

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 the moment.

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

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

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

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

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

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

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

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

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

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

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

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

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1 towards reintegrating in society.

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

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

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

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

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

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

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

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

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

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

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

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

25 My observations are the City Council, for the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 MR. KIFF: Yes, sir.

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

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

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

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

25 "The Hearing Officer needs to make a finding

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

9 And so these are addressed in the staff report.

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

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

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

25 And then it discusses this concept that in

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

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

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

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

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

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

3 I apologize. I know that's not helpful.
4 It's -- it's something that --

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

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

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

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

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

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

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

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

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

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

22 MR. KIFF: Okay.

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

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

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

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

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

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

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

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

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

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

25 And so, I would request or require that a

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

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

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

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

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

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

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

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

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

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

11 MR. KIFF: Ten days.

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

13 MR. KIFF: Does that seem reasonable?

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

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

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

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

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

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

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

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

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

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

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NEWPORT COAST RECOVERY - 1/12/2009

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

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

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

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

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

18
19 Dated: JAN 14 2009

20
21 
22 Laura A. Millsap, RPR
23 CSR No. 9266
24
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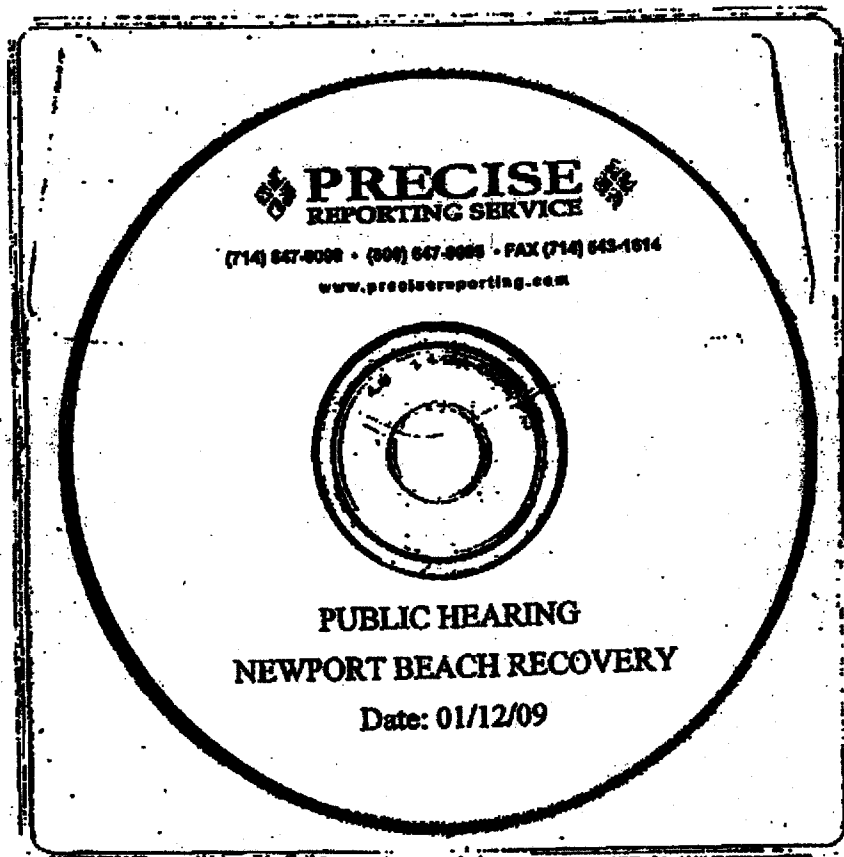
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NCR 00500

**GROUP RESIDENTIAL USE PERMIT HEARING (1/22/09):
AGENDA**

NCR 00501

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NCR UP/RA 00645

645

**City of Newport Beach
GROUP RESIDENTIAL USE PERMIT HEARING
AGENDA**



This hearing is held in accordance with Newport Beach Municipal Code Chapter 20.91A (*Use Permits in Residential Districts*).

DATE: Thursday, January 22, 2009
TIME: 4:00 p.m. - 6:00 p.m. (Hearing must be concluded or continued by 6 p.m.)
LOCATION: Council Chambers, Newport Beach City Hall @ 3300 Newport Boulevard
HEARING OFFICER: Thomas W. Allen

AGENDA ITEM #1

USE PERMIT No.: UP2008-033 (PA2008-104)
APPLICANT: Newport Coast Recovery
SUBJECT PROPERTY: 1216 West Balboa Boulevard, Newport Beach

PROJECT SUMMARY: An application requesting approval of a Use Permit to allow a residential care facility to operate an adult alcohol and/or drug abuse recovery treatment facility for males only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This is not a public hearing item.

AGENDA ITEM #2

USE PERMIT No.: UP2008-038 (PA2008-112)
APPLICANT: Kramer Center at Newport Beach, LLC
SUBJECT PROPERTY: 207 28th Street, Units A & B, Newport Beach

PROJECT SUMMARY: An application requesting approval of a Use Permit to allow a residential care facility to operate as a "sober living home" for up to 12 male and female adult resident clients. This is an "unlicensed 7 and more" facility. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This is a public hearing item continued from December 10, 2008.

AGENDA ACTION

1. Meeting Convened (Hearing Officer)
2. Agenda Item #1 – No Public Hearing
 - a) Draft Resolution of Denial, *Newport Coast Recovery* (UP 2008-033) (Newport Beach City Staff presentation)
 - b) Hearing Officer Determination. The Hearing Officer has asked that he be presented with a Resolution of Denial for Use Permit No. 2008-033.
3. Agenda Item #2 – Continued Public Hearing

NCR 00502

- a) Presentation of the *Kramer Center at Newport Beach LLC* application (UP2008-112) (Newport Beach city staff)
 - b) Applicant comments, if any
 - c) Public hearing opened (Hearing Officer).
 - i. Comments are limited to comments about the subject property's application and operations; and
 - ii. Comments limited to three minutes, unless otherwise ordered by the Hearing Officer.
 - d) Public hearing closed (Hearing Officer).
 - e) Applicant may offer rebutting or clarifying comments (Applicant).
 - f) Hearing officer's questions of City staff or applicant.
 - g) Hearing Officer determination. Options include continuance, approval of a use permit with conditions or denial of a use permit. In the latter two cases, the Hearing Officer may instruct staff to prepare the Resolution for his signature.
4. Adjournment (Hearing Officer).

CEQA: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from CEQA's provisions.

APPEAL PERIOD: Use Permits do not become effective until 14 days after the date of approval, during which time the decision of the Hearing Officer may be appealed to the City Council.

#

NCR 00503

**GROUP RESIDENTIAL USE PERMIT HEARING (1/22/09):
CORRESPONDENCE TO HEARING OFFICER**

NCR 00504

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NCR UP/RA 00648

Brown, Janet

From: Kiff, Dave
Sent: Thursday, January 22, 2009 1:15 PM
To: Brown, Janet
Subject: FW: Data Request
Attachments: Newport Recovery Resolution Review.pdf

FYL

From: mathenaesq@aol.com [mailto:mathenaesq@aol.com]
Sent: Thursday, January 22, 2009 11:55 AM
To: Kiff, Dave
Subject: Re: Data Request

Hi Dave:

Attached is my input on the Denial Resolution for Newport Coast Recovery.

I am still looking forward to a few answers from my prior email below.

See you later.

Larry

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

From: mathenaesq@aol.com
To: DKiff@city.newport-beach.ca.us
Sent: Wed, 14 Jan 2009 10:07 am
Subject: Data Request

In preparing for 1115 West Balboa I note the following:

In both staff writes-ups on January 8th 2008 as well as January 22nd 2008- It is observed in regards to FEP's that "No FEP was ever issued by the City, nor did none apply. City Staff believes that some facilities subject to the FEP told the City that they would operate as a "6 and Under" but facility managers submitted a higher resident plan to State ADP."

Ocean Recovery's ADP license at 1115 has always been in excess of 6. It began operations at 1115 in mid 2004 and separately licensed it.

Based on the explanation given- Ocean Recovery should have applied for an FEP at 1115 West Balboa but apparently it (nor anyone else) never did.

In Attachment C to the January 22 Submittal to the City Counsel- Summary of Comments (page one of six)- the notorious Denys Oberman is attributed as stating: "Existing uses need to be legally compliant." The Response back was: "Agreed, generally. Existing uses that have violated the Moratorium or did not apply for an FEP yet should have are ineligible to receive a Use Permit."

So- isn't Ocean Recovery "Ineligible to receive a Use Permit" at least at 1115?

If not, why not?

2. I would like to review the UP file *and any related correspondence* for Ocean Recovery sooner rather than later.

Should I arrange to do so through Theresa ?

AND ONE MORE QUESTION FROM MY JANUARY 13TH EMAIL:

Are Ocean Recovery's properties being treated as an integrated facility by the City?

Which stars will make the biggest headlines in 2009? Get Hollywood news, celebrity photos and more with the PopEater Toolbar.

Larry Mathena
1125 West Balboa Boulevard
Newport Beach, California 92661
949-752-5115 Extension 18
mathenaesq@aol.com

January 22, 2009

To: Thomas W. Allen, Hearing Officer
David Kiff, Assistant City Manager

Subject: Newport Coast Recovery, LLC
1216 West Balboa Boulevard
Use Permit UP 2008-033 (PA2008-104)
Draft Resolution of Denial

From: Larry Mathena

Gentlemen:

I have reviewed the proposed resolution prepared by City Staff deny the Use Permit identified above. Although the conclusion of the resolution is the right one- many of the determinations made within the resolution seem inappropriate.

The focus seems to be on explicitly defining a few reasons why the permit is being denied and at the same time capitulating on all other points for no apparent reason.

For example:

The resolution states:

NBMC §20.91.035 (A) Finding No.1: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

(Because) "(a)pproval of a use permit would include a condition limiting the continued use of the facility to a maximum of 14 residents."

The direct testimony of the applicant was that he objected to this reduction. Therefore, stating this as a completed (accepted) finding is incorrect.

A proposal regarding occupancy had merely been made by City Staff. The only response on record is Applicant's rejection of the proposal to state this as a finding is both erroneous and I believe unnecessary.

The resolution then goes on to state:

NBMC §20.91.035 (A) Finding No.3: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Finding B of NBMC §20.91A.060 described in Section 2 below.

This is mere speculation- and is unnecessary for this resolution and in fact unnecessarily reduces the City's ability to deal with this Applicant both now and in the future. As far as I know- no conditions of use for a use permit were formally presented *and* formally accepted. Unless and until they were- the conclusory (and favorable to Applicant) language above is unnecessary and improper.

Then the resolution states:

NBMC §20.91.035 Finding No.4: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, *the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.*

The proposed use is a non-conforming use as specified in Chapter 20.91A of the NBMC and an application for a use permit to continue the use has been filed by Newport Coast Recovery, the project applicant, consistent with the requirements of Chapter 20.91A. Approval of the Use Permit would include conditions of approval requiring the continued use of the subject property as a residential care facility to be operated in a manner that will restrict the potential for secondhand smoke impacts to neighboring properties, will ensure that contact information for the facility is available at all times, maximum resident occupancy of the facility will be limited to 14 residents equivalent to two persons per dwelling unit, the facility will operate pursuant to the terms of the license issued to the facility by ADP, other certifications, as appropriate will be obtained by the facility, and the names of all owners of the facility will be available to the City.

This language above is not true. Clearly in rejecting the application the use is *not* "consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter." The determination to the contrary exists in the analysis of Section 4 of the resolution, that "Findings Band D of NBMC §20.91A.060 cannot be made."

In addition that applicable standard of law is not to operate "in a manner that will restrict the potential for secondhand smoke impacts to neighboring properties"- it is to not allow secondhand smoke to be detected on adjoining parcels- not to restrict the potential.

The resolution states:

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

and does so apparently based on the following:

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

Even accepting these facts as true- does not necessarily lead to the conclusion that no secondhand smoke can be detectable outside the property. The conclusory language appears to leave the Applicant protected- even in the event that secondhand smoke can be detected when smoking only occurs within the courtyard facility.

Why is the City Staff not requiring that the Applicant comply with law- rather than simply agreeing with the favorable conclusion of the Applicant- with no direct evidence presented to support this position? Indeed why are the residents evidently having to bear the burden of disproving this conclusion- and if they do at a later time despite the clear language of the law- will the Applicant be protected and the citizens at risk? Why are these overreaching conclusions being included in a denial resolution in any event?

The resolution states as follows:

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

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

Given that this is a resolution for the denial of a permit- why would not this language read- in the event that the Applicant successfully appeals its denial, that in order for the

permit to ever be issued that it would only be issued following Applicant's written agreement to permanently reduce its residency as noted above and submission of the documentation reducing its residency to the State within thirty days of such successful appeal-and that Applicant must receive said amended license from the State ADP within 60 days of said successful appeal?

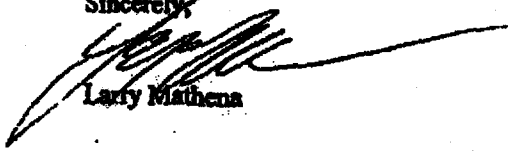
The resolution then states:

NBMC §20.91A.060 Finding B: The property and existing structures are physically suited to accommodate the use.

The City's flawed prior application of the fire code makes this statement simply untrue. The City has liability for its failure to: the State ADP, the neighbors of this facility, and the occupants of the facility and is on notice of its liability. If the Applicant were to be granted a permit on appeal- the City should enforce its fire safety laws.

I commend the Hearing Officer's decision, but suggest that a carefully reconsideration be given to what is conceded in the language of the resolution.

Sincerely,



Larry Mathena

**GROUP RESIDENTIAL USE PERMIT HEARING (1/22/09):
PROPOSED RESOLUTION**

RESOLUTION No. _____

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

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

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

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

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

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

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

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

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

NCR 00512

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

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

NOW THEREFORE BE IT RESOLVED:

Section 1. That Findings Nos. 1, 3, and 4 of NBMC §20.91.035 (A) can be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 1: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed use is in accord with the objectives and requirements of Chapter 20.91A because an application has been filed to secure approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District, pursuant to Chapter 20.91A of the NBMC. Approval of a use permit would include a condition limiting the continued use of the facility to a maximum of 14 residents. The intensity of the use with 14 residents housed in 9 bedrooms with 2 persons per bedroom is consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District.

NBMC §20.91.035 (A) Finding No. 3: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Finding B of NBMC §20.91A.060 described in Section 2 below.

NCR 00513

NBMC §20.91.035 Finding No. 4: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

The proposed use is a non-conforming use as specified in Chapter 20.91A of the NBMC and an application for a use permit to continue the use has been filed by Newport Coast Recovery, the project applicant, consistent with the requirements of Chapter 20.91A. Approval of the Use Permit would include conditions of approval requiring the continued use of the subject property as a residential care facility to be operated in a manner that will restrict the potential for secondhand smoke impacts to neighboring properties, will ensure that contact information for the facility is available at all times, maximum resident occupancy of the facility will be limited to 14 residents equivalent to two persons per dwelling unit, the facility will operate pursuant to the terms of the license issued to the facility by ADP, other certifications, as appropriate will be obtained by the facility, and the names of all owners of the facility will be available to the City.

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

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

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

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

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

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

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presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

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

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

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

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

5. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.

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

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

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

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

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

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

According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of code violations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010.

NBMC §20.91A.060 Finding B: The property and existing structures are physically suited to accommodate the use.

The building is similar to many other residential structures along West Balboa Boulevard constructed on a lot parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially at the time the facility was previously issued a "fire clearance."

NBMC §20.91A.060 Finding E: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading occurs at the West Balboa Boulevard frontage that is less congested than the narrower alley access at the rear of the building. Approval of a Use Permit would include a condition of approval restricting loading and unloading of transportation van passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double parking in a traffic lane.

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NBMC §20.91A.060 Finding F: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

NBMC §20.91A.060 Finding G: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 9:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Section 3. That Finding No. 2 of NBMC §20.91.035 (A) cannot be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 2: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

General Plan policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in the Use Location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

The Use Location is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State

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of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the Use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

The Use Location is proximate (within 1250 feet) of two outlets for alcoholic beverages (American Legion Hall at 215 W 15th Street and Fry's Market at 115 E 15th Street), both within walking distance from the Use Location which allows residents of the Use convenient access to alcohol sales and service.

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

NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility if determined by the facility operator to be necessary (i.e. for use driving to and from work). Approval of a Use Permit for the facility would include a condition of approval that the applicant: (1) purchase one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles to a maximum of three.

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

NBMC §20.91A.060 Finding D: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of

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the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
3. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

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

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

The Use Location is within the Nonstandard Subdivision Area, an area which is characterized by narrow lot widths, small setbacks, narrow streets, limited available on-street and off-street parking, and short blocks. The Use Location provides six on-site parking spaces for resident client and facility staff use. The operations and management of the Use require on-street parking for family counseling on weekends which impacts the availability of on-street parking for use by residents of the subdivision. In addition, noise associated with the operation of the Use, including music and shouting, is audible to adjacent properties.

The Use Location is proximate to at least one other group residential facility with an approved use permit for 11 beds at Balboa Horizons is within a block distance in the Nonstandard Subdivision Area that is less than the average calculable block length of a standard subdivision in Newport Beach (711 feet). The APA standard suggests that no more than "one or two (recovery facility) uses" per block be approved to avoid block institutionalization. Due to the existence of an approved 11 bed facility within 300 feet of the proposed use. This neighborhood would experience an intense concentration of beds unequalled in other parts of Newport Beach with the approval of the proposed 18 bed use at Newport Coast Recovery and the 11 bed use located nearby at Balboa Horizons.

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

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

PASSED, APPROVED, AND ADOPTED this 22nd day of January, 2009.

By: _____
Thomas W. Allen, Hearing Officer

NCR 00520

**GROUP RESIDENTIAL USE PERMIT HEARING (1/22/09):
REVISED RESOLUTION PRESENTED AT HEARING**

NCR 00521

RESOLUTION No. _____

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

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE BE IT RESOLVED:

Section 1. That Findings Nos. 1, 3, and 4 of NBMC §20.91.035 (A) can be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 1: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed use is in accord with the objectives and requirements of Chapter 20.91A because an application has been filed to secure approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District, pursuant to Chapter 20.91A of the NBMC. Approval of a use permit would include a condition limiting the continued use of the facility to a maximum of 14 residents. The intensity of the use with 14 residents housed in 9 bedrooms with 2 persons per bedroom is consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District.

NBMC §20.91.035 (A) Finding No. 3: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

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The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Finding B of NBMC §20.91A.060 described in Section 2 below.

NBMC §20.91.035 Finding No. 4: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

The proposed use is a non-conforming use as specified in Chapter 20.91A of the NBMC and an application for a use permit to continue the use has been filed by Newport Coast Recovery, the project applicant, consistent with the requirements of Chapter 20.91A. Approval of the Use Permit would include conditions of approval requiring the continued use of the subject property as a residential care facility to be operated in a manner that will restrict the potential for secondhand smoke impacts to neighboring properties, will ensure that contact information for the facility is available at all times, maximum resident occupancy of the facility will be limited to 14 residents equivalent to two persons per dwelling unit, the facility will operate pursuant to the terms of the license issued to the facility by ADP, other certifications, as appropriate will be obtained by the facility, and the names of all owners of the facility will be available to the City.

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

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

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

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

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

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would

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include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

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

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

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

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

5. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.

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

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

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

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

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

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

According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of code violations associated with the facility's operations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010.

NBMC §20.91A.060 Finding B: The property and existing structures are physically suited to accommodate the use.

The building is similar to many other residential structures along West Balboa Boulevard constructed on a lot parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially at the time the facility was previously issued a "fire clearance."

NBMC §20.91A.060 Finding E: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading occurs at the West Balboa Boulevard frontage that is less congested than the narrower alley access at the rear of the building. Approval of a Use Permit would include a condition of approval restricting loading and unloading of transportation van

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passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double parking in a traffic lane.

NBMC §20.91A.060 Finding F: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 2:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

NBMC §20.91A.060 Finding G: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 8:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Section 3. That Finding No. 2 of NBMC §20.91.035 (A) cannot be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 2: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

General Plan policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in the Use Location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

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

The Use Location is proximate (within 1250 feet) of two outlets for alcoholic beverages (American Legion Hall at 215 W 15th Street and Fry's Market at 115 E 15th Street), both within walking distance from the Use Location which allows residents of the Use convenient access to alcohol sales and service.

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

NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility if determined by the facility operator to be necessary (i.e. for use driving to and from work). Approval of a Use Permit for the facility would include a condition of approval that the applicant: (1) purchase one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles to a maximum of three.

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

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NBMC §20.91A.060 Finding D: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
3. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 380 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

The Use Location is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the Use due to residents of Newport Coast Recovery using the open recreational area associated

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with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

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

The Use Location is within the Nonstandard Subdivision Area, an area which is characterized by narrow lot widths, small setbacks, narrow streets, limited available on-street and off-street parking, and short blocks. The Use Location provides six on-site parking spaces for resident client and facility staff use. The operations and management of the Use require on-street parking for family counseling on weekends which impacts the availability of on-street parking for use by residents of the subdivision. In addition, noise associated with the operation of the Use, including music and shouting, is audible to adjacent properties.

The Use Location is proximate to at least one other group residential facility with an approved use permit for 11 beds at Balboa Horizons is within a block distance in the Nonstandard Subdivision Area that is less than the average calculable block length of a standard subdivision in Newport Beach (711 feet). The APA standard suggests that no more than "one or two (recovery facility) uses" per block be approved to avoid block institutionalization. Due to the existence of an approved 11 bed facility within 300 feet of the proposed use, this neighborhood would experience an intense concentration of beds unusual in other parts of Newport Beach with the approval of the proposed 18 bed use at Newport Coast Recovery and the 11 bed use located nearby at Balboa Horizons. It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the nonstandard subdivision area. Inasmuch as S20.91A 0800.3, indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, the Hearing Officer must establish a block length for the mid-Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood.

Within the 617-foot block where this use is located there is already one 11 bed residential care facility (Balboa Horizons). While within 100 feet there is an application pending with California ADP for a six or fewer facility housing six or fewer

persons at 1217 W. Bay Avenue. This is not yet approved, and the City by State law (California Health and Safety Code Section 11834.23) must treat this facility as it treats any single family use. Across Balboa Boulevard are two residential care facilities which have closed or are under abatement orders to close by February, 2009; however, it is not certain that these facilities will in fact remain closed or abide by the abatement order. Also, across Balboa Boulevard at 1115 and within 300 feet of the proposed use is a 22-bed residential care facility (Ocean Recovery).

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

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

PASSED, APPROVED, AND ADOPTED this 22nd day of January, 2009.

By: _____
Thomas W. Allen, Hearing Officer

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NCR 00531

**GROUP RESIDENTIAL USE PERMIT HEARING (1/22/09):
MR. KIFF'S POWERPOINT PRESENTATION**

NCR 00532

Use Permit Hearings
Thursday, January 22, 2009

Newport Coast Recovery, LP Kramer Center, LP

Today's Hearing

- Agenda Item #1
 - Resolution of Denial, Newport Coast Recovery, LP
 - Not a public hearing
- Agenda Item #2 – Kramer Center, LP
 - Use Permit Hearing
 - Brief Background on Ordinance 2008-05 (Dave Kiff)
 - Presentation of the Newport Coast application (Roger Mobley)
 - Applicant's comments, if any
 - Public Hearing Opened
 - Comments limited to 3 minutes unless Hearing Officer determines otherwise
 - Public Hearing Closed
 - Applicant can return to rebut or clarify comments made
 - Questions from the Hearing Officer to the applicant or to City Staff
 - Hearing Officer's determination – alternatives are:
 - Approve with conditions;
 - Deny; or
 - Continue the hearing to a date certain

NCR 00534

Staff Presentation

- This is a Use Permit hearing held under NBMC Chapter 20.91(A) – *Use Permits in Residential Districts*
- Ordinance 2008-05, effective February 22, 2008, calls out this process:
 - Most existing group residential uses had to apply for a Use Permit to stay in operations by May 22, 2008.
 - A Hearing Officer shall make a determination to approve or deny the Use Permit.
 - The Hearing Officer's decision can be appealed to the City Council.
 - The City Council's decision may not be appealed, but "reasonable accommodation" may be requested. RA requests go before a hearing officer at a public hearing, and can be appealed to the City Council.
 - Ordinance 2008-05 exempts one type of home from the Use Permit requirement – ADP-licensed treatment homes:
 - Housing six or fewer persons, and
 - Which do not operate integrally with other facilities ("Integral Facilities").
- US District Court Judge James Selna in May 2008 blocked the City from requiring networked ADP-licensed 6 and Unders from going through the Use Permit process (SLBTS).

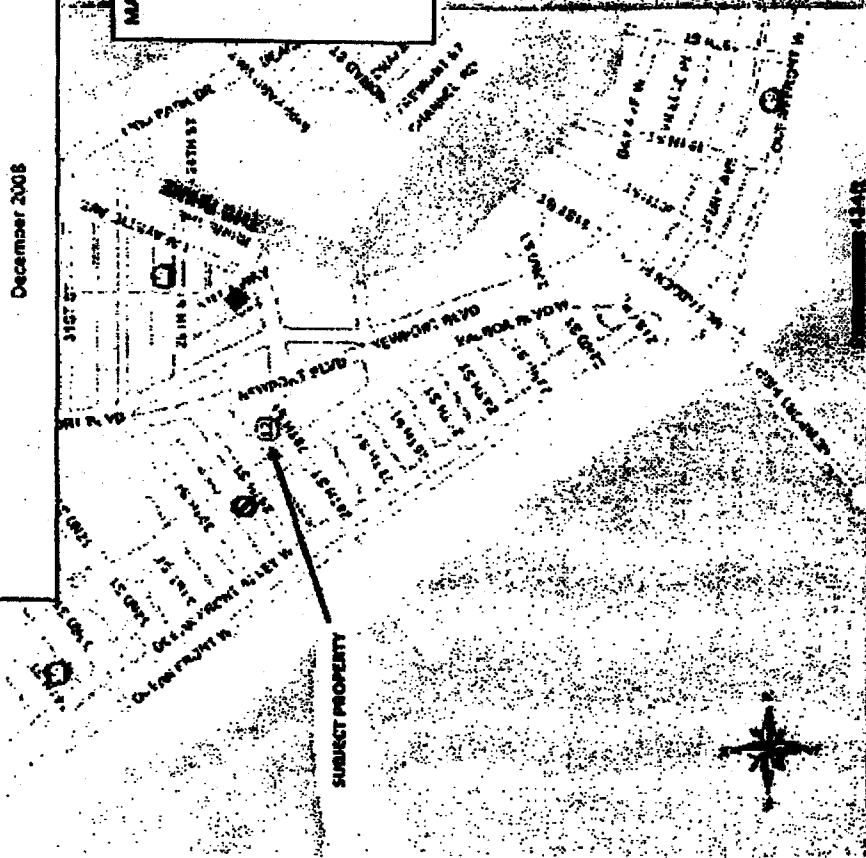
NCR 00535

BALBOA PENINSULA (Central Peninsula Area)

December 2008

MAP LEGEND

- = Use closed, or under statement order.
- = Narcotics to state Feb 2010.
- = Applied for a Use Permit
- = Use is an ADP-licensed "G and U" user" or otherwise not subject to Use Permit requirement, including SLBTS
- ◆ = SLBTS' V/A Way offices
- ▲ = DSS-licensed large day care



NCR 00536



NCR 00537

About Kramer Center at NB, LLC

NCR 00538

Upcoming Group Residential Hearings

- Ocean Recovery – Two Properties
 - Thursday, February 5, 2009
 - City Council Chambers
 - 4:00 to 6:00 p.m.
- Yellowstone Recovery – Four Properties in SAH
 - Combined Use Permit + Reasonable Accommodation Hearing
 - Thursday, February 12, 2009
 - City Council Chambers
 - 4:00 to 6:00 p.m.
- Others Pending
 - Pacific Shores Recovery (3 homes) – RA hearing
 - Balboa Recovery (3 homes) – RA hearing
 - Morningside Recovery – RA hearing & UP Hearing

NCR 00539

**GROUP RESIDENTIAL USE PERMIT HEARING (1/22/09):
TRANSCRIPT**

NCR 00540

CERTIFIED COPY

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

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

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NCR 00541

NEWPORT COAST RECOVERY - 1/22/2009

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

2

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NCR 00542

NCR UP/RA 00686

686

NEWPORT COAST RECOVERY - 1/22/2009

1 APPEARANCES:

2
3 For The City of Newport Beach:

4 RICHARDS, WATSON, GERSHON
5 BY: PATRICK K. BOBKO, ESQ.
6 355 S. Grand Avenue, 40th Floor
7 Los Angeles, CA 90071-3101
8 (213) 626-8484

9 CITY OF NEWPORT BEACH
10 BY: DAVE KIFF, Assistant City Manager
11 JANET JOHNSON BROWN, Associate Planner
12 3300 Newport Boulevard
13 Newport Beach, CA 92658-8915
14 (949) 644-3002

15 For Kramer Center:

16 COOKSEY, TOOLEN, GAGE, DUFFY & WOOG
17 BY: DAVID R. COOKSEY, ESQ.
18 535 Anton Boulevard, Tenth Floor
19 Costa Mesa, CA 92626-1977
20 (714) 431-1002
21
22
23
24
25

NEWPORT COAST RECOVERY - 1/22/2009

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

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

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

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

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

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

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NCR 00544

NCR UP/RA 00688

688

NEWPORT COAST RECOVERY - 1/22/2009

1 recommended being added.

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

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

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

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

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

5

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NCR 00545

NEWPORT COAST RECOVERY - 1/22/2009

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

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

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

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

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

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

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

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NCR 00546

NCR UP/RA 00690

690

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

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

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

13 MR. ALLEN: Yes.

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

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

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

7

NEWPORT COAST RECOVERY - 1/22/2009

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

4 MR. ALLEN: Okay. Thanks.

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

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

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

14 MR. ALLEN: 21.91.035(a).

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

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

19 MS. BROWN: Section 1.

20 MR. KIFF: Section 1, okay.

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

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

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NCR 00548

NCR UP/RA 00692

NEWPORT COAST RECOVERY - 1/22/2009

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

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

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

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

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

13 (Pause in proceeding.)

14 MR. KIFF: Mr. Allen?

15 MR. ALLEN: Yes.

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

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

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NCR UP/RA 00693

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NEWPORT COAST RECOVERY - 1/22/2009

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

5 MR. ALLEN: I would prefer the latter.

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

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

12 MR. KIFF: Okay.

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

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

16 THE COURT: Thank you.

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

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

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

10

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NCR 00550

NCR UP/RA 00694

NEWPORT COAST RECOVERY - 1/22/2009

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

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

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

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

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

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

11

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NCR 00551

NCR UP/RA 00695

695

NEWPORT COAST RECOVERY - 1/22/2009

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

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

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

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

15 MR. ALLEN: Okay.

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

23 You said you're out next week?

24 MR. COOKSEY: First week in February.

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

12

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NCR 00552

NEWPORT COAST RECOVERY - 1/22/2009

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

4 MR. COOKSEY: Yes.

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

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

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

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

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

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

13

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NCR 00553

NCR UP/RA 00697

697

NEWPORT COAST RECOVERY - 1/22/2009

1 them.

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

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

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

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

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

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

18 MR. ALLEN: Okay.

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

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

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

14

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NCR 00554

NCR UP/RA 00698

698

NEWPORT COAST RECOVERY - 1/22/2009

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

9 I see Mr. Mathena.

10 MR. MATHENA: Yes.

11 MR. LISKIN: What date again?

12 MR. ALLEN: January 29th, correct?

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

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

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

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

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

15

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NCR 00555

NCR UP/RA 00699

699

NEWPORT COAST RECOVERY - 1/22/2009

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

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

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

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

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

25 MR. ALLEN: Thank you.

16

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NCR 00556

NCR UP/RA 00700

700