to
3 present evidence to you under seal, redacted from all of
4 the names, that would be perfectly acceptable to the
5 City. And we think that that would ameliorate any
6 questions about confidentiality that prevent them from
7 exerting any type of defense here.

8 We've done that in the past. It is not
9 uncommon to do in situations, for example, in cases
10 where, for example, police officer files are turned over
11 from the City. That information is confidential by the
12 Penal Code, and those files are always turned over under
13 seal. We would -- if that's the question, the City would
14 be happy to stipulate to that procedure, so that you had
15 the ability to look at any of evidence that they would
16 like to put on.

17 But again, this suggestion that there is simply
18 no defense to this evidence, and not only is there no
19 defense to this evidence, but they are legally prohibited
20 from defending ourselves against that evidence, is, I
21 think, an overstatement.

22 MR. ALLEN: All right. Here's what I think,
23 and I'm going to do this as quickly as possible.

24 Number one, Mr. Mathena said what we all are
25 recognizing all the way along here, that whatever we do

1 today does not have any effect on the Resolution
2 previously adopted making the findings, among other
3 things, that there's an overconcentration, and that this
4 use was denied for that reason.

5 So this use is still denied, and the City
6 Council did not seek further input with respect to that.
7 They simply remanded the additional evidence concern to
8 the Hearing Officer to make a finding there. The City
9 Staff has come up with a notion that possibly this
10 constitutes the basis for demonstrating a pattern of
11 violation of the law.

12 I don't think that one or two instances
13 constitutes a pattern of violation of the law. But it is
14 clear to me, without having to conduct any further
15 hearings, that at least two 17-year-old individuals were
16 admitted into this facility, and that they were present
17 their for awhile, and they entered into what -- or their
18 parents entered into contracts to have Newport Coast
19 provide services for them. And that's pretty simple and
20 straight forward. I did not hear even denial of that
21 from the Applicant.

22 So I don't need to go forward in my mind and
23 conduct a full-blown evidentiary hearings to determine
24 whether technical violations occurred with respect to the
25 nature of the treatment that was given. The fact is,

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1 there were two 17-year-olds admitted into the facilities,
2 and they were weren't licensed.

3 And so I'm going ask the City Staff to prepare
4 a Resolution that would be a Resolution supplemental to
5 the 2002-09, I believe it is, or -- I'm sorry, no.
6 2009-002 Resolution. It would be supplemental to that,
7 not the same Resolution, because the City Council
8 remanded this for a determination to them as to this
9 newly acquired evidence.

10 And so while I don't believe a pattern or
11 practice of violating the law just based on what the City
12 Council remanded back, which I think is a separate issue,
13 I can't go back and make a determination here now that,
14 for instance, they're using the garage in violation of
15 law, and a lot of other things that have been contended
16 here, because that's not what the City Council sent back.

17 The City Council sent back this one issue of
18 whether this newly acquired evidence should be considered
19 by the Hearing Officer, and that's what I'm going to do
20 by this Resolution. And I believe I'll have to work with
21 Staff to construct it. But there's no need to further
22 continue this. I will draft that Resolution in
23 connection with staff, and we'll end that at this point.

24 Any comments or needs to make further --

25 MR. BRANCART: Yes. Obviously, so that the

1 record is clear, all the objections stand. We object to
2 the finding. This is not the competent forum. Please to
3 do not, by my lack of advocacy on this issue, say that
4 we're conceding any of these points.

5 What I've said before, and I'll say it again,
6 is that this is a matter that's going to be fully
7 adjudicated by ADP and DSS. It's not going to be
8 adjudicated here.

9 But you've rendered your finding and -- based
10 upon the information that you have before you, and you've
11 made a determination that you believe you're in a
12 position to make that finding on the record that's been
13 presented, that that is what has occurred.

14 But please do not accept our presentation as
15 being acceptance of the finding or not presenting a
16 denial, okay?

17 MR. ALLEN: I won't do that, but on the other
18 hand, I think you had a duty to at least make some
19 presentation here. And if you're legally prevented from
20 doing that, I find it that surprising, that you could not
21 at least deny that these, in fact, occurred.

22 MR. BRANCART: Right. And I appreciate that,
23 and that's the determination you've made as the Hearing
24 Officer, that you believe, based upon the expertise that
25 you bring here, is that that would have been something

1 that the Applicant could and should do.

2 Regarding the application of licensure, we
3 respectfully disagree, but that is a subsidiary finding.
4 And I would like that reflected in your findings,
5 please.

6 MR. ALLEN: Okay.

7 MR. BRANCART: Would you do that? Thank you.

8 MR. BOBKO: I'll take five minutes.

9 MR. ALLEN: Mr. Bobko?

10 MR. BOBKO: I'm simply going to ask that we
11 take a five-minute break, before the reasonable
12 accommodation hearing.

13 MR. ALLEN: I think it's an excellent idea. Is
14 this one concluded?

15 MR. BOBKO: Staff has nothing.

16 Mr. Kiff?

17 MR. KIFF: Nope.

18 MR. ALLEN: It's concluded then, subject to
19 adoption of a Resolution.

20 (Pause in proceeding.)

21 MR. ALLEN: All right. Let's commence number
22 two on this agenda, which is the same Applicant, Newport
23 Coast Recovery, seeking a reasonable accommodation from
24 several of the Newport Beach Code standards.

25 So let's commence with a Staff report by the

1 City.

2 MR. KIFF: Ms. WOLCUTT will be making the
3 reasonable accommodation presentation. As a reminder,
4 the pattern is similar to what we do with the Use Permit
5 hearing. There's a Staff presentation. The Applicant
6 has an opportunity to make comments. Public hearing is
7 opened; public hearing is closed. Applicant can return.
8 You can ask further questions, and then either make one
9 of three different determinations, approve, deny or
10 continue.

11 And just as a reminder to the folks in the
12 audience, our obligation is to be out of the room by
13 5:45.

14 MS. WOLCUTT: Katherine Wolcutt, Deputy City
15 Attorney. That probably applies to me as well to get
16 through the Powerpoint with all due speed.

17 As you see in the Staff report, the Staff
18 report is approximately 39 pages long. The Applicant
19 made two different reasonable accommodation requests, and
20 they were both very exhaustively analyzed.

21 And we will be hitting the high points in the
22 verbal presentation today, because of the number of the
23 requests and the length of the Staff report and the need
24 to get through the material so that people still have
25 time to speak. For anybody who's been to these

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1 presentations before, this will look very familiar.

2 The background in reasonable accommodation,
3 under the Federal Fair Housing Act, "unlawful
4 discrimination includes refusal to make reasonable
5 accommodations in rules, policies, practices, or
6 services, when such accommodations may be necessary to
7 afford a handicapped person equal opportunity to use and
8 enjoy a dwelling." That's a quote from the McGary v.
9 City of Portland, 9th Circuit case.

10 The duty for a city or a housing provider to
11 make reasonable accommodations is well established.
12 Federal Fair Housing Act Amendments are the source of the
13 duty. They require cities to make exceptions from their
14 usual rules, policies, and practices when:

15 The request is made on behalf of the disabled
16 individual;

17 When the request is reasonable;

18 And when the request for the accommodation or
19 exemption is necessary, and that that necessity is tied
20 to whether it is necessary to afford a disabled
21 individual an equal opportunity to use and enjoy a
22 dwelling. Source of that is 42 U.S. Code, Section
23 3604(f)(3)(B).

24 First, we look at whether or not a request is
25 reasonable. And requests are considered unreasonable if

1 granting it would either:

2 Impose an undue financial or administrative
3 burden on the City;

4 Or if it would result in fundamental alteration
5 in the nature of the City program.

6 Fundamental alteration is also described as
7 "undermining the basic purpose which the requirement was
8 adopted to achieve."

9 We also look at whether the request is
10 necessary. Will the accommodation -- on a general level,
11 will the accommodation allow the disabled individual to
12 live in the dwelling if the accommodation is granted?

13 Would the disabled individual be unable to live
14 in the dwelling without the accommodation?

15 And then we look at whether or not there's a
16 direct link between the accommodation requested and the
17 required equal opportunity?

18 And court cases looking into this issue and
19 analyzing it have found -- have come to define it as
20 whether the required accommodation is necessary to either
21 make the facility financially viable, and thus, provide
22 an equal opportunity to live there;

23 Or does the required accommodation provide a
24 therapeutic benefit to the disabled resident? Is there a
25 direct connection between the accommodation requested and

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1 the benefit to be received?

2 Applicant has requested two alternative
3 exemptions. Each request would require an
4 exemption -- if granted, it would require an exemption
5 from the restriction of Newport Beach Municipal Code
6 section 20.10.020, which requires that residential care
7 facilities generally be located only in MFR zones and
8 with a Use Permit.

9 An exemption for the Newport Beach Municipal
10 Code section 20.10.020, with continued operation under
11 the terms recommended by the January 12th Staff report
12 was the first of Applicant's request. They made two
13 separate ones, which complicated the analysis a little
14 bit, hence the length.

15 That recommendation that they have asked you to
16 adopt is that the use be continued in the current
17 location with 14 residents, maximum occupancy. And some
18 of the other conditions that that would have required,
19 recommended by staff:

20 Quiet hours;

21 All the on-site parking spaces, all six of
22 them, be kept clearing for parking, not used for any
23 other use;

24 Three master parking permits be purchased from
25 the City, and that staff and residents and visitors who

1 would -- staff and residents will use those master
2 parking permits when parking off-site.

3 And for the family counseling that's apparently
4 provided to the residents' families, Staff had made a
5 suggestion that either the counseling sessions for people
6 who do not reside on-site be conducted from 9 to 12 in
7 the morning, on Sunday mornings, to mitigate impact on
8 beach parking.

9 Or that the family -- when family counseling is
10 provided, that the family members park elsewhere and be
11 transported from off the Peninsula with a shuttle system.

12 It also required compliance with all Federal,
13 state and local laws, as all of our conditions can do.

14 Applicant also made a second request. As the
15 Applicant phrased it, if we did not -- if the Hearing
16 Officer did not grant the first request, which was
17 essentially continue the operation with 14 and
18 conditions, including conditions on parking, then they
19 required -- asked for a waiver of continued operation of
20 18 residents, and a waiver of certain Newport Beach
21 Municipal Code requirements, and also waiver of selected
22 standards that were required in order to receive a Use
23 Permit.

24 Those specific standards that they asked to be
25 waived were asked for 18 residents as maximum occupancy;

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1 They asked for a waiver of the Use Permit
2 occupancy requirements. There's a limit of two per
3 bedroom, plus one additional resident in the entire
4 facility in order to receive a Use Permit;

5 Exceptions from the parking requirements. The
6 parking requirements are in another section of the Code,
7 20.66.030. Those parking requirements were in place
8 before the current Ordinance was adopted.

9 They asked that residents and visitors be
10 subject to the same parking requirements as all
11 residential uses;

12 They ask that the City -- the Hearing Officer
13 determine that the City should treat the Newport Coast
14 Recovery as a legal non-conforming use;

15 They asked that the City apply the California
16 Building Code requirements that were in place at the time
17 the facility was established. The first change of this
18 facility from a residential use to a recovery facility
19 use was in 1997.

20 A waiver of the overconcentration
21 considerations, particularly those involving APA standard
22 of one or two residential care facilities per block;

23 And a waiver of consideration of proximity of
24 the facilities to schools, playgrounds, day care centers,
25 and alcoholic beverage outlets.

1 The Staff recommendations are to deny request
2 number one, but to permit current facility residents to
3 complete the stay that they intended, so that we're not
4 depriving any current residents of their housing;

5 And request number two, to deny the
6 accommodation since we have already dealt with the
7 current residents into request number one.

8 Turning to analysis at the individual requests,
9 request number one. First, we look at whether request
10 number one is necessary and necessary to afford a
11 disabled individual an equal opportunity to use and enjoy
12 a dwelling.

13 We look at, does this facility require the
14 requested accommodation at the requested population they
15 have asked for to achieve financial viability or a
16 supportive recovery environment? And our 9th Circuit
17 source for that is City of Edmonds v. Washington State.

18 The factors of the Newport Beach Municipal Code
19 allows the City to consider, and a Hearing Officer,
20 whether the accommodation will affirmatively enhance the
21 quality of life of individuals with a disability. That's
22 tied to the therapeutic benefit issue;

23 Whether the disabled individuals will be denied
24 an equal opportunity to enjoy the housing type of their
25 choice without the accommodation;