

CERTIFIED COPY

PUBLIC HEARING ON
BALBOA RECOVERY, INC.
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
THURSDAY, APRIL 30, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 5:25 p.m., on Thursday, April 30, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

1 APPEARANCES:

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PUBLIC HEARING - 4/30/2009

1 NEWPORT BEACH, CALIFORNIA; THURSDAY, APRIL 30, 2009

2 4:00 P.M. - 5:25 P.M.

3
4 MR. ALLEN: We'll open the hearing for Thursday
5 April 30, 2009. I'm Tom W. Allen, the Hearing Officer
6 designated by the City to conduct the hearing. This one
7 in particular is Balboa Recovery, Inc., 204 21st Street.

8 May we commence with the staff report,
9 Mr. Kiff? Are you back in the saddle?

10 MR. KIFF: Yes, Mr. Allen.

11 As I reminder to, I guess, the few folks in the
12 audience how these hearings work, this is a hearing on
13 reasonable accommodation. That's a term in Federal Fair
14 Housing Law.

15 We start with a summary of the application by
16 my colleague, Janet Brown, and then continue to the
17 background of what our Ordinance says about reasonable
18 accommodation, and that's -- Deputy City Attorney Cathy
19 Wolcott will address that.

20 And then she will also present Balboa
21 Recovery's reasonable accommodation request, and the
22 Applicant is invited to come up and speak for Balboa
23 Recovery. That time is not limited, the public hearing
24 that is open, those comments are limited to three
25 minutes.

1 Public hearing is closed. The Applicant can
2 return to clarify or rebut comments made. And then there
3 could be a question-and-answer period between the Hearing
4 Officer and the City staff or Applicant.

5 Then the Hearing Officer can do a number of
6 things. One, Mr. Allen can approve the request, or deny
7 the request, or continue the hearing to a date certain.

8 So with that, I'm going to turn this over to my
9 colleague, Janet Brown, to talk a little bit about the
10 application.

11 MS. BROWN: Thank you, good afternoon. I'm
12 Janet Brown from the Planning Department.

13 Balboa Recovery operates a sober living
14 facilities for adults in recovery from alcohol and/or
15 drug abuse in both units of the duplex building that is
16 located at 204 21st Street.

17 In addition to this location, Balboa Recovery
18 also operates two similar facilities in Newport Beach,
19 one in which is located at 32067 West Balboa, and the
20 other located at 124 30th Street.

21 Per the Applicant, the residents are referred
22 to the Balboa Recovery facilities by the licensed Ocean
23 Recovery facilities, even though there is no affiliation
24 between the two entities.

25 The facility located at 204 21st Street

1 provides housing for up to eight resident clients and one
2 on-site resident manager, all women, within both units of
3 the duplex. According to the Applicant, both units have
4 been operating as a sober living facility since February
5 2006.

6 The duplex is comprised of Unit A, which is
7 downstairs and contains two bedrooms that accommodate
8 three beds, including the on-site resident manager, and
9 Unit B, which is upstairs, contains three bedrooms that
10 accommodate six beds.

11 I'd like to clarify that this was not
12 accurately described in the staff report. It sounded as
13 if it was a single level, so it is -- it's two levels.

14 MR. ALLEN: Right.

15 MS. BROWN: Balboa Recovery is an unlicensed
16 facility, and there are no treatment services provided to
17 the residents at this facility. The Applicant tells us
18 that clients stay range at the facility between 90 days
19 and up to 18 months, with an average stay of 10 months.

20 The clients reside at the facility under a
21 separate written agreement with the operator and/or
22 subject to a set of house rules. Those house rules
23 including the abstinence from alcohol and drugs, drug
24 testing as required by the resident manager, attendance
25 at 12-step meetings.

1 The clients are expected to abide by curfew and
2 quiet hours, and refrain from smoking in the house. They
3 are expected to refrain from the use of racist, sexist or
4 foul language. They are expected to maintain and clean
5 the dwelling unit and complete all assigned chores.

6 The residents are required to be employed or
7 actively seeking employment or attending school full-time
8 while at the facility. They are responsible for their
9 own groceries and supplies, and the only delivery to the
10 site is bottled water delivered every two weeks.

11 There are no transportation services provided
12 by the facility operator, and the residents are permitted
13 to have their own personal vehicles while residing at the
14 facility. The use of the residents' personal vehicles
15 must be approved by the operator, as does the parking
16 arrangements of the vehicles.

17 The property provides two off-street parking
18 spaces in an enclosed two-car garage. I'd also like to
19 clarify for the record here. In the staff report, we
20 stated that there are four parking spaces on-site, which
21 would include a driveway in front of the garage where
22 vehicles park.

23 After the report was published, we found that
24 the depth of the driveway does not meet the Code required
25 depth for a parking space, so technically, there's two

1 spaces provided on-site. Of those two spaces, one is
2 reserved for the resident manager. And the Applicant has
3 indicated that he would be willing to purchase a parking
4 permit in order to help meet the parking needs of the
5 facility.

6 And staff is recommending that if the
7 Applicant's request for reasonable accommodation would be
8 granted, that the number of resident clients permitted to
9 use personal vehicles be limited, and that the Applicant
10 be required to purchase more than one parking permit to
11 cover the parking needs.

12 Since this notice has been mailed out to
13 residents within 300 feet, and even prior to this time,
14 there have been no complaints regarding this facility.

15 The Applicant has submitted a reasonable
16 accommodation application requesting an exemption from
17 the requirements subsection 20.10.20 of the Municipal
18 Code to allow the continued operations at the sober
19 living facility.

20 This section of the Code establishes land uses
21 that are permitted by right, conditionally permitted, or
22 not permitted uses within the residential districts of
23 the City.

24 The use of this facility would be classified as
25 residential care facilities general, which, per the land

1 use regulations, would not be permitted in any district
2 except an MFR district with the approval of a use permit.

3 At this time, the use of the property as a
4 sober living facility is subject to abatement. However,
5 in accordance with Federal and State Fair Housing Laws,
6 providers of housing for disabled persons may request a
7 reasonable accommodation of the City zoning and land use
8 regulations when needed to provide an individual with a
9 disability an equal opportunity to use and enjoy a
10 dwelling.

11 Under both Federal and State Fair Housing Laws,
12 clients, excuse me, Cities have an affirmative duty to
13 provide a reasonable accommodation if the request is made
14 on or behalf of a disabled individual;

15 The accommodation is necessary to afford the
16 disabled individual an equal opportunity to use and enjoy
17 a dwelling;

18 And the request is reasonable.

19 City's may find an accommodation request
20 unreasonable if granting would result in a fundamental
21 alternation of the nature of a City program or would
22 impose an undue financial or administrative burden on the
23 City.

24 Per section 20.98.025 of the Code, the Hearing
25 Officer is authorized to approve, conditionally approved,

1 or deny a reasonable accommodation application based on
2 five findings, all of which are required to be made in
3 order to grant approval.

4 Staff has analyzed the Applicant's request as
5 to current residents and prospective residents and, as
6 noted in the staff report, cannot make all five findings.

7 However, we have identified an alternative that
8 could meet all five findings of section 20.98.025, and
9 that is to limit the population to a total of six
10 resident beds, and require an on-site resident manager
11 who is qualified as a recovery specialist. This bed
12 count may be housed in both units in the duplex, or one
13 unit with the other unit being occupied by a single
14 housekeeping unit.

15 Of concern to staff is the proximity of the
16 facility to several restaurants, bars and liquor stores,
17 all serving alcoholic beverages, and located across
18 Balboa Boulevard and the area of McFadden Square and the
19 Newport Pier.

20 One of the findings that must be made is that
21 the granting of the accommodation will not result in a
22 fundamental alteration in the nature of the City's zoning
23 program.

24 And one of the objectives stated in Chapter
25 20.91.010, of the Zoning Code is to protect and implement

1 the recovery and reintegration of the disabled, including
2 those receiving treatment and counseling in connection
3 with dependency recovery.

4 In order to protect and implement the recovery
5 of the facility residents, staff recommends a reduction
6 in the number of the resident population to a size that
7 can be easily monitored and controlled by the on-site
8 resident manager.

9 With that, that concludes my presentation. I'd
10 like to turn this now over to the City Attorney's Office,
11 Catherine Wolcott.

12 MS. WOLCOTT: One moment while we load my
13 PowerPoint.

14 All right. Catherine Wolcott, Deputy City
15 Attorney.

16 For anyone who hasn't attended these meetings,
17 first thing we do is discuss a short background on
18 reasonable accommodation in general, and why we're here
19 today.

20 MR. KIFF: I'm sorry. I'll just forward this.

21 MS. WOLCOTT: Thank you.

22 Reasonable Accommodation. Under the Federal
23 Fair Housing Act, "unlawful discrimination includes
24 refusal to make reasonable accommodations in rules,
25 policies, practices or services, when such accommodations

1 may be necessary to afford a handicapped person with
2 equal opportunities to use and enjoy a dwelling."

3 The Federal Fair Housing Act requires cities to
4 make exceptions from their usual rules, policies, and
5 practices when:

6 The request to made on behalf of a disabled
7 individual;

8 The request is reasonable;

9 If the exception is necessary to afford a
10 disabled individual an equal opportunity to use and enjoy
11 a dwelling.

12 And I should add that that is a requirement
13 that's in Federal Law. And there are three prongs of
14 that analysis. The first is that the individual who is
15 requesting -- on whose behalf the request is being made
16 is disabled;

17 The second is that the request is reasonable.
18 If it is an unreasonable request, we'll discuss that
19 more, then the City does not need to grant it.

20 The third is that the request of the exception
21 be necessary.

22 Looking at the reasonableness prong, the
23 requests are considered unreasonable if granting the
24 request would either impose undue financial or
25 administrative burden on the City, or result in a

1 fundamental change in the nature of the City's zoning
2 program or any City program.

3 Fundamental alterations in the reasonableness
4 analysis is also described in court cases as undermining
5 the basic purpose which the requirement seeks to achieve.
6 And in today's presentation, we will be looking at
7 whether or not the Applicant's request undermines the
8 basic purposes of the Zoning Code specifically related to
9 the exceptions that he's requesting.

10 When a request is not reasonable, when it would
11 undermine a fundamental purpose of the City program, the
12 Department of Justice and the Department of Housing and
13 Urban Development directs that the government entity, if
14 they refuse the requested accommodation because it is not
15 reasonable, then the government entity must discuss
16 whether they are alternate accommodations that could meet
17 the requestor's needs as those needs are directly related
18 to the disability.

19 If an alternative accommodation will meet the
20 need and that accommodation is reasonable, which is an
21 important distinction, the government entity must grant
22 it.

23 Then we move to the necessity analysis. Is the
24 accommodation necessary?

25 Will the accommodation allow the disabled

1 individual to live in the dwelling?

2 Would the disabled individual be unable to live
3 in the dwelling without the accommodation?

4 And finally, is there a direct link between the
5 accommodation requested and the equal opportunity, which
6 Federal Law requires that we give disabled individual in
7 housing matters?

8 When necessity equals opportunities, court
9 cases have indicated two areas that the City should look
10 at. One, is the required accommodation necessary to make
11 the facility financially viable? And does the required
12 accommodation provide therapeutic benefit for the
13 residents?

14 At this point, we should discuss California
15 Building Code issues. They tend to come up under the
16 reasonableness analysis when we make a recommendation of
17 population limit in a certain type of building.

18 In the California Building Code, the California
19 Building Code looks at the type of use that is occurring
20 within a building. And it categorizes the occupancy type
21 based upon what is occurring in the building. And it
22 creates life safety protection and building standards
23 based on the operating characteristics and needs of the
24 residents that will be using that type of occupancy.

25 So the relevant occupancy type for analysis

1 today are R3 under the Building Code. This looks like a
2 zoning classification, same language, same letters and
3 numbers. However, under the California Building Code,
4 they are referring to occupancy types.

5 R3 are single and two-family occupancies. In
6 other words, single-family homes and duplexes.

7 R4 are recovery facility occupancies housing
8 seven or more persons in the recovery facility in a
9 building.

10 And R3.1 occupancies are recovery facilities
11 that are housing six or fewer in a building.

12 Life safety requirements for the residential
13 care facilities are established by the State Fire
14 Marshal, under the authority of the State Legislature.
15 The City's authority to allow substitute alternate
16 materials and methods that will provide equivalent
17 protection; however, the City lacks the power to waive
18 the level of protections that State law has set. The
19 City Fire Marshal enforces the State Fire Marshal's
20 regulation; however, he did not draft those regulations.

21 Today, the Applicant requests an exemption
22 restriction in Newport Beach Municipal Code section
23 20.10.20, which requires a residential care general
24 unlicensed and small unlicensed facility be located only
25 in MFR zones with the use permit. So we'll be analyzing

1 first necessity and then reasonableness.

2 If the request necessary? Is this request
3 necessary to avoid a disabled individual an equal
4 opportunity to use and enjoy the dwelling?

5 The first question we look at is, could the
6 disabled individual live in the dwelling out the
7 accommodation? And if the answer is yes, then our
8 analysis stops there. The request is yes, the
9 accommodation is not necessary, because they can live
10 there without said accommodation.

11 If they can't live in the dwelling without the
12 accommodation, we move on.

13 Does the facility require the requested
14 accommodation at the requested population level to
15 achieve financial viability and a supportive recovery
16 environment? That goes to the equal opportunity analysis
17 discussed earlier.

18 Newport Beach Municipal Code allows the City to
19 allow four factors when it's determining necessity. This
20 does not mean that it has to make every -- this is not
21 like a required finding. It's not that it has to make
22 every single one of those four matters. It doesn't have
23 to have a yes to everyone of them; however, we are
24 permitted to consider them.

25 Whether the accommodation will affirmatively

1 enhance the quality of life of individuals with a
2 disability;

3 Whether the disabled individuals be denied an
4 equal opportunity to enjoy the housing type of their
5 choice without the accommodation;

6 Whether the accommodation is necessary for
7 financial viability;

8 And whether the existing supply of facilities
9 of a similar nature and operation is sufficient to
10 provide individuals with an opportunity to use and enjoy
11 a dwelling.

12 Staff analyzed all these factors. And what we
13 suggest is that, as to the current residents of the
14 facility at the current population level, the necessity
15 has been demonstrated.

16 This facility is currently subject to --
17 although the facility was established in, I believe,
18 2006, it is currently subject to abatement, because it do
19 not apply for a Use Permit during the period that was
20 designated after Ordinance 2008-05 became effective.

21 Therefore, our proposal as to the current
22 residents of the facility is that the accommodation be
23 granted, and that the population be reduced to staff's
24 recommended level as current residents complete their
25 program and the facility condenses in size.

1 Prospective -- excuse me. The staff -- I
2 believe the Applicant requested eight residents at this
3 facility and one resident manager. Staff is proposing
4 six for the reasons that Ms. Brown discussed.

5 We propose either six in one dwelling unit with
6 the other unit be occupied by single housekeeping unit,
7 or three in one dwelling unit, three in the other, for a
8 total of no more than six in the building.

9 The reasons, as Ms. Brown discussed, were
10 related to, one, the Applicant's ability to control and
11 properly monitor the residents in an area that is close
12 to a number of alcoholic beverage outlets;

13 And two, so that we do not run into the
14 problems you can run into with the California Building
15 Code when a residential care facility exceeds six
16 residents.

17 At six residents, the Applicant can apply for
18 the California Building Code requirements. If it exceeds
19 six, it will have some fairly extensive retrofitting the
20 Applicant will have to do.

21 The Applicant has submitted some evidence about
22 financial viability; however, staff did not -- and did
23 not submit evidence that dealt with therapeutic benefit.
24 It did submit evidence as to therapeutic benefit of
25 living together while in recovery in general, but not in

1 particular numbers.

2 Now, the Hearing Officer has requested staff to
3 provide a briefing on the available of alternate
4 facilities of a similar nature, and we did get some
5 numbers on that last night.

6 Currently, facilities that are not subject to
7 abatement at this time that have 12 residents living in a
8 duplex setting, sober living, unlicensed, there are
9 currently 84 beds within the City in duplexes located
10 where sober living residents live within two units of a
11 duplex.

12 Of those, 24 beds are run by Sober Living By
13 The Sea, and they are planning to close at a future date
14 per the Zoning Agreement. Sixty of those beds are
15 located in two units of five duplexes. Those are also
16 run by Sober Living By The Sea, and they are also closed
17 in the future based on the Zoning Agreement as well. So
18 that is what is available at the level requested by the
19 Applicant.

20 At the level suggested by staff, which the
21 Applicant has indicated prior to this meeting would be
22 acceptable to the Applicant, there are -- there's
23 currently only one unit of the duplex being run as a
24 sober living facility. It's a setup -- it's not six and
25 six. It's a setup that has only one unit in a duplex

1 that is being used for sober living purposes. That is
2 being run by Sober Living By The Sea, and it will be
3 closed in the future based on the Zoning Agreement.

4 That leaves one facility with four residents in
5 one unit of a duplex run by LMS Properties, which is not
6 subject to abatement, pursuant to the reasonable
7 accommodation that this Hearing Officer granted.

8 Therefore, at the level suggested by staff,
9 this would be the only -- currently the only six-or-under
10 sober living facility in one unit of a duplex that was
11 not subject for closing.

12 For that reason, we feel that the necessity
13 elements can be satisfied. This would be for anyone
14 wanting to reside in small sober living environment,
15 other than the four units at LMS Properties in the
16 future. At this point, it could be the only one granted.

17 All right. As to the financial viability
18 aspect, we've discussed our recommendations with the
19 Applicant, and the Applicant has indicated that a limit
20 of six would be acceptable; and, therefore, as the
21 Applicant was not trying to exceed the number that staff
22 recommends, we don't feel that we need to do the full
23 financial viability analysis in this permit application.

24 And we also do not need to discuss this slide,
25 or that one, or the next one. And we dealt with that

1 aspect, yes.

2 Now we get to the reasonableness analysis. The
3 factors that are considered when the City's considering
4 whether or not a request is reasonable are detailed in
5 the Newport Beach Municipal Code. That's 20.98.025.

6 Whether the accommodation would fundamentally
7 alter the character of the neighborhood;

8 Whether the accommodation would result in
9 substantial increase in traffic or insufficient parking;

10 Whether granting the accommodation would
11 substantially undermine any expressed purpose of the
12 General Plan or applicable Specific Plan;

13 And whether the accommodation would create an
14 institutionalized environment due to the number and
15 proximity of similar uses.

16 We have reviewed these factors and determined
17 that granting the requested accommodation under the level
18 suggested by staff would not pose an undue financial or
19 administrative burden. We have not had -- we've never
20 had any complaints about this facility. We are unaware
21 of any calls for service. It has not created a financial
22 burden to date.

23 Furthermore, the Applicant has been extremely
24 cooperative with working with staff submitting all the
25 information that was requested. We have no reason to

1 believe that this Applicant will change his pattern of
2 behavior with the City in the future.

3 Would granting the request result in a
4 fundamental alteration in the City's zoning program?
5 This is a more complex analysis. Because the Applicant
6 is requesting an exemption from two aspects of the Zoning
7 Code, we addressed both separately.

8 The first aspect, this facility is located in
9 R2 zoning district. Currently, the Applicant -- the
10 Zoning Code permits this facility -- a facility of this
11 type to be located only in a residential district zoned
12 MFR.

13 Also, what we're going to be looking at there
14 is would allowing it to remain an R2 undermine the
15 fundamental purpose the R2 zoning requirements were put
16 in place to achieve.

17 The second element is whether or not -- the
18 second element is that a Use Permit be issued. And as
19 the Applicant has not applied for a Use Permit, he would
20 have to be allowed to remain without the Use Permit.

21 So we will be analyzing whether or not the
22 Applicant could remain in the current facility without a
23 Use Permit, and will it undermine any of the fundamental
24 purposes a Use Permit requirement was put in place to
25 achieve?

1 Purposes of the R2 zone and the MFR zones are
2 on the screen. The R2, which provide areas for
3 single- and two-family residential uses. Medium and high
4 density use, depending on the location.

5 And MFR is to provide for single-, two- and
6 multi-family residential uses, which is also medium to
7 high density use.

8 At staff's proposed level of density, which is
9 six in one, or two three-bedroom units, medium level of
10 density is achieved; therefore, we feel that allowing it
11 to remain in this current location does not undermine the
12 fundamental purposes of the R2 zone.

13 The purpose of the Use Permit. Use Permits are
14 required from the City of Newport Beach, because we
15 encounter uses with operating characteristics that
16 require special conditions that would enable them to
17 operate compatibly with other uses, and to mitigate any
18 negative secondary impacts which some uses might have on
19 surrounding residential uses.

20 Our Ordinance requires a Use Permit for the
21 non-conforming uses in residential areas. The purpose of
22 that is to ensure the purposes of the Zoning Code are
23 achieved, and adverse secondary impacts are mitigated.

24 Zone Code, some other specific purposes. To
25 promote the public health and safety, implement the goals

1 of the General Plan by ensuring that conditional uses do
2 not change the character of residential neighborhoods.

3 There's also a second and equally important
4 purpose that the Zoning Code sets forth, and that's to
5 protect and implement the recovery and reintegration of
6 disabled individuals, partly by avoiding
7 overconcentration that would lead to an
8 institutionalization of the area.

9 So the first question is there. Is the Use
10 Permit undermined if we forego requiring this Use Permit
11 in this litigation? As we discussed before, any
12 reasonable controls which the Use Permit could require of
13 an Applicant can also be required of a Hearing Officer
14 through the reasonable accommodation process.

15 Reasonable accommodations don't run with the
16 land. It's specific to a particular applicant. By
17 granting a reasonable accommodation, it does not create a
18 land use entitlement that runs with the land.

19 Our analysis has been that the conditions and
20 findings that would be necessary to issue a Use Permit
21 could be made with regard to this facility. Therefore,
22 all these controls that the Use Permit conditions were
23 put in place to achieve can be put -- can be achieved
24 through reasonable accommodation. Therefore, the Use
25 Permit purpose would not be undermined.

1 We look at whether the Use Permit purposes
2 would be undermined. And I would emphasize the Applicant
3 is not applying for a Use Permit; however, he's applying
4 for an exemption from the Use Permit, and that's why we
5 are looking specifically at the Use Permit requirements
6 to make sure that no purpose is undermined by the
7 granting of the reasonable accommodation.

8 Under Chapter 28, all required findings must be
9 made. We propose the alternative conditions for you
10 today in order to meet the needs of the disabled
11 individuals.

12 Our primary concern was clients' supervision so
13 that the disabled clients weren't affected by the
14 surrounding ABO's, Alcoholic Beverage Outlets. Anyone
15 familiar with the area knows there are number of bars in
16 the area, as well as liquor stores across the street.

17 We look forward to the Applicant addressing how
18 he controls the clients in a location like this so that
19 they are not impacted by the surrounding alcoholic
20 beverage outlets.

21 Proposed conditions. There would be a bed cap
22 of no more than six female clients with one manager;

23 Quiet hours from 10 p.m. to 8 a.m.;

24 Quiet hours for television from 10 p.m. to 8
25 p.m., so that the surrounding neighbors are not

1 disturbed;

2 No secondhand smoking detectable off the
3 property;

4 24-hour contact to address neighbor concerns;

5 Keep garages clear for parking;

6 Compliance with all state and local laws,
7 including the California Building Code.

8 And Mr. Kiff may want to assess the 90-day
9 average stay with the Applicant, as he has with some
10 other facilities that had some different operating
11 conditions, but I will leave that to Mr. Kiff's
12 discretion.

13 The Applicant has a parking plan for the
14 residents who are permitted a personal vehicle. And he
15 can address that more if when he speaks if he chooses.
16 As Ms. Brown mentioned, because the driveway is not long
17 enough to be a legal parking space, we would ask -- we
18 would want a condition that had the Applicant having more
19 than one, perhaps up to three, parking permits that are
20 purchased from the City.

21 Although the Applicant has indicated that he
22 has no intention of applying for licensing from ADP, this
23 is not the type of facility that he operates, we wanted
24 to add the condition that if he obtains this -- if he
25 changed his mind at some point in the future, if he

1 obtains a six-and-under license from ADP, then that
2 licensed facility could substitute for the sober living
3 facility, and the reasonable accommodation for the sober
4 living facility ends.

5 With these conditions, we then look at whether
6 the use can conform to the operational standards of
7 20.91A.050. 20.91A.050 is the operational standards
8 required for a Use Permit. And every one of the
9 operational requirements -- operating standards must be
10 then met for the Use Permit to be granted. We are
11 looking in detail to determine whether or not we're
12 undermining the purposes of Use Permit by granting the
13 accommodation.

14 With the staff's recommendation, with staff's
15 recommended conditions and the staff's recommended level,
16 we felt that all of the findings -- all of the
17 operational standards could be met.

18 No secondhand smoke detectible off the
19 property;

20 Operate in compliance of state and local law;

21 No more than two residents in the bedroom plus
22 one, in keeping with the operational standard;

23 Name of managers and owners provided, none of
24 whom have exhibited a pattern or practice of operating
25 similar facilities in violation of state and local law,

1 to the best of staff's knowledge.

2 The use -- this was written when we thought
3 that they had four on-site parking spaces.

4 If there's two on-site parking spaces, and they
5 have six in the entire building, then the Municipal Code
6 requires one parking space for every three residential
7 care beds. So, it's six in the entire building. They
8 can meet their requirement easily.

9 If they decide to use six in one unit and a
10 single housekeeping unit in another, then that is the
11 only requirement for limiting the residents' personal
12 vehicles. It becomes very important in the purchase of
13 the City parking passes. It's important as well to the
14 immediate parking issue to the surrounding neighbors.

15 We also looked at what the average daily trips
16 generated to see whether the traffic is substantially
17 increased by the presence of this use.

18 The average daily trips for a duplex unit with
19 a single housekeeping unit would be -- in both units
20 would be 13.44. The average daily trip for a facility
21 with only six clients plus one off-site manager would be
22 7 -- is 19.8, which is roughly equivalent.

23 Average daily trips for six clients with one
24 manager in the unit, single housekeeping unit in another,
25 would be 25.9, nearly double what it would be if it were

1 just two single housekeeping units in the
2 dwelling -- both units. Therefore, we reiterate the
3 purpose of limiting residents' vehicles and parking
4 permits.

5 In the reasonable accommodation setting, the
6 standard is a little different when you're looking at
7 traffic and parking impacts. In Use Permits, it requires
8 a day-to-day entry level to be mitigated to a level of
9 insignificance.

10 In reasonable accommodation, we considered
11 these factors and whether they create substantial
12 increases in parking and traffic. And it does not appear
13 to be a substantial increase in parking and traffic that
14 would be generated by the Applicant's use.

15 Other required findings. Property physically
16 suited to accommodate the use;

17 The use would not change the character of the
18 surrounding residential neighborhood. There are no other
19 facilities nearby, to the best of staff's knowledge,
20 certainly not within adjacent blocks;

21 The impact from the neighborhood is a factor
22 that the Hearing Officer is allowed to consider in the
23 Use Permit, but we believe the Applicant can control the
24 impact from the neighborhood that surrounds it;

25 There is no van traffic, because the Applicant

1 reports that it does not provide transportation;

2 And delivery of regular City trash collection.

3 The questions remaining were whether the
4 reduction in bed count protects the facility residents'
5 recovery sufficiently in the surrounding neighborhood,
6 and the Hearing Officer's financial viability/facility
7 supply questions, which I believe we've addressed.

8 Did you have any questions?

9 MR. ALLEN: Not now.

10 MS. WOLCOTT: Thank you.

11 MR. ALLEN: So does that complete staff
12 presentation?

13 MR. KIFF: That does, Mr. Allen.

14 MR. ALLEN: So let's proceed with Applicant's
15 presentation please. Mr. Cullen?

16 MR. CULLEN: Kevin Cullen, C-u-l-l-e-n. And
17 I'm the owner/operator of Balboa Recovery.

18 I thank you all for coming out. I appreciate
19 your time. I know you guys are busy, and I appreciate
20 you coming out.

21 Quite honestly, I don't have much to say. You
22 guys did a great job on the staff report. My application
23 is pretty complete. I hope you've had a chance to read
24 it. And I have no complaints or anything or concerns
25 about it to address.

1 As far as the couple things, the parking I'm
2 willing to working with. At that particular location on
3 23rd Street, we're right across the street from the
4 Spaghetti Factory. We will not be able to fix it in the
5 summertime. We can't get a car in or out of there
6 period. I mean, you just can't. That whole street is
7 just blocked. So I'm not really big on having people
8 have cars. It's kind of worthless. They are more than
9 welcome to ride bikes. They ride bikes for the last
10 three to six months. Parking stinks. Happy to work.
11 That's not a big deal.

12 In wintertime, a lot of the kids go to school,
13 OCC or whatnot. I would like to buy parking passes, so
14 that's really not an issue at all.

15 And quite honestly, that secondhand smoke
16 really has not been an issue either. There's a parking
17 lot across the street. There's businesses all around
18 there. There's only one actual resident next door, which
19 is a rental unit, that's never complained. And the
20 smoking is done on the upper level. There's a balcony on
21 the upstairs and the front and the back. There's isn't
22 anything down below.

23 Oh, and regards to the area about all the bars
24 and nightclubs, I hear that question asked over and over
25 and over again, and no one has actually answered it. And

1 my guess is because their attorney is not familiar with
2 people in recovery -- hang on a second.

3 Two things. First of all, the area of Newport
4 Beach is actually the highest rate of 12-Step recovery
5 meetings per capita anywhere in the United States is
6 right here. So you can find a meeting any time.

7 As a matter of fact, this Thursday night, 7
8 o'clock, at the Newport Lawn Club, which is right across
9 the way. And also within a block's radius of all kinds
10 of bars and nightclubs, you'll see 200 people going to
11 the meeting at any time, and there's 300 a week on the
12 Peninsula. There's more than 1800 a week just in the
13 general area. Those are just Alcoholics Anonymous, not
14 overeating, Narcotics Anonymous or Drug. That's one of
15 the reasons they're attracted.

16 And also, this is a big book about Alcoholics
17 Anonymous. It discusses people in recovery. It's kind
18 of our Bible. And I don't know if you've even actually
19 read it, but it's worth taking a look. You can buy a
20 copy right across the street.

21 But it says very specifically when it addresses
22 bars and nightclubs,

23 "Now, in our belief, any scheme of combating
24 alcoholism which I would essentially shield the
25 sick man from addiction is a deemed to failure.

1 If the alcoholic tries to shield himself, he
2 may succeed for a time, but he usually winds up
3 with a bigger explosion than ever. We've tried
4 these methods, these attempts to -- these
5 attempts to do the impossible have always
6 failed."

7 And this is, like, this book, there's tens of
8 millions of copies in print. It's the number one
9 recovery guide for -- it's, hell more -- saved more lives
10 from being alcoholics than anything else there is. And
11 actually, the whole page -- I'm not going to bore you,
12 but it has very specific things about going to
13 nightclubs, and what is appropriate and what's not
14 appropriate.

15 And this is what we do. This is all we do, you
16 know. We do meetings, you know. We mandatorily
17 participate in programs for recovery. If you don't want
18 to do them, then you don't want to live in my house. So
19 that's how I address it. It's pretty black and white.

20 There's plenty of people that really want an
21 opportunity to recover. That's what I provide. And if
22 you want to do that, I'm sure there's other places you
23 can go, and I can name a few. I choose not to right now.
24 But that's kind of my main question, and that should be a
25 sufficient answer.

1 I thank you for your time. If there's any
2 questions, I'm happy to answer them.

3 MR. ALLEN: You know, that's a vacant lot right
4 next to you where the Crab Cooker parks all the time.

5 MR. CULLEN: Right.

6 MR. ALLEN: Is there any ability for you to
7 join in with the Crab Cooker in using that parking?
8 Because this is kind of a new thing that's just come up.
9 That's a bit of a problem, it seems.

10 MR. CULLEN: I'd be more than happy to talk to
11 them. We've never had any complaints or any type of
12 issues with them. It's always the same. They have a
13 sign that says "No parking any time." We always
14 respected that.

15 MR. ALLEN: Do they occupy -- does their truck
16 cover the whole lot most of the time?

17 MR. CULLEN: No. There's still two spots,
18 maybe three. If they are willing to rent them, we'll
19 take them.

20 MR. ALLEN: It would be WORTH an inquiry, it
21 seems.

22 MR. CULLEN: I'd be happy to do it.

23 MR. ALLEN: Is the parcel on the other side
24 right on Balboa Boulevard occupied all the time?

25 MR. CULLEN: No, it's not. As a matter of

1 fact, the upstairs has weekly renters. The downstairs
2 unit is either owned or either rented out by the kids of
3 the owner of the property. They are kind of in and out.
4 They surf, and they are not the kind to keep regular
5 hours, but they are really quiet, and there's been no
6 complaints of troubles or anything like that.

7 It's not -- those are the only -- we're the
8 only two homes in the whole area, quite honestly.
9 Everything else is businesses. So it's kind of a unique
10 area, and we are really happy to be there.

11 MR. ALLEN: So you're receptive to the staff
12 recommendations with respect to limiting the occupancy to
13 six plus I guess it's you as the resident manager?

14 MR. CULLEN: We have someone on night running
15 the place. It's an all women's facility. We don't allow
16 men at the place. I come over, but I announce myself,
17 you know. We want to keep it safe for them as much as
18 possible. We don't have the boyfriends over or anything
19 like that. Even if parents come over, they have to be
20 announced and set up an appointment, and that kind of
21 stuff.

22 But at any rate, I'm happy to do what the
23 City's -- I haven't figured out how we're going to do it
24 yet, but I think this is something that can easily be
25 worked out.

1 MR. ALLEN: I'm sorry. You haven't figured out
2 how you are going to do what?

3 MR. CULLEN: How specifically we're going to
4 work it out, but we're going to work it out.

5 MR. ALLEN: Work out what?

6 MR. CULLEN: Being three upstairs, three
7 downstairs, or -- but the request that they are making, I
8 can figure it out. You know, I can work it out. I can
9 work with the City and make that happen. It's not -- I
10 am happy to do it.

11 MR. ALLEN: What's the City's recommendation?
12 What's the recommendation here as far as the use of three
13 and three, or six all in one unit or --

14 MR. KIFF: I think the least impactful system
15 for the neighborhood would be three and three. However,
16 we understand that changes the financial equation, and
17 that's something we have to look at with a reasonable
18 accommodation request. But our recommendation would be
19 three and three. And that way, you do minimize the
20 amount of people in that dwelling unit or that building
21 entirely.

22 MR. CULLEN: For what it's worth, I'm kind of
23 more comfortable with that only because I can control
24 who's downstairs and who's upstairs. The owner of the
25 property has been great. She's -- I don't foresee her

1 throwing in, you know, a bunch of fraternity guys or like
2 a weekly rental unit every week, or something like that,
3 but I still like to have the ability to have as much
4 control over the location as possible.

5 MR. ALLEN: So can you actually, yourself,
6 limit it to three and three, three in each unit?

7 MR. CULLEN: Yeah, I have.

8 MR. ALLEN: Or do you have to abide by someone
9 else's demands?

10 MR. CULLEN: No, I can do whatever I want. I
11 mean, in regards to whatever you guys ask me to do, I can
12 do. You know, I'm kind of the buck stops here, you know.
13 What I says goes in the sense that it's quite honestly
14 the way it is up until now.

15 MR. ALLEN: Okay. Thank you.

16 MR. CULLEN: You bet.

17 MR. ALLEN: Anything else? The parking
18 determination, it turned out that there's an insufficient
19 area between the garage door and where -- is there a
20 sidewalk or -- so cars can hang out onto the sidewalk
21 because the driveway is insufficient in length to
22 accommodate?

23 MS. BROWN: Yes, that's correct. The distance
24 from the base of the building to the property line is 12
25 feet, and then it's 6 feet from the property line to the

1 face of curb. Per the Zoning Code requirements, if you
2 use the driveway in front of a garage for parking, it
3 must be 20 feet deep. So this is not that much. So any
4 cars parking in front of the garage would be in the
5 public right-of-way hanging out into the sidewalk area.

6 MR. ALLEN: Except real small cars of some
7 kind?

8 MS. BROWN: Smart cars, VW's, Mini-Coopers.
9 They would all fit there.

10 MR. ALLEN: Right.

11 MR. CULLEN: May I just address that? She's
12 actually right. It isn't long enough. But it's not a
13 real thoroughfare. There's no one really walking through
14 there. It's not like it's a Newport Boulevard. She's
15 actually right. It is too short, but there isn't a lot
16 of foot traffic going through. For what it's worth,
17 we're happy to change it, though, believe me.

18 MR. ALLEN: Okay. We have a public hearing
19 scheduled, and so let's go ahead and open that. And
20 we'll run the usual format whereby you're welcome to come
21 forward in whatever order you can. And please limit your
22 comments to three minutes, and let's proceed.

23 Please identify yourself for the record, and at
24 least spell your sir name so that it gets on the
25 reporter's --

1 MS. HODSON: I'm Margie Hodson, H-o-d-s-o-n.
2 I'm the owner of the property.

3 MR. ALLEN: Good. Okay.

4 MS. HODSON: And they have been the finest
5 tenants I've ever had in there. I have had renters
6 upstairs with quote three people, and the next thing I
7 know, there's six people living there. You can't be down
8 there controlling it all the time. I do have a
9 management company that takes complete care of it. But I
10 have not had one complaint, nor has the management
11 company.

12 And the parking is a problem. And again, when
13 I had masses in there, they parked on the driveway
14 sometimes four cars across. But there is a problem, as
15 Kevin mentioned, with the Spaghetti Factory. In the
16 summer, it gets really bad.

17 But otherwise, they have just been ideal
18 tenants. I think every landlord would appreciate having
19 someone like them. Thank you.

20 MR. ALLEN: Can you live with -- I'm sorry.
21 Can you also -- are you receptive to the idea of the
22 three and three and not renting out of rest of the
23 facility, or is that something you would not do?

24 MS. HODSON: Well, the upstairs has three
25 bedrooms, and I rented it to three people. But as I

1 said, sometimes two or three more moved in. Downstairs,
2 it's a combination. It's two big bedrooms and two full
3 baths. So it can accommodate three people easily.

4 MR. ALLEN: I see, okay. Thank you.

5 All right. Anyone else?

6 MR. MALICH: Good afternoon. My name is George
7 Malich, and I reside at 210 21st Street. Also, I own 214
8 21st Street, which is right next door or one lot away,
9 you might say, from 204.

10 Also, on 20th Street, I own two duplexes at 215
11 and 217 20th Street. I've been down at 210 21st Street.
12 My father purchased that. We built a home in the mid
13 1950's, and we've been there down. We watched the City
14 grow. We've watched traffic increase. And the whole
15 thing has really, really changed through the years.

16 While I'm thinking about it, I might say there
17 is a lot of foot traffic on 21st Street. And especially
18 Friday nights, Saturday nights, Sunday nights, there is
19 no place to park. There is no way a fire engine can get
20 in there. There's no way that anybody can move on those
21 particular evenings.

22 These people that are proposed to be living
23 here, six or eight people, I'm sure they have a personal
24 life. I'm sure they have friends. I'm sure they have a
25 need to move Friday or Saturday or Sunday. We limit

1 ourselves, since we're used to the problem with parking
2 and traffic, to move out or do our shopping or do
3 whatever we need to do in the morning hours, because we
4 know how intensive it can get.

5 So I oppose it primarily on the parking
6 problems that exists. If this gentleman says he's
7 willing to purchase parking permits for these people,
8 that just simply doesn't work, because those parking
9 permits, the moment they leave, the moment people -- it's
10 taken by visitors, by tourists. Those spaces are taken
11 up unless you simply do not move your car.

12 I can't imagine people not moving their car at
13 all through the weekend hours or -- you know, it just,
14 you know. I have to do it. You need to move it, from
15 fisherman to tourists, people that use the beach,
16 families, whatever.

17 Anyway, what I was -- I don't think, really,
18 that there is enough parking, you know. If we're talking
19 two spaces in a garage, okay, for six or eight people,
20 plus visitors, you know, it's just totally unreasonable.
21 Sometimes I'm up at three, four in the morning if I know
22 I'm going to have visitors, and I'll park my car out on
23 the street, okay?

24 And because the bars are closed at two,
25 obviously, and that's when they leave. And those people

1 come over and they park on our street. The little
2 available parking that we have, I put my car in the
3 street, that way I have a space for a visitor the next
4 day, or if I'm planning to have some member of the family
5 come over.

6 So the parking permit thing, I just don't think
7 it's going to work. Because talking to another people in
8 the area, they will leave their car parked in those
9 parking spaces, because they need that parking, and they
10 don't move, but that's a rarity. You know, I mean,
11 that's really something that isn't going to work at all.

12 So that's my primary objection to the whole
13 thing, I don't think these people should be granted the
14 freedom to do this.

15 MR. KIFF: It's about time, sir.

16 MR. MALICH: Okay.

17 MR. KIFF: Thank you. I'm the timekeeper
18 today. Thank you.

19 MR. MALICH: All right. Thank you.

20 MR. KIFF: Thank you, though.

21 MR. MALICH: Sorry.

22 MS. HODSON: May I offer a rebuttal?

23 MR. ALLEN: Not now, no. We have to keep it
24 orderly and keep moving forward.

25 MR. WASCO: Good afternoon, ladies and

1 gentlemen. It's possible, since I'm speaking on behalf
2 of another resident, if I go over to four or possibly
3 five minutes, if that would be okay, I'd certainly
4 appreciate it.

5 My name is Jim Wasco, and I represent myself as
6 a homeowner on 20th Street. Also represent Mr. and
7 Mrs. Rubian (phonetic), who own two of the three adjacent
8 lots to the property that we're discussing directly next
9 to the duplex in question. This is their primary
10 residence. It has been their residence for over 50
11 years.

12 I'm also a company officer representing the
13 interests of the commercial property less than 30 feet
14 from the lot line of the property. In total, I'm
15 representing the owners of two of the
16 properties -- adjacent properties on 20th Street, three
17 duplexes and two single-family dwellings on 20th Street,
18 the furthest one of which is no more than a stone's throw
19 from the lot line.

20 First off, I'd like to say that I think that
21 this commercial venture and their intentions are valiant
22 for what they are doing for the people, and I hope that
23 they are very successful with it. We are opposed to it
24 for multiple reasons, however.

25 As George mentioned, parking. I don't see any

1 way to abate that unless there's a multi-level structure
2 parked -- that's built across the street someday. It's
3 just not going to happen.

4 21st Street, as you know, has essentially
5 turned into a one-way road, even though it's a two-way
6 street. But people go the opposite way. There's no way
7 for an emergency vehicle can get there on any weekend in
8 the summer months, or even in 6 p.m. in the spring and
9 fall during nice warm days, too.

10 We've had some problems with cigarette butts
11 and trash that have been in the area on personal
12 residences.

13 My main beef or one of the beefs with
14 this -- with this proposal is that this is a commercial
15 venture. It's nothing short of a moneymaker for the
16 owner, where the owners of the residents of 20th and 21st
17 Street are actually being asked to pay the bill.

18 I don't believe that this use is compatible
19 with the existing residents of 20th and 21st Street.
20 You, yourself, have used the words "facility" and
21 "client" to describe the tenants and the property,
22 confirming that this is a commercial venture. And I
23 believe it's preposterous not to require a use permit and
24 a business license for a for-profit business that's next
25 to existing residents who are opposed to this. Just

1 because we have haven't complained in the past doesn't
2 mean that there hasn't been problems.

3 This is an SP6/R2, where this use is not
4 permitted by existing Ordinance. If you want to make
5 accommodations, then what I would suggest is that the
6 City review this and change this to -- I believe
7 it's -- the proper term is an MWR zone, and include 20th
8 and 21st Street, if that would be the City's wish. So
9 that's really -- like I said, we represent a fair
10 majority of the local nucleus of the surrounding
11 property.

12 To discuss the additional parking on
13 Ms. Rubian's properties, I think the math is pretty easy
14 to use. If you figure what the loss value is on the
15 Peninsula, the reason that that's undeveloped is because
16 parking is such a premium. And so discussing that with
17 him, that's where his guests park, and that would be an
18 option to go ahead and rent that, where the Crab Cooker
19 truck is presently rented.

20 So again, I wish the client or -- excuse me. I
21 wish you great luck and success with your valiant
22 efforts. I just don't feel that this is the appropriate
23 location for such a commercial enterprise.

24 Thank you.

25 MR. ALLEN: Thank you.

1 Next?

2 MR. SELCER: My name is Jack Selcer. I live at
3 231 20th Street.

4 THE COURT: Would you spell your last name,
5 please?

6 MR. SELCER: Selcer, S-e-l-c-e-r. Like Alka,
7 but it isn't. And I'm representing my brother at 233,
8 and Bob Sullivan at 229.

9 And for the same reasons that the last
10 gentleman brought up, parking is a nightmare in the area,
11 and people are leaving old junkers. I know in particular
12 on 20th Street that there's some old junkers that they
13 don't even drive just to protect their parking stall, and
14 then they put it onto the lot, and then pull their car in
15 there, and that's where they park at night.

16 Parking is a big issue, and I think that if you
17 look back on the -- although I don't put it together with
18 this particular use, I think having somebody in a home
19 that's overlooking people that are having a problem,
20 trying to get out of it, is probably a good thing.

21 But there has been a lot of crime on that
22 street. There was a murder last year. There was a
23 shooting, I think, a year or two before that. There's
24 been a lot of problems on that street, and I don't think
25 that that's really conducive to what you're talking

1 about.

2 Thank you.

3 MR. ALLEN: Thank you.

4 MR. MATHENA: Larry Mathena. Resident in the
5 middle of the Peninsula. I'm here to talk about a couple
6 of things.

7 Number one, frankly, I've thought about this,
8 and I actually complimented Mr. Cullen yesterday. If you
9 are an operator who is smart enough to come to these
10 hearings, simply pay attention, and write down
11 everything, and comply with the simple set of rules that
12 are actually implied in this, you almost absolutely,
13 positively can end up with the ability to have your
14 facility approved. The sad thing is, it's because the
15 City, and ultimately this process, is not following the
16 law, and the law is clear.

17 It basically starts out and says fundamentally
18 we allow these uses in certain zoned areas unless
19 somebody asks us really nicely and comes up with a
20 citizen or two that says no, and last but not least,
21 says -- actually ties it to -- and the City is sort of
22 out on this under some strategy of protecting
23 itself -- is, oh, we're going to let the place at 900
24 West Balboa Boulevard get a facility because we have so
25 few of those.

1 One of the observations that was presented in
2 the data yesterday was, oh, let's carry that to its
3 logical absurdity and see if it still makes sense. So
4 one end of it was, oh, we only have a single four
5 facility place, and the implied reason for granting this
6 use -- and I fully accept this is a responsible person,
7 but this isn't your law -- is, oh, you know what? There
8 aren't any 70 place, 70-bed facilities.

9 So, if I find an old hotel, or I find some
10 absurdly huge thing because there isn't any other, and
11 it's a unique experience for people to be 70 together,
12 instead of four together, as opposed to 12 together,
13 that's a basis for not, oh, it's unique, it's a
14 necessity. That's your basis for overcoming the
15 necessity argument is, oh, this is special. We don't
16 have any other.

17 Now, except we have over 500 beds on the
18 Peninsula. But if somebody can say that in their little
19 dwelling unit, it's unique and special compared to
20 others, that makes it a necessity. I have not heard one
21 word making this a necessity. Period. Nothing.

22 Second point I'd like to make for the record
23 is -- and I've heard different things, although I find it
24 interesting. Mr. Cullen is identified as the CFO of
25 Balboa Recovery, Inc. At the same time, he's referred to

1 himself as owner and operator. He's identified as the
2 Applicant. But nowhere in any of this -- and I want to
3 know, because I believe you're going grant these rights
4 to Ocean Recovery, Inc., and my suspicion is you don't
5 have documented who owns Ocean Recovery, Inc., anywhere.

6 So fundamentally, I would say if you're not
7 coming up with who owns it, you know, I would argue you
8 have fundamentally failed in potentially granting this
9 right to anybody. And if you don't know that right now,
10 I would really question whether or not you're doing your
11 due diligence in anybody's analysis.

12 MR. KIFF: It's time, Larry.

13 MR. MATHENA: One last thing. Last point
14 briefly. You have an integrated facility with Ocean
15 Recovery. This gentleman's time is absolutely necessary
16 for Ocean Recovery and was part of the basis of their
17 application. I don't understand how, and he is a very
18 bright man, how he can do both.

19 Last point is, it's my understanding that his
20 facility at 124 West 30th Street was open during the
21 moratorium, and it's my understanding the City is aware
22 of that. And I believe that that is a violation of the
23 law, and it potentially is grounds for denying a permit
24 in and of itself.

25 Thank you.

1 MR. ALLEN: Anyone else wish to speak?

2 All right. We'll close the public hearing.

3 Subject to any rebuttal. Let's see, what is
4 our next process? Normally, we have the Applicant rebut
5 any testimony that he would like to rebut, or do we have
6 the City do it first? I never remember.

7 MS. WOLCOTT: I believe it's the Applicant.

8 MR. ALLEN: So Mr. Cullen, you would like to
9 respond to the comments made during the public comment?

10 MR. CULLEN: Yeah, sure. I'll do my best to
11 answer the questions that they have. Kevin Cullen,
12 C-u-l-l-e-n.

13 I'm sorry. I didn't hear your last name,
14 George. In regards to parking, you're absolutely right.
15 Parking is a nightmare down there. I keenly aware about
16 how much traffic there is there. During the summertime,
17 it's restaurants and stuff, people living, going to the
18 beach. I think you're right.

19 However, parking is a nightmare regardless of
20 whether I'm there or not. So if it was a rental unit,
21 you could have six cars. You could have eight cars, you
22 could have more, or whatever. But if you have two
23 separate units, you're going to have more than three
24 cars, that's for sure, and I will guarantee that.

25 I know that my house that I live in, I live in

1 the heights, you know, just me and my wife, and we have
2 several cars. And, well, we have two cars right now. So
3 my guess is, whether we are there or not, there's going
4 to be parking issues. So I just want to address that.

5 And for Jim -- I'm sorry, I didn't catch your
6 last name. I didn't write it down. As to parking, once
7 again, it is an issue. I kind of addressed that, and it
8 is a nightmare. But once again, these people have been
9 riding bikes. He don't have any vehicles for three
10 months. And like I said, I'm not particularly interested
11 in having more cars.

12 THE REPORTER: I'm sorry. I need to hear you.

13 MR. CULLEN: I'm sorry. I know you don't know
14 me or have any reason to trust me on that issue, but I
15 assure you, I'll do my very best to make that work. I'm
16 happy to work it out with you. I'm happy to do it. And
17 I mean that. I'll give you my number afterwards, and you
18 can call me. I'm pretty available.

19 And cigarette butts and trash. There is
20 cigarette butts and trash down there. At that particular
21 location, we do chores on a daily basis. We do walk
22 around, so we keep it clean. I'm sure you've seen the
23 place. It's pretty clean, nice. And if there's
24 cigarette butts down there, they are not from our girls,
25 trust me. If I saw someone throwing cigarette butts --

1 MR. ALLEN: Mr. Cullen, you're speaking very
2 fast and away from the reporter, and she can't hear you.
3 So you need to address us, and the gentleman out there
4 can understand that you're talking to him.

5 MR. CULLEN: You know, I apologize. This is
6 the first time I've gotten to do this. I appreciate that
7 opportunity.

8 If I catch someone throwing a cigarette butt,
9 we go pick it up. We go pick up trash at the beach.
10 It's kind of the consequences of our behavior. I don't
11 smoke. I used to smoke, but it seems like the punishment
12 tends to fit the crime, so to speak. And I don't want to
13 tolerate a dirty place. It's not my thing.

14 As far as requiring business license, we do
15 have a business license. And also, Jim, your mentioning
16 about, yeah, it's a commercial business. There's a bunch
17 of a commercial businesses in that area. I know there is
18 a zoning issue, and I'm requesting a reasonable
19 accommodation from a zoning -- from that zoning code.

20 But there are other businesses in that area
21 directly across the street, directly behind us, to the
22 left of us, down the street, to the right of us as well.
23 And quite honestly, everything else is rental properties,
24 you know. So we're not much different than that other
25 than we don't drink or use drugs.

1 The last one, Jack Selcer. Parking, once
2 again, is an issue. I believe I've addressed that. And
3 crime on 20th Street, I assure you, we've never murdered
4 anybody or shot anybody down there. It's a women's home.
5 These people are daughters and are sisters and our
6 mothers. And they come from great families and great
7 kids, and they really haven't been a problem.

8 And anyway -- and as far as Larry Mathena, who
9 spoke very well, zoning issue. I don't have -- I haven't
10 read the Zoning Code, or anything like that, and quite
11 honestly, I don't really understand, other than this is
12 the process I have to take to continue what I do.

13 As far as being a money-making operation, we
14 are in business, absolutely. And I guess the definition
15 of business is to make money. But there's easier ways to
16 make a buck, guys, believe me. Because I am not getting
17 rich off of it.

18 I actually, quite honestly, I'm good at this.
19 I'm good at what I do. I'm in recovery myself, and I
20 would like other people to have the same opportunity that
21 I had and in a safe place, man.

22 This sounds funny, but I love this town, guys.
23 This place literally saved my life, and I would never do
24 anything to harm it. And I just really appreciate the
25 opportunity that this place has given me. And I'd like

1 to give something back. And quite honestly, that's about
2 all I have.

3 MR. KIFF: Mr. Cullen, I have a question for
4 you, if you don't mind.

5 MR. CULLEN: No.

6 MR. KIFF: Could you explain for the record the
7 ownership of Balboa Recovery?

8 MR. CULLEN: Absolutely. I don't know the
9 proper termination of it or whatever. Balboa Recovery is
10 a corporation, an S corporation. I believe I have a
11 business partner named Darryl Schindler, who is not a
12 part of Ocean Recovery in any way.

13 Ocean Recovery, there's no owner of Ocean
14 Recovery. So there are partners. No ownership there
15 whatsoever. But Darryl Schindler is my business partner
16 in that. I think he may be CEO or CFO, I'm not sure
17 which is which.

18 But as far as any practical purposes, I run the
19 show. I don't particularly deal with, you know, bills
20 and licensing issues, that type of stuff. But as far as
21 the day-to-day operations, as far as getting the beds
22 filled, as far as keeping in with people, dealing with
23 parents, dealing with families on a daily basis, it's my
24 show. That's all.

25 MR. ALLEN: Is Mr. Schindler the shareholders

1 of the corporation?

2 MR. CULLEN: Yes.

3 MR. ALLEN: Does the corporation write your
4 paychecks?

5 MR. CULLEN: Well, we haven't got a paycheck
6 yet, actually.

7 MR. ALLEN: Ocean Recovery?

8 MR. CULLEN: But that's the intent, yeah.

9 MR. ALLEN: I see.

10 Anything else, Mr. Kiff?

11 MR. KIFF: I had one more question, please.

12 Mr. Cullen, explain to me, sorry for being
13 thick headed, about how can any client have a car, or do
14 you control what clients can have cars?

15 MR. CULLEN: I absolutely control what clients
16 have cars. It's not -- here's one of the unique
17 situations going on here as well. Everyone that comes
18 through, I have a pre-longstanding relationship with the
19 family. They have been at least under my care or
20 direction in some capacity for at least four months
21 before they ever even move into Balboa Recovery. I have
22 a great relationship with the families.

23 No one is just too hip on giving their kid a
24 car, someone new to recovery a car. It's not necessarily
25 always safe or always practical. And if the parents say,

1 "Hey, what do you think? Shall I get my kid a car?" My
2 response is "No, they don't get a car." Period.

3 I don't let people just show up to the house
4 and move in because they want to. I turn away more
5 people -- I turn everyone away. And these are from
6 outside facilities are the calls I get. And on a weekly
7 basis, I get calls from the Betty Ford Center, Sober
8 Living By The Sea, Morningside Recovery, other places
9 that say "I want to check in," and I'll tell them it's
10 not what I do. My success has been with people that I
11 have a relationship with, with the families.

12 So to answer the question, no. If someone
13 wants a car, I tell them, no, they don't get a car.
14 That's the way it is.

15 MR. KIFF: So, for instance, right now, of the
16 people who reside at this facility, how many have cars?

17 MR. CULLEN: Four.

18 MR. KIFF: Four of eight?

19 MR. CULLEN: Four of eight. However, it's the
20 summertime, and we got two girls moving out. They
21 are -- and so that will be -- count down to two, and keep
22 it at that. I can keep it at three, whatever you guys
23 want to do.

24 MR. KIFF: Hold on just a second.

25 MR. CULLEN: Yeah.

1 MR. KIFF: Mr. Cullen, as a condition of this
2 reasonable accommodation, we would recommend keeping the
3 maximum amount of cars that the facility at two.

4 MR. CULLEN: Okay. Is that with
5 the -- including the house manager or not including the
6 house manager?

7 MR. KIFF: Well, if --

8 MR. CULLEN: You can think back, think about it
9 and get back to me whatever you want to.

10 MR. KIFF: Okay. Let me think about that.

11 MR. CULLEN: Cool.

12 MR. ALLEN: If we do go ahead with approval of
13 this, we could structure the resolution accordingly after
14 further discussion.

15 MR. KIFF: Okay.

16 MR. ALLEN: Thank you.

17 MR. CULLEN: Is that it?

18 MR. ALLEN: Yes.

19 MR. MALICH: Could I come up again and --

20 MR. ALLEN: Well, the public hearing is closed
21 now. We got of have a process that we keep going. You
22 need to say one thing, but we're not going to reopen it
23 to anybody else. If you have a compelling point that you
24 think will render a different decision here or close to
25 it, you're welcome to come up.

1 MR. MALICH: Well, very quick.

2 MR. ALLEN: Go.

3 THE REPORTER: Name again, please?

4 MR. MALICH: Okay. George Malich. Resident at
5 210 21st Street, 224 21st Street.

6 I know that people need cars. To say that only
7 two cars will be at that place doesn't sound reasonable
8 at all. People have their lives. People have family.
9 People have visitors. I know when I leave, I make sure
10 there is a place at my residence, or I have a car in the
11 street before I come back. This gentleman just does not
12 have the parking for his people. Physically, it doesn't
13 exist, even just barely two people that exists.

14 MR. ALLEN: Okay.

15 MR. MALICH: That's it.

16 MR. ALLEN: We're done with the public hearing,
17 please.

18 MR. KIFF: The speaker's point is, I think,
19 well taken. Yet, I'm also fully cognizant of the fact
20 that parking is a problem down at this location. And if
21 this were two vacation rentals or two separate single
22 housekeeping units, the City has no control over the
23 amount of cars that those facilities would bring in.

24 So I'm struggling with why one use -- this
25 specific use limited to, say, two cars for the entirety

1 of the building, so inclusive of both units, to me, that
2 seems like a much better scenario than having two
3 separately rented units, single housekeeping units, with
4 no controls over parking.

5 You could have college roommates in there with
6 four and four, four at on the bottom, four on the top,
7 and each of them could have cars, and that's eight cars
8 in that area. And the City can't control that. This is
9 an opportunity to control parking. So I think it's worth
10 pursuing.

11 MR. ALLEN: Okay. Let's see. The Applicant
12 has completed rebuttal. And would the City like to have
13 further comment with respect to this?

14 MR. KIFF: I just have a couple more comments
15 centering a little bit around Mr. Mathena's comments.
16 The reasonable accommodation process is not easy. It's
17 not simple. There's lot a case law involved in it. I
18 think reasonable people can disagree.

19 But for those in the audience, this is the
20 process that, under the advice of Counsel, we're
21 following. I know others, including Mr. Mathena, would
22 like it to be slightly different, but we believe this is,
23 fundamentally, the appropriate way to approach it. It
24 is, again, fully tested in Federal law and case law.

25 And I would urge everybody in the audience,

1 maybe when you're home, to Google that, and kind of look
2 at what reasonable accommodation means, and how important
3 it is for a city, for any agency, to respond to that
4 term, that reasonable accommodation, sincerely and
5 honestly, and we're trying to do that.

6 Mr. Mathena also brought up one other point
7 about integral facilities and integral uses. And I would
8 remind the folks in the audience that at least for the
9 purpose of many of our facilities in town, that section
10 of our Ordinance has been struck down, and has been
11 enjoined from action from the U.S. District Court, Judge
12 Selna's direction.

13 So we cannot and are not enforcing the integral
14 facilities or integral uses section of our Ordinance.
15 Again, we've been told not so.

16 So with that, Mr. Allen if you have any
17 questions of Counsel or staff, we welcome your
18 direction.

19 MS. WOLCOTT: I have one other point to
20 clarify. Well, two. In Mr. Mathena's testimony, he
21 stated that there were 500 beds on the Peninsula. To the
22 best of staff's knowledge, there are not.

23 I gave you the numbers of the sober living beds
24 and unlicensed facilities currently available that are
25 not subject to abatement at this time. Some of those may

1 be still in the administrative process. But of the ones
2 that are legitimately established under the City's
3 Ordinance, there's only the numbers that I gave you
4 earlier.

5 MR. KIFF: Sorry to interrupt, Cathy, but for
6 those of you who would like to look at that, that's on
7 our Web site as well. There's a list of all of the beds
8 that have been approved or subject to abatement and/or
9 within the process similar to today. So, if you look at
10 our Web site, you can do your own count.

11 MS. WOLCOTT: Correct. That's public available
12 information, and it includes addresses.

13 The other statement Mr. Mathena made is that
14 this use was established during the moratorium. The
15 information we have been given is that it was established
16 in February of 2006, which substantially precedes the
17 adoption of the moratorium.

18 Thank you.

19 MR. KIFF: Sorry. I think Larry was referring
20 to another facility by Balboa Recovery. I don't know if
21 we have information on the other establishment dates for
22 the others.

23 MS. WOLCOTT: The Applicant reports that the
24 306 West Balboa was established in October 2005, and 124
25 30th Street was established in October of 2006. All of

1 those proceeded the moratorium adoption.

2 MR. ALLEN: And as long as we're talking about
3 Mr. Mathena's comments, he indicated that we had
4 absolutely no idea who owns Ocean Recovery. And in as
5 much as they will be coming back next week for further
6 review of some sort, possibly that will be available to
7 supply.

8 MR. KIFF: And that's actually available in the
9 public record. You can look at ADP's licensed
10 application for Ocean Recovery, and it's clear as to who
11 the owners are. I don't have it in front of me, but I
12 have reviewed it.

13 MR. ALLEN: All right.

14 MS. WOLCOTT: Sorry. We should also specify in
15 the Applicant's process of applying for the reasonable
16 accommodation, the Planning Department did get the
17 corporate information on Balboa Recovery. And the CFO is
18 Kevin Cullen, Vice-President is Kevin Cullen, the
19 President is Darryl Schindler.

20 MR. ALLEN: All right. So we're through with
21 our testimony, and it's time for decisionmaking. And we
22 were originally going to consider a continuance of this
23 matter, because there was more information.

24 But inasmuch as more information that was going
25 to come in was of a financial nature to possibly assist

1 in the necessity termination with respect to the number
2 of clients, but inasmuch as Mr. Cullen has agreed to
3 limit it to six, which is the City's recommendation, then
4 there's not a need to continue.

5 I believe the City has demonstrated the
6 findings that are required, and that we are required, as
7 this body, to grant the reasonable accommodation in
8 accordance with the conditions that are proposed. And so
9 I am prepared to adopt a resolution when it's brought
10 back to approve the matter in that fashion.

11 Now, there are conditions recommended by the
12 staff that were on the overhead, and I believe they are
13 set forth in about page 15 of the staff report. And we
14 can quickly address them.

15 That the bed cap would be limited to six
16 persons, plus an on-site resident manager, who shall be a
17 qualified specialist;

18 Reference to ADP license, if they get it;

19 Change the client quiet hours to 10 p.m. to 8
20 a.m.;

21 Television hours;

22 And requiring compliance regarding secondhand
23 smoke.

24 And in addition to those five conditions that
25 are set forth on page 15, that there be established a

1 maximum number of clients resident in the facility who
2 may have automobiles. And I believe that that is a
3 matter that is still open for discussion between
4 Mr. Cullen and Mr. Kiff. Is that true?

5 MR. KIFF: Yeah. The question would be, is it
6 two cars for the entire household, or two cars plus one
7 for the house manager, meaning three. And I need to
8 wrestle with that a little bit, look at the site a little
9 bit more.

10 MR. ALLEN: My observation in that respect is
11 that despite the testimony, which is absolutely valid,
12 that parking is horrendous in that area, it's very
13 horrendous in that particular area -- I visit there a lot
14 and am well aware. But Mr. Kiff's point is compelling,
15 that if this facility were not there, and the place was
16 rented, the parking would be worse.

17 So Mr. Cullen's willingness to limit is a
18 benefit not a detriment to the residents, in my opinion.
19 And so, therefore, whether it's two cars or three cars,
20 either one would be acceptable. And I would sign the
21 Resolution with either one of those limitations included.

22 As I said, I believe the findings that are
23 required in the Ordinance with respect to necessity and
24 with respect to the reasonableness of the accommodation
25 have been and can be made.

1 So that's the conclusion, unless anybody has
2 any recommendation or need for suggestions to add
3 anything that we haven't covered already.

4 MR. BOBKO: Let me confer with my staff.

5 MR. KIFF: We're just working on our calendar,
6 actually, there.

7 So as you know, Mr. Allen, we're recommending a
8 continuance on the second two items, the 124 30th Street
9 and 3206 West Balboa, to May 20th, at 4 o'clock, same
10 location. And we recommend that we bring back the
11 resolution on 204 21st Street at that time for you to
12 sign in a public setting.

13 MR. ALLEN: All right. So that's acceptable.
14 So 3206 Balboa Boulevard, and 124 30th Street are both
15 continued until May the 20th, at 4 o'clock. And then
16 we'll bring back -- you'll bring back the Resolution for
17 this matter at that time as well.

18 MR. KIFF: That's correct.

19 MR. ALLEN: Before we close, Mr. Mathena
20 is -- feels compelled to make a comment, and please do.

21 MR. MATHENA: Very briefly. Number one, the
22 location with the moratorium was 124 West 30th, not the
23 current facility.

24 Number two, in the staff report sent out that
25 was associated with the hearing yesterday, the reference

1 was to 300 on -- and forgive me, because you're right. I
2 did overstate in the sense of there's a reference to
3 Balboa Peninsula and West Newport that talks about 312
4 plus 200 more. And I'm happy to send you the site. So
5 if I just said the Peninsula, I apologize.

6 MS. WOLCOTT: No, you're correct. In 2007,
7 there has been a change.

8 MR. MATHENA: Okay.

9 MS. WOLCOTT: And that included licensed
10 facilities.

11 MR. MATHENA: Okay. Forgive me. That's was my
12 most recent data.

13 And the last thing is to the extent that I was
14 referring to Ocean Recovery as opposed to Balboa
15 Recovery, I apologize.

16 Last point. On a corporation, briefly, if they
17 are not licensed, and you don't know from the State who
18 owns it --

19 MR. ALLEN: Why don't you put those comments in
20 writing, and then we can address them, because this will
21 be confusing. So please do that, and then we'll
22 understand it and be able to a respond appropriately.
23 Thank you.

24 Okay. Nothing further? Then we're adjourned
25 for today, and continue those two items and the

1 Resolution to May 20th.

2 (Ending time: 5:25 p.m.)

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

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

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

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

Dated: MAY 12 2009



Laura A. Millsap, RPR
CSR No. 9266

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