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PUBLIC HEARING ON
OCEAN RECOVERY, LLC
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
THURSDAY, FEBRUARY 12, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 6:25 p.m., on Thursday, February 12, 2009,
before LAURA A. MILLSAP, RPR, Certified Shorthand
Reporter No. 9266.

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1 NEWPORT BEACH, CALIFORNIA; THURSDAY, FEBRUARY 12, 2009

2 4:00 P.M. - 6:25 P.M.

3
4 MR. ALLEN: All right. We'll open up the
5 hearings for today, Thursday, February 12th. I'm Thomas
6 W. Allen, the Hearing Examiner appointed by the City to
7 conduct these hearings.

8 We have two items on the agenda today. First
9 item is 1601 West Balboa Boulevard, Ocean Recovery. Does
10 everyone per chance have their cell phones turned off?

11 We'll go on a normal course here, where the
12 staff will do a report, there may be questions, and then
13 we'll open up the public hearing and give the public an
14 opportunity to present their views.

15 So with respect to 1601, do we have a staff
16 report, please?

17 MS. LINN: Yes. This item is a request for
18 approval of the use permit for the continued operation of
19 a residential care facility at 1601 West Balboa
20 Boulevard, use permit number 2008-031.

21 The application is for the continued use of a
22 four-unit residential building at the subject address
23 with a total of 10 bedrooms and 16 beds. The facility is
24 licensed for 16 beds, and they currently occupy the total
25 16 beds, meaning they are ADP licensed. They have on

1 site -- the facility has four off-street parking garages,
2 and the operations of the facility are summarized in your
3 staff report.

4 Staff is recommending approval of this use
5 permit subject to a number of conditions being included
6 that would assure that their operations are in a manner
7 that are compatible with the surrounding neighborhood.

8 One significant condition of which includes the
9 reduction of their bed count from 16 to 14 in order to
10 accommodate -- better accommodate parking on the facility
11 and also to address some of the concerns that may have
12 arisen due to the public comments that are also
13 summarized in your staff report.

14 We have received additional public comments
15 that were e-mailed to the City on the 11th, yesterday,
16 and they are also, I believe, on the desk for you and
17 included in a package at the counter.

18 Based on the conditions of approval, staff is
19 recommending approval of the subject application. The
20 Hearing Officer -- we believe all the findings can be met
21 if the conditions of approval are included.

22 As an alternative, the Hearing Officer may also
23 determine that the application should be continued or
24 denied. And staff is requesting that the Hearing Officer
25 direct staff to return with a Resolution of Approval for

1 the project, subject to the conditions listed in your
2 staff report.

3 And that concludes our presentation, if you
4 have any questions on this matter.

5 MR. ALLEN: I don't have any questions at the
6 moment. Is the Applicant here and wish to make a
7 presentation?

8 MR. MC CLOSKEY: Sure. My name is Jim
9 McCloskey with Ocean Recovery. And I guess I'd like to
10 start off by saying that, first of all, both of our
11 facilities are licensed facilities, and I know we're only
12 talking with 1601 here, but the person that's in charge
13 or manager has a Master level education and has been in
14 the counseling for -- in this field for about 25 years.

15 We, again, as I mentioned, are a licensed
16 facility. We started very, very small. We started with
17 two clients. We've grown up into where we are today. So
18 our theory was, we grew very, very small with no
19 mistakes, and that's how we're able to grow to the size
20 that we are today.

21 You know, to my knowledge at 1601, we haven't
22 had any complaints by the surrounding neighborhood. I
23 don't know if that's accurate or not, but to my
24 knowledge, there hasn't been any -- there was some
25 concerns about the parking, which we've already addressed

1 the parking, and we've taken care of it. We've converted
2 it back to a parking garage.

3 That's about all I can really say about 1601,
4 unless there's anything else you'd like for me to go
5 into.

6 MR. ALLEN: How many spaces had to be converted
7 back?

8 MR. MC CLOSKEY: I believe three? Or was it
9 four?

10 MS. LINN: Four.

11 MR. ALLEN: Four?

12 MR. MC CLOSKEY: I'm sorry. There's only three
13 there, I believe. And there's four at the other.

14 MR. KIFF: Our staff report indicates that
15 there's four, so --

16 MR. MC CLOSKEY: There is four.

17 MR. KIFF: Okay.

18 MR. ALLEN: Do you believe you're able to
19 operate successfully given the constraints of the
20 conditions that are proposed by the staff?

21 MR. MC CLOSKEY: Yeah, I think we can operate
22 at 14, and I think we can manage it correctly, yes.

23 MR. ALLEN: All right. Let's open the public
24 hearing, then, and see if -- the Applicant -- excuse me.
25 Go ahead.

1 MR. O'CONNOR: I apologize for interrupting.
2 I'm Sean O'Conner. I'm an attorney at the Law Firm of
3 Sheppard, Mullin, Richter & Hampton. And I represent
4 Ocean Recovery.

5 And I'm going to let Mr. McCloskey do most of
6 the speaking, and I'll save most of my comments for the
7 application on 1115. I did want to address just a couple
8 of conditions that are part of the application for 1601.

9 As Mr. McCloskey stated, we probably could
10 operate with a suggested condition of a reduction in bed
11 count to 14. We do believe that a bed count of 16 would
12 be more appropriate. That's what it's currently licensed
13 for by the ADP. Indeed, we have 10 bedrooms at this
14 facility. So there is room for more than the currently
15 licensed 16 already. So we think that 16 would be a
16 reasonable number.

17 We also have concerns, Mr. Allen, regarding
18 proposed condition number seven. That is to do with the
19 smoking. And to my knowledge, there have been no
20 complaints about secondhand smoke as to this particular
21 facility. There's a different issue with the 1115.
22 We'll get to that in a bit. But there have been no
23 complaints regarding smoking -- secondhand smoke as to
24 1601. Yet, the condition for 1601 is just as onerous as
25 is the case for 1115.

1 And what that condition requires in part is
2 that smoking outdoors is prohibited. I've done a little
3 research on this, and I'm aware of no other property in
4 the entire City that has been subjected to such an
5 onerous condition that says to the property owner, "You
6 cannot even smoke on your own property."

7 We'd be willing to work with the City to find a
8 solution that would control secondhand smoke to the
9 extent that it is an issue here. Again, there has been
10 no evidence to suggest that is an issue at this
11 particular property. So that condition as worded is
12 problematic to us.

13 Lastly -- and this is something I think could
14 be revised rather easily -- condition number 26, which
15 has to do with the requiring of a new amendment or,
16 excuse me, a new use permit or an amendment to the use
17 permit if there is, among other things, a change on
18 on-site staffing.

19 Carried to its logical extreme, what that could
20 mean is that if we merely lose one employee and hire
21 another employee, we would have to come back down here to
22 the City for either an amendment to the use permit or an
23 entirely new use permit. I don't think that's the intent
24 of this condition, but that's the way that it's read
25 legally.

1 MR. ALLEN: Thank you.

2 MR. O'CONNOR: We'd be happy to respond to any
3 questions either now or after public comment.

4 MR. ALLEN: Thank you. Maybe we should give
5 staff --

6 MR. KIFF: Maybe, Sean or Jim, if you could
7 stay up by the podium and address -- I think on condition
8 26, you're right. It's not our intent to say that if
9 Mary replaces Joe, that that's an approval.

10 I think it's a change in on-site staffing that
11 would either reduce the management capability -- the
12 on-site management capability and supervision that would
13 cause a concern to us in the neighborhood, that we would
14 want that to come back.

15 So it wouldn't necessarily mean a change in the
16 persons or even positions, but just so we knew that same
17 expertise was on staff and stayed on staff. That's fine.
18 That wouldn't need to come back, if that's clear.

19 Or a change, say, in addition of several staff
20 members that would impact the parking in the area so
21 significantly that it's not the same use that we envision
22 today. So if that context is acceptable to you, that's
23 acceptable to us.

24 On smoking, I don't know if maybe -- I realize
25 this is a little bit small scale, but I think the biggest

1 concern the City would have is if -- I'm sure my
2 batteries always die when I need this -- if smoking
3 occurs such that it impacts the neighbor on the left or
4 the neighbor behind that -- now the winds do generally go
5 in across the street, but I'd be interested to know what
6 the outside smoking area is now for 1601. Is it -- or
7 when folks need to smoke, where do they go?

8 MR. MC CLOSKEY: It is a designated area that's
9 actually out on the patio incorporated up against the
10 wall. So if it's an L shape, they are actually back
11 against the bottom of the L of the L shape.

12 MR. KIFF: Okay. So they are closer to Ocean
13 Front alley and 16th?

14 MR. MC CLOSKEY: Correct.

15 MR. KIFF: So I guess our thinking would be if
16 there's a way that that stays in the smoking area -- and
17 you're right, we haven't had specific complaints. It's
18 not to say we wouldn't from this facility -- but that
19 there be an opportunity to install maybe some plexiglas
20 or some type of area that at least funnels the smoke up
21 instead of straight across into the neighbor's window.

22 Our intent was not to literally prohibit it if
23 it's not prohibited to any typical residence. But that
24 there be some accommodation made to try and keep the
25 smoke from getting into the neighbor's windows.

1 MR. MC CLOSKEY: I guess that is something that
2 we can examine. The only issue -- I think especially in
3 that location we haven't had a problem with that. And
4 really, if it funnels anywhere, it funnels into the alley
5 or 16th Street area. So I don't know where we would
6 redirect it to.

7 MR. KIFF: Well, maybe when we come back, if
8 this is the course that we take, we would wordsmith that
9 condition. Because I think the "prohibition" word is,
10 indeed, too strong. It should be limited so that it's
11 literally in the terms of the Ordinance, so that the
12 neighboring properties aren't affected by it. So that's
13 our goal. And if that's our goal, there are probably a
14 variety of paths to get there.

15 MR. O'CONNOR: Mr. Allen, with those
16 clarifications -- thank you, Mr. Kiff, by the way -- we
17 are fine with the condition number 26 with that
18 clarification. And similarly, condition number 7, it
19 seems like we will be able to work something out
20 concerning the concern on smoke.

21 MR. ALLEN: All right. Thank you.

22 So you're satisfied with being able to leave
23 the conditions the way they are, given staff's
24 interpretations that you'll --

25 MR. MC CLOSKEY: Work together to --

1 MR. ALLEN: -- work with them, recognizing this
2 condition will be there, and you could ultimately be
3 required to comply with it precisely?

4 MR. KIFF: Well, with the clarification,
5 Mr. Allen, I do think there needs to be a wordsmithing on
6 both 7 and 26 to make it the way I interpreted it three
7 minutes ago. So we will -- I think the wording will
8 change when you see it next, if that's, indeed, the path
9 this takes.

10 MR. O'CONNOR: And Mr. Allen, to directly
11 address your question, the short answer is yes. We would
12 be agreeable to this. That's not to say that these
13 conditions are not onerous, and it's not to say --

14 MR. ALLEN: Right.

15 MR. O'CONNOR: -- we don't have problems with
16 them, and I'll probably address this more as it relates
17 to 1115.

18 Indeed, we do question the legality of the
19 Ordinance in the entire process we're going through. But
20 our attitude today is the same as it's been the last 12
21 months. We are working to find a cooperative solution to
22 a difficult problem that's been presented here. And we
23 would like to do so today.

24 So with that mindset, we would be agreeable to
25 those conditions as clarified by Mr. Kiff.

1 MR. ALLEN: Does anyone have the Ordinance
2 language right up there? I'm trying to bring it up here,
3 and it will take me a moment, I know.

4 But does it essentially say that smoke shall be
5 controlled in such a fashion that it does not disbursed
6 or is not detectable on neighboring properties? Is that
7 what the Ordinance says?

8 MR. KIFF: That's what it generally says, and I
9 will put it up with you here.

10 We're not getting Internet connection. You
11 might, Mr. Allen, if you wanted to start the public
12 comment, we can come back and revisit this as I try to
13 get back on the Internet. If worse comes to worse, I'll
14 run to my office.

15 MR. ALLEN: I have it here, but I'll have to
16 find --

17 MR. KIFF: Okay. I can find it if you're
18 logged on.

19 MS. BROWN: It's Item A, 2091050, Item A.

20 MR. ALLEN: 050?

21 MS. BROWN: Yes.

22 MR. ALLEN: Okay. "No staff, et cetera, may
23 smoke in an area from which the secondhand smoke may be
24 detected on any parcel other than the parcel on which the
25 facility is located."

1 So that's even more rigid. If it's detected on
2 adjacent property, it's a violation. That certainly does
3 take care of it from an enforcement point of view if
4 complaints are received.

5 MR. KIFF: That's why I think the goal of the
6 Ordinance, Mr. Allen, was to encourage or discourage the
7 concept of 12 or 14 or 10 people all gathering in the
8 same area and smoking at the same time;

9 That if somebody wants to smoke, they -- maybe
10 they take a walk. Maybe it's one person. Obviously the
11 preference is that folks get on maybe a smoking cessation
12 program. I realize that can be unreasonable in many
13 cases.

14 But I think you'll hear from -- consistently,
15 and we heard consistently last year as this Ordinance was
16 being developed, that this is a key problem is a whole
17 group of people all sitting around smoking, and it just
18 overwhelms the neighborhood. And I think more so than a
19 typical single-family use. Even a family with one or two
20 smokers is different than a household with 10 or 12.

21 MR. O'CONNOR: A suggestion only, Mr. Allen.
22 There are some provisions in place as it relates to the
23 Sober Living agreement that address secondhand smoke that
24 looked to be reasonable and looked to address the
25 concerns of secondhand smoke. I have the language here,

1 if you're interested in it. But it's also in the actual
2 zoning agreement as well.

3 MR. ALLEN: Okay. That's a thought then, as
4 far as wordsmithing that Mr. Kiff was suggesting.

5 All right. Let's open the public, or does
6 staff have anything else first?

7 MR. KIFF: No, sir.

8 MR. ALLEN: Let's open the public hearing,
9 then, and please come forward and give us your wisdom.

10 MR. LOPEZ: Mr. Allen and Mr. Kiff, Paul Lopez,
11 1125 1/2 West Balboa Boulevard, next door neighbor of
12 1115 but commenting on 1601.

13 I'm going to give Dave here a final package of
14 accumulating information gathered by local residents.
15 And I stress that people on the Peninsula have 144
16 signatures here opposing both 1601 and 1115.

17 I've got two additional opposition letters that
18 were generated that will refer back to 1115, and
19 miscellaneous communications with Dave Kiff, as well as
20 pictures, of which I was and have been for the last three
21 weeks been trying to coordinate with Mr. Kiff and never
22 got confirmation that I could use these pictures here at
23 the meeting.

24 MR. KIFF: You received it twice, Mr. Lopez,
25 last night and about three weeks ago. You're welcome to

1 use them at the meeting.

2 MR. LOPEZ: Okay. I did not get that
3 communication.

4 So as it relates to 1601, I would like to
5 comment. In talking with several residents, or whatever,
6 the confusion that's been created a little bit by the
7 moving of dates here. So I do look -- as I look out in
8 the audience here, we have some good representation, but
9 do know for a fact that some folks have not been able to
10 attend the meeting today.

11 The 144 signatures and over 13 letters that
12 have been written by local residents apply to both 1601
13 and 1115. The key components of that opposition are
14 1601's location to Newport Elementary, which is less than
15 1,000 feet. Neighbors have experienced repeated nuisance
16 problems over the last five years, including secondhand
17 smoke, profanity, littering and loud noise.

18 This operation provides undue burden on parking
19 and traffic, as evidenced by the operator himself in
20 converting the garages back. This business operation
21 includes neighbors and families that would be frequenting
22 the beaches being a little bit intimidated.

23 And then overconcentration of facilities, which
24 has really been kind of the key argument that we've been
25 discussing here over the last few weeks. The City's

1 already approved 1132 West Balboa. There are three other
2 facilities that are operating or seeking approval, which
3 the community has gone on record that feels that all of
4 these are too close to Newport El and the playgrounds.

5 My understanding of the City Ordinance 2008-05
6 states that the City will protect the integrity of the
7 City's residential areas. And it says that it will
8 include such impact as changes in residential character,
9 noise, secondhand smoke, profanity, and lewd speech,
10 traffic congestion, excessive trash, excessive debris on
11 surrounding sidewalks.

12 I believe that the past behavior demonstrates
13 that this does not meet the spirit of this Ordinance.

14 Thank you.

15 MR. ALLEN: Thank you, Mr. Lopez.

16 Someone else?

17 MR. MATHENA: I'm Larry Mathena.

18 I am actually not sure what to say at this
19 time. Part of the reason I'm not sure is because I've
20 actually reached a certain point of cynicism, especially
21 after seeing, for instance, in the case of the Kramer
22 Center where you're on the cusp of actually issuing an
23 appropriate finding and simply quit, which, in fact, was
24 my real problem with that opportunity. And I see a
25 similar activity going on now.

1 If I were the Applicant, I'd love the Sober
2 Living by the Sea standard. It's got nothing to do with
3 the regulation, and it has no teeth, no explicit
4 measurement, no -- nothing precise. It's utterly
5 inappropriate to go from a standard, regulatorily agreed
6 to, that secondhand smoke shouldn't be detected on any
7 other parcel to the Sober Living by the Sea standard of,
8 oh, we'll try hard, especially in a circumstance where
9 you have a huge amount of evidence, not so much at this
10 facility.

11 But my concern is you guys are generating
12 precedents for the next one. And it's wrong. Follow
13 your law. In fact, my biggest complaint of the City as a
14 whole is it doesn't follow the law. And specifically, it
15 doesn't follow the law, I think benignly, it's to avoid
16 being accused of discrimination.

17 And God knows, I mean, a very nice,
18 professional, well written threatening legal letter
19 saying, oh, we could violate ADA, we could violate fair
20 housing, we could do this, that and the other. And in
21 fact, the very introduction of this is, we don't agree
22 with this to begin with.

23 You folks came in here at every one of these
24 hearings telling us, "We set up these Ordinances. We set
25 up these rules," with the understanding and going to the

1 effort of saying they comply with the law. Follow your
2 law. And if not, then admit that you can't.

3 I think it's pathetically sad that it's
4 instantly, oh, that sounds reasonable. That's not the
5 circumstance. You have no right to default of the Sober
6 Living by the Sea standard. One of the reasons you're in
7 this situation is because everybody defaulted instead of
8 thinking through where they should be to begin with.

9 I could go on. And I guess my punch line
10 comment is, you've got to talk loud across the street,
11 you've got a liquor store a block away, and you've got a
12 large day care facility a block and a half away.

13 There's a total illogic to this effort that if
14 your goal was -- your time is fair -- if your goal was
15 trying to do what's right for the community, which was
16 Paul's point, you would come to the conclusion that even
17 this one, which isn't nearly as bad as 1115, shouldn't be
18 approved.

19 Thank you.

20 MR. RUSH: How many minutes?

21 MR. ALLEN: Three.

22 MR. RUSH: Three?

23 Bob Rush, Newport Beach resident.

24 I'm not here to say anything for or against the
25 recovery operator. I just want to mention that I spoken

1 to Mr. McCloskey a number of times. I find him to be a
2 generous and sincere individual in his efforts to try to
3 work with the community. And that's what I'd like to
4 leave that comment at.

5 But I did want to come up right now, because I
6 need some clarification with this report done by staff
7 planning. I have some problems with it. And I think
8 that it's pertinent to your decision, since you are
9 relying on the information they are giving you, and you
10 are relying on the fact that it's supposedly accurate.

11 Well, I'll give you a couple of examples of
12 where I think it's too loose, not accurate, or perhaps
13 even goes so far to say as intentionally misleading.

14 Page -- of the 115 -- 1115 West Balboa, page
15 11, if you look --

16 MR. ALLEN: We're trying to stick with 1601
17 right now.

18 MR. RUSH: I'm sorry. Okay. It's the same
19 question on both.

20 MR. ALLEN: Okay.

21 MR. RUSH: Okay. The author talks about
22 recovery homes not being proven to be a burden, financial
23 burden, to the City. Yet, nowhere in these reports does
24 the author, Ms. Brown, cite where it is normal for a
25 building to be entirely filled with adults to the point

1 of two or three per bedroom.

2 There's no basis in Newport Beach that is the
3 norm of having two to three adults per bedroom. There's
4 no place. Yet, that's not addressed. That's not
5 discussed. That's critical to her recommendation to you
6 by saying there's no proof that this is a burden to the
7 City. So that's one major inaccuracy.

8 Secondly, she says -- she makes the statement
9 that the City has determined that an overconcentration
10 would exist -- the City has determined that an
11 overconcentration would exist if more than one
12 residential care facility exists within one block length.

13 Yet, there's nothing in our municipal code that
14 says that. There's no determination in our municipal
15 code that one house per block is -- or more than one
16 house per block is overconcentrated.

17 Not only that, but the only real point or only
18 real place where this "one house per block" comes from is
19 a singular letter that originated from the previous City
20 attorney's desk going to the Assistant State Attorney
21 General's Office asking for a position, in which he cites
22 an APA survey or study suggesting that one house per
23 block might a way to determine overconcentration.

24 But there is such a variation, even within the
25 Peninsula, that one house per block is a poor standard to

1 use. But in our municipal code, which the author of this
2 report states, there is no determination.

3 And the last point I'd like to make -- so I'd
4 like her to cite where is it's determined in our code
5 overconcentration is blank.

6 Secondly, she makes no differentiation between
7 facility size. She says one facility per block. I mean,
8 you know, we have a case of a rehab up on Clay and Orange
9 that has 45 people. And -- so according to the author's
10 one facility per block guide, that wouldn't be
11 overconcentrated. Yet, 45 people within a corner, across
12 from a tot lot or a day care center to me is classic
13 overconcentration. Narconon is the same, classic
14 overconcentration, 49 people. Yet --

15 MR. ALLEN: Your three minutes is up. You can
16 do it at the next one. We did get the point.

17 MR. RUSH: Thank you.

18 MR. ALLEN: Would someone else like to come
19 forward?

20 MS. OBERMAN: Good afternoon, Mr. Allen and
21 staff. Denys Oberman.

22 I wanted to comment on smoking, and this
23 comment is pertinent not only to 1601 but also to 1115,
24 and other facilities.

25 First of all, relative to smoke, cigarette

1 smoke is a legally recognized known carcinogen. And I
2 think every citizen in this community recognizes the
3 right of people that are in recovery to smoke if they so
4 choose. By the same token, by matter of equity, every
5 citizen in this community that chooses not to smoke has
6 the right not to breathe cigarette smoke.

7 And the reason why it is so important to put
8 that out there is because it's a criteria to consider
9 when deciding whether to recommend approval or denial of
10 this facility.

11 Density needs to be heavily weighted, because
12 there's a lot of difference between a structure and a
13 facility, regardless of its size, where 0 to 100 percent
14 of the people in the facility smoke, where the structure
15 is 3 to 6 feet, or maybe as much as 8 feet, away from the
16 adjacent structures, versus the situation where there
17 isn't that type of structural density, and the structures
18 are, you know, 200 feet away from one another, which is
19 characteristic of what many people call standard
20 subdivisions or other areas.

21 And we had asked for that consideration to be
22 written into the Ordinance. We understand it's something
23 that the Hearing Officer can consider at his discretion.

24 Secondly, overconcentration. Overconcentration
25 creates a compounding effect relative to cigarette smoke

1 and having to suffer the impacts of it. If there are
2 more people -- and the people don't just stay in their
3 house. So breathing secondhand smoke is not just a
4 consideration when they are sitting interior or exterior
5 to the residents.

6 It's also people regularly walking down alleys
7 behind other neighbors' houses, going by the school,
8 going on to the beaches and smoking, going to the
9 sidewalks and alleyways.

10 So we beg that you consider those things and
11 you look carefully at the true aspect of
12 overconcentration of facilities and also the density of
13 the neighborhood and the surrounding structures.

14 Thank you.

15 MR. ALLEN: Anyone else?

16 All right. We'll close the public -- I see a
17 person with his finger -- of course, you've already been
18 up here, so --

19 MR. LOPEZ: Just one second.

20 THE COURT: You have 30 seconds.

21 THE WITNESS: Yeah, that's fine.

22 THE REPORTER: Your name again?

23 MR. LOPEZ: Paul Lopez, 1125 1/2 West Balboa
24 Boulevard.

25 I just wanted to correct one comment that the

1 operator mentioned in regards to where the folks smoke on
2 the deck out there. It is an L shaped building, but the
3 tables and the place where the residents, who are female,
4 smoke is outside the L. It sits up closer to West Balboa
5 Boulevard than it does blocked by three walls.

6 MR. ALLEN: All right. So we'll close the
7 public hearing. Bring it back to staff.

8 Do you have any some comments with respect to
9 some of the public comments that were made?

10 MR. KIFF: Yes, I do, Mr. Allen. Thank you.

11 I wanted to address -- I'm going start with Bob
12 Rush's comments and address a little bit Denys' and talk
13 about smoking in general.

14 Because -- actually, I signed the staff report,
15 too, so some of those statements where I talk about
16 recovery homes not being a cost burden to the City, they
17 are literally not.

18 Remember, a facility like this, at 1601, is
19 four units and 10 bedrooms. And you -- we have to
20 imagine, from a regulatory standpoint, that this use
21 would have four families in there, and potentially two or
22 three cars per family. This is a use that is being
23 regulated such that it will have four parking spaces and
24 not have any opportunity to need that more or use that
25 more. So that is a little different.

1 But the statement that that was trying to
2 respond to about not being a cost burden was a number of
3 letters and e-mails that I received saying, well, it
4 costs more in police, it costs more in fire, it costs
5 more in trash, it does not. We don't have any more
6 police calls from recovery facilities than we do from
7 vacation homes.

8 And a little bit more both than single family
9 homes, but if this was an apartment use, we would expect
10 that same amount of police cars and EMS calls. And
11 remember, everybody in Newport gets their trash collected
12 for free. It's within your property tax. So there isn't
13 that kind of cost burden either. So that's the genesis
14 of that statement, Bob.

15 I think there is an impact to the structure
16 when you are overwhelming the structure with people. And
17 remember, the bed count that we're proposing is 14 beds
18 within 10 bedrooms. So this facility is four units, 10
19 bedrooms, 14 beds. So I think that is actually a less
20 intense use than you'd see in a single family use.

21 Bob also talked about the APA standard, and I
22 think it's a fair thing to discuss. And the APA
23 standard, American Planning Association standard, was
24 discussed when this Ordinance was developed. And it is
25 pretty much the only document we ever found -- and we're

1 still happy to look -- that discussed from a planning
2 perspective, from a professional planning perspective,
3 what an appropriate number of residential care facility
4 was in any one block. And they didn't say one use. They
5 said one or two uses.

6 And thus, I think you heard Mr. Allen
7 struggling with trying to decipher that in light of the
8 Newport Coast Recovery application. Because it does say
9 one or two uses. And also, it doesn't say that -- it
10 doesn't count beds in those uses. It doesn't say that a
11 six-bed facility should be evaluated differently from a
12 22-bed facility. So it's left up to the local
13 jurisdiction to consider.

14 And what we did was adopt the APA standard as
15 a guideline, and then say that in cases where blocks are
16 small, the Hearing Officer can stretch the block out to
17 an average block length of Newport beach. And I think
18 Mr. Allen's last discussion of that was roughly 617 feet.

19 So this facility here at 1601 does not have
20 another facility in its block, even if you stretched that
21 block out to 617 feet, which is why we recommended the
22 approval.

23 We recommended the lowering in bed count
24 because of the parking spaces. And we have a standard in
25 our code that says one parking space for three beds. So,

1 with the Balboa Horizons facility, we set a precedent by
2 saying if you don't have assembly uses, that potentially
3 you could get two more beds.

4 So sure enough, 1601 West Balboa, they agreed
5 to not have assembly uses. So we did that same ratio,
6 which would have brought it to 12 beds and added two to
7 be consistent with Balboa Horizons.

8 Let me touch briefly on smoking then.

9 Ms. Oberman brings up an important point. Many
10 people, including myself personally, are very concerned
11 about secondhand smoke. We have to treat a recovery
12 home, though, just as we would treat a typical single
13 family use. We don't ban smoking on your personal
14 property. We don't ban smoking in an apartment building
15 where a couple of folks will get out on the ledge and
16 smoke.

17 Now, other communities have banned that. The
18 City of Belmont, in fact, has. If Newport Beach decides
19 to take that step, those types of bans would be
20 applicable to every house in the community, including
21 recovery homes. And that could change the way many of
22 the recovery homes operate here.

23 But the key for me is, we need to treat a
24 recovery home like we treat another facility. And if
25 smoking is not banned in an apartment building, we cannot

1 ban it in a recovery home. To do so, arguably, is
2 discriminatory.

3 That said, I think the Ordinance was strong in
4 trying -- in saying the secondhand smoke should not leave
5 the property. We intend to pursue that and to ensure
6 that at 1601 the secondhand smoke doesn't leave the
7 property. Now, again, that doesn't stop somebody from
8 walking off and smoking down the sidewalk, just like the
9 neighbor could do that as well.

10 Mr. Lopez and Mr. Mathena brought up a number
11 of other issues, and I think they were more in tune to
12 their concerns about 1115, so I'm happy to come back and
13 have that discussion with them on the next item.

14 MR. ALLEN: Any other staff comments?

15 It appears that this secondhand smoke issue in
16 the Ordinance itself is addressed very strongly by saying
17 that no person shall smoke in an area where the
18 secondhand smoke may be detected on any parcel other than
19 the parcel on which the facility is located.

20 That's a lot stronger statement than what I
21 heard was described or done in Sober Living. The
22 Ordinance itself would supercede these conditions anyway,
23 in my estimation. So if the residents are able to do the
24 enforcement and/or get the enforcement done, that's
25 stronger than the use permit conditions. That's the way

1 I would see it, keep in mind.

2 Okay. One other point, I think the
3 concentration is not an issue here, but I think it bears
4 just very brief discussion. And I think my thoughts tie
5 into what Mr. Kiff was saying and what Ms. Oberman
6 raised.

7 That in the instance where we have an Ordinance
8 on the books that talks about one or two uses per block,
9 recognizing that that's a large variation, I think the
10 intent there is to take into account the number of beds.
11 So that you could have two 10-bed facilities,
12 conceivably, in the block, but only one 20-bed, for
13 example. And I think that's the kind of flexibility
14 that's probably intended in that section.

15 Given the fact that it's probably illegal to
16 create absolute distancing requirements and impose them
17 across the board, I'm sure the City thought about that a
18 great deal in the course of attempting to bring this
19 Ordinance forth with Constitutional restrictions.

20 Anyway, I have listened to the testimony. I do
21 believe that the findings can be met -- have been met.
22 And so on that basis, my motion is to approve this use,
23 to request that the staff bring back an Ordinance or, I
24 mean, a Resolution consistent with the findings that have
25 been made in this staff report, and bring back a

1 Resolution with the conditions of operation that have
2 been recommended.

3 So with that, unless there's anything else?
4 Let's see. Do we need to set a time to consider that
5 Resolution?

6 MR. KIFF: We think we can bring that back to
7 you -- actually, let us work with you on that and propose
8 something back. We need to look at calendars and when
9 you're next going to be here, so --

10 MR. ALLEN: Okay.

11 MR. KIFF: Potentially, it could be the next
12 Friday during the Yellowstone hearings; correct?

13 MS. LINN: We're short staff.

14 MR. KIFF: Okay. We'll talk about that.

15 MR. ALLEN: Fine. All right. Thank you. All
16 right. So next item on the agenda is 1115 West Balboa
17 Boulevard.

18 MR. KIFF: Mr. Allen, would you like me to make
19 the presentation?

20 MR. ALLEN: Sure. Let's proceed with the
21 presentation. You can summarize the situation better
22 than I can.

23 MR. KIFF: So staff clearly saw this as a
24 different circumstance from 1601 for a number of reasons.
25 We received a great -- well, to me, a significant amount

1 of correspondence on this. But it's also in a
2 neighborhood that does have other group residential uses
3 in it and nearby, a couple of which, at least one
4 significantly, at 1129 West Balboa, is scheduled for
5 abatement in what is, in effect, gosh, 11 days.

6 So we did hear some -- both some generalized
7 testimony in opposition to this facility and some very
8 specific testimony in opposition to this facility. And
9 it was the specific concerns that I think weighed most
10 heavily on staff, because -- I'm going to thumb to a
11 screen where I was trying to summarize that.

12 I'm going to start with some of the things that
13 I don't believe the Ordinance allows us to consider in a
14 denial or an approval. And I say this with great respect
15 to the people who offered these opinions and who signed
16 petitions to that effect.

17 But first one is declining home values.
18 There's no evidence to suggest that the presence of a
19 recovery facility is any more impactful on private
20 property values than changes in the housing market,
21 certainly, the presence of long-term rental, vacation
22 rentals, or other non-single family uses. And I think
23 the data shows that nationwide.

24 Another concern that -- actually, I'm going to
25 wobble on this one. Ocean Recovery has continued to

1 assert that its residents do not attend a meeting of
2 Narcotics Anonymous on Saturday at 9:30.

3 And I emphasize this meeting, because it has
4 been brought to my attention that the folks who attend
5 this meeting tend to be more aggressive in potentially
6 confronting others and certainly in possibly violating
7 our no smoking on the beach law.

8 And I have discussed this with Ocean Recovery,
9 and they have said up and down, "No, we don't send our
10 folks to this meeting, and they don't go to it."
11 However, I note that Mr. Lopez has submitted a counter to
12 that, saying, "Gosh, they sure do go." So maybe we can
13 discuss that in the public comment.

14 I mentioned already I don't think it's a fair
15 consideration within our Ordinance to allege that
16 recovery homes are a cost burden to the City.

17 The other thing that I think people, again,
18 were very sincere in offering was that this facility's
19 proximity to Newport Elementary School. It is about 740
20 feet away. And many people wrote me and said, "I can't
21 believe that the City allows these within a thousand feet
22 of an elementary school."

23 I want to stress with you that -- the folks in
24 the audience that distancing from public uses, like
25 elementary schools, has specifically been addressed by

1 Courts like the 9th Circuit and have been rejected. And
2 indeed, in State law, it doesn't allow us to specifically
3 distance one home from another and not from -- one
4 recovery home from a use like an elementary school.

5 So many people assume that the law allows us to
6 do this. And I would assert that the law does not allow
7 us to do this, which is why the text of our Ordinance
8 reads slightly differently. It allows the Hearing
9 Officer to consider the proximity of the use to schools,
10 parks and other care facilities, and other uses which
11 could be affected by or would affect the operation of the
12 subject use.

13 So what we do, in an analysis on staff's part,
14 is to decide if this use at 1115 West Balboa could be
15 affected by its proximity to the school or affects the
16 operation of the school. And we've seen no evidence on
17 the record from Newport Elementary at 740, 750, either
18 way, that affects this use.

19 And then finally, a concern that we're not able
20 to consider is a general comment about recovery homes
21 Citywide out directing specific comments to the operation
22 of West Balboa. I'm going to move back to things
23 that -- let's see if I can find that slide.

24 I think concerns that the Ordinance does allow
25 us to consider -- and that's allegations made that are

1 specific to this property, which, in staff's eyes, might
2 indicate an inability to manage 1115 in a manner that's
3 respectful to the neighborhood's peace and quiet and
4 quiet enjoyment.

5 And specifically, these are threatening,
6 confrontational, or age-inappropriate interactions of
7 clients with neighbors, excessive profanity, especially
8 when youth are nearby, excessive noise, as well as noise
9 late at night. And then potentially poor and
10 inappropriate responses from clients when neighbors
11 attempt to remedy those interactions by themselves.

12 Excessive secondhand smoke is something that we
13 can address. Trash problems, again, is something that we
14 can address. Curfew violations and what some have
15 alleged to be an apparent lack of adequate on-site
16 supervision. So we did receive -- and these are
17 summarized in the staff report -- some very specific
18 concerns about this property that I thought warranted our
19 addressing them.

20 And the proposal from staff was that we direct
21 that this use be reviewed in six months and that the bed
22 count be lowered to 14 beds to see if there was an
23 opportunity to answer a question in staff's mind is that,
24 is the proximity to 1129 West Balboa causing a number of
25 the problems that are attributed by 1115 West Balboa?

1 And in fairness to 1115 West Balboa and to this
2 process, I don't believe staff can make the evaluation
3 that all of the problems in that block are caused by
4 1115. So this time period, staff believe, would have
5 allowed us to take look at the operations without 1129
6 around and make an evaluation at that time.

7 So I think those are the comments that I'd make
8 and maybe welcome your interaction, Mr. Allen, and the
9 public's interaction from here.

10 MR. ALLEN: Is there an absolute commitment for
11 termination of 1129, or is it just subject to abatement?

12 MR. KIFF: Everything I've been told is that
13 they intend to close the abatement date, which is
14 February 22nd. Now, what we have is a process in place
15 where we will, A, ensure that that occurs, at least
16 through inspection, or otherwise. And if it doesn't
17 occur, we have an administrative procedure and a civil
18 procedure to go through that would cause the abatement.

19 MR. ALLEN: One thing with respect to this
20 application. You've already mentioned, Mr. Kiff, there's
21 been a great deal of correspondence that has come in on
22 this. And are we able to make provision for referencing
23 that or otherwise including it in the record?

24 I think the people that have spent the time to
25 do the amount of work that they have done deserve to be

1 sure that it's in the record for whatever that future
2 purpose may mean.

3 MR. KIFF: Yes, we do, Mr. Allen. Anything
4 that's provided up until the close of the public hearing
5 becomes part of the record associated with this use
6 permit, including e-mails and statements and petitions.

7 And I think I believe I have most, if not all
8 of that. If there's anything I missed, I know that folks
9 will remind me of that, including having an opportunity
10 to say so during the public hearing now.

11 MR. ALLEN: There's a great deal of
12 correspondence from Mr. Lopez, and a great deal of
13 correspondence from Mr. Mathena, and then Mr. Lopez
14 brought us a great deal more here this afternoon.

15 As long as it's all in the record so
16 that -- because I'm thinking in terms of any appeal to
17 City Council; that the Council would have to look at the
18 record, and that that would be included. So thank you.

19 I just want to see if there's any question I
20 have before we --

21 MR. KIFF: I note, too, Mr. Allen, that, for
22 folks in the audience's benefit, these are -- we do have
23 the Court Reporter here, and these transcript
24 are -- become a public document. We do post them on the
25 Web site. So that is part of the public record as well

1 that Council would see in any appeal.

2 MR. ALLEN: How long has 1115 been in
3 operation?

4 MR. KIFF: Depends on -- I think that's a
5 better question for Mr. McCloskey to ask, because it
6 depends on what you're asking for. In some cases, their
7 date of licensure as this activity dates
8 back -- sorry -- dates back to the time at which they
9 received their ADP license.

10 Others have suggested that this facility,
11 before Ocean Recovery was there, operated similarly but
12 as an unlicensed sober home. So I think that's a better
13 statement made directly by the Applicant.

14 At least your question to staff, we believed
15 it's been in operation since at least '05.

16 MR. ALLEN: All right. Why don't we proceed,
17 then, with the Applicant making the presentation here on
18 this one.

19 MR. O'CONNOR: Thank you, Mr. Allen. Sean
20 O'Connor again, and I represent Ocean Recovery. In
21 addition to representing Ocean Recovery, I'm also a
22 resident of Newport Beach and have been so for 16 years.

23 And one of the things I've grown to a
24 appreciate about this City is the City's attempts to
25 reach fair solutions to difficult problems. And I think

1 that certainly applies to the situation we're dealing
2 with tonight.

3 I know that I had a problem five years ago in
4 regard to a City project. My wife and I called the City.
5 Staff came out. Listened to our concerns. In fact, it
6 was Mr. Kiff five years ago. We weren't entirely
7 satisfied. But, looking back at it, I think we now
8 recognize that the solution that was presented to us was
9 a fair one and was a balancing of completing concerns,
10 and we'd hope that we can find a similar situation
11 tonight.

12 We have a difficult situation in our hands, and
13 I think we recognize that no matter what the City
14 decides, no one is going to be entirely happy. From our
15 standpoint, we recognize that group homes are not a
16 popular use. We also recognize, however, that there is
17 federal and state law that afford us various protections.
18 And we also recognize we're providing valuable services
19 to people in need.

20 As I mentioned earlier, it has been our choice
21 not to aggressively fight the City regarding this
22 Ordinance, even though we have problems with the
23 Ordinance. I think the City and the City residents
24 should be thankful for this.

25 They went out and hired a talented team of

1 lawyers to craft this Ordinance. Then, as a lawyer
2 myself, I looked at that Ordinance, and I see it as a
3 good piece of lawyering work that does a lot to protect
4 the concerns of the City residents regarding group homes.

5 Putting on my hat representing a group home, I
6 have concerns about that Ordinance, and I think it pushes
7 the envelope and, indeed, goes too far. But what we're
8 trying to do tonight, just like we've done over the last
9 12 months, is see if we can work with the process to see
10 if we can come up with a cooperative solution. And I
11 think that staff will tell you that we've adapted that
12 approach from the very beginning.

13 I have provided Mr. Kiff and others on the
14 staff unlimited access to my client, Jim McCloskey, not
15 to be filtered through me. If Mr. Kiff or anyone else
16 has a problem or a question that needs to be answered,
17 they call up Mr. McCloskey, and he gives them a response
18 right away. We've done our best to work with the City.
19 We've done our best to work with the neighbors.

20 I understand that there have been some recent
21 comments and concerns raised by the neighbors, and we'll
22 get to that in just a moment. And Mr. McCloskey would
23 get to that as well. I would note that I submitted a
24 letter, both one that I prepared yesterday and also a
25 letter from Karen Knab, K-n-a-b, of Ocean Recovery that

1 attempted to address some of those concerns.

2 We pride ourselves in being a good operator.
3 And I think even though we have some concerns regarding
4 the Ordinance in this process, to some extent, we also
5 welcome it, because, as this Ordinance was explained to
6 us by City staff, the intent was to eliminate the bad
7 operators. And we were told directly that we're not
8 viewed as a bad operator. Instead, we are viewed as one
9 of the good operators, if not the best operator, in the
10 City.

11 So to some extent, we welcome that, because we
12 saw that there were some operators out there that
13 probably had no business running these types of
14 operations. We've done our best to be a responsible
15 operator. Having said that, we'd like to become a better
16 operator, if possible. And we're happy to accept some of
17 these proposed conditions to the extent that those will
18 make us an even better operator.

19 What I'd like to do right now, however, is just
20 spend a couple of minutes focusing on some of the
21 proposed conditions which go way too far in our view. In
22 fact, as it relates to one of these conditions, it would
23 put us out of business, and that is the proposed
24 condition reducing the bed count down to 14 beds.

25 As I believe you know, Mr. Allen, we are

1 currently licensed through the ADP to have a bed count of
2 22 beds. The proposed condition reducing that bed count
3 down to 14 is a staggering 36 percent reduction. And in
4 our view, that is not reasonable. And more importantly,
5 I think -- and I think Mr. McCloskey will address this a
6 little more specifically -- that essentially makes a
7 difference between us being able to remain in business
8 and putting us out of business.

9 City staff told us specifically that they don't
10 want to see us go out of business, but, unfortunately and
11 regrettably, if this condition is imposed with 14 beds,
12 it will do just that. It will put us out of business.
13 So we think that this one condition goes way too far.

14 Is there some flexibility within 22? Yes,
15 there is. And we'd be willing to discuss that. But a 36
16 percent reduction, bringing us from 22 down to 14, is
17 unreasonable. And I don't think that there's been
18 evidence that warrants that.

19 Regarding that evidence -- Mr. McCloskey will
20 speak to that a bit -- the letter submitted by Ms. Knab
21 yesterday addressed that a bit. I will note the
22 following, though, that we have never -- saying it
23 somewhat differently, this a largely news to us.

24 And it caught me by surprise and it caught
25 Mr. McCloskey by surprise to see this level of opposition

1 regarding 1115, particularly when you look at 1601, the
2 facility we just discussed. One letter in opposition,
3 and really not specifically at the operations.

4 We run the same type of operation at 1115 as we
5 do at 1601. So if we were a problem operator, one would
6 expect to see the same types of problems that have been
7 alleged as to 1115 for 1601. There haven't been those
8 types of allegations.

9 I would also note that the timing is a little
10 bit curious. I'm certainly not going to accused anyone
11 in the audience of lying, even though some of those
12 people have accused my client of lying. Instead, there
13 may have been some misunderstandings.

14 It's regrettable that these concerns were not
15 brought to our attention earlier. It's regrettable that
16 these concerns have caught us by surprise. Because had
17 these concerns been brought to our attention in an
18 earlier time, we would have addressed them. We would
19 have addressed them promptly.

20 I think there's some members of the audience
21 who would recognize that Mr. McCloskey has gone to them
22 in the past and said, "If you ever have a problem, here's
23 my cell phone number. Give me a call. I'll get back to
24 you right away." That's the way we do business.

25 So it's a little hard for us, and I would add a

1 little unfair for us, to have to comment to -- and
2 address these concerns that have surfaced for the first
3 time after the City noticed this public hearing.

4 I would also note, picking up on something that
5 Mr. Kiff said, as it related to 1601 is that this could
6 be a situation where, where, with all due respect, I
7 think that some of the residents need to be careful for
8 what they asked for.

9 But as it relates to this particular residence,
10 alternative uses could be a lot worse than what is there
11 currently. We currently are licensed for 16, as I
12 mentioned. Fourteen is way too low, but we would be
13 willing to consider something lower than 22.

14 Alternative uses, if this was a rental home, if
15 that was rented out to vacationers, college students, a
16 lot more cars, a lot more trash, no regulations regarding
17 their behavior, no curfew. We have always those things
18 in place right now. So I believe that we can continue to
19 provide valuable services to our clients while, at the
20 same time, being good neighbors.

21 But as it relates to a couple of the
22 conditions -- and we also have concerns regarding the
23 condition on smoking. I would assume that Mr. Kiff's
24 explanation as related to my concern for 1601 regarding
25 the condition as related to smoking would be the same as

1 it applies here.

2 And our concern regarding condition number 27,
3 which was actually condition number 26 for the 1601
4 property, with those clarifications, we would be
5 accepting of those two conditions. But again, the
6 condition that is an absolute not a start for us is
7 condition number one, which limits us to 14 beds from the
8 currently licensed 22.

9 With that, I'm going to turn it over to
10 Mr. McCloskey, unless you have any questions,
11 Mr. Allen.

12 MR. ALLEN: I was wanting one of you to address
13 this question about -- I believe that there's a condition
14 limiting or prohibiting the assembly uses at this
15 location. And I think that's a very significant issue to
16 be addressed, as well as the ones, of course, that you
17 are objecting to.

18 Because that seems to me to be a significant
19 contributor to the kinds of objections the neighborhood
20 has, the assemblies of groups of people and their
21 resulting behavior that's objectionable by the neighbors.

22 MR. O'CONNOR: That's probably a good segue for
23 Mr. McCloskey to take the stand. Thank you.

24 MR. MC CLOSKEY: Again, Jim McCloskey.

25 I'd like to address that. That's already been

1 addressed. The assemblies are now disbanded. They are
2 no longer allowed at the facility.

3 I want to also address the parking. The
4 parking also there has been addressed. The garages has
5 been converted back to garages.

6 I also wanted to emphasize that there's
7 concerns about our group, as mentioned earlier, that they
8 go to NA meetings on a specific date. They do not attend
9 those meetings.

10 So -- and there was another question you had
11 about how long we had been in operation. It's roughly
12 been -- it's hard to say exactly. We've been there for
13 about five years. It roughly took us about a year to get
14 licensed. So we've probably been in operation for just
15 about four years.

16 MR. ALLEN: Have you had dealings with the City
17 prior to the commencement of the actions leading up to
18 the adoption of this Ordinance? Have Code Enforcement or
19 other similar police been called to that facility at all
20 or in any intervals, to your knowledge?

21 MR. MC CLOSKEY: To my knowledge, no. I can
22 tell you the only big issues we did have is when we
23 initially took over the property, there were several
24 illegal units. There was -- the amount of people
25 residing there was -- I would say, I'm guessing, it was

1 probably greater than the 22 that we are licensed for
2 right now.

3 MR. ALLEN: Was it a recovery facility?

4 MR. MC CLOSKEY: No, it was a rental unit. So
5 we would have four to five people in a one-bedroom,
6 and -- of which, I believe, are seven; is that correct?
7 Are seven units, I believe. And there were a bunch of
8 illegal units there, which he had to convert back to the
9 conforming use that it is right now.

10 MR. KIFF: Mr. Allen, if you don't mind it,
11 I'll ask a question of Mr. McCloskey.

12 You just stated this a moment ago, but I wanted
13 to make sure I understood it, because Mr. Lopez in his
14 e-mail -- let me try to read it to you. I think you saw
15 this, because I tried to forward it for the record.

16 "The operator states that the residents from
17 1115 don't attend weekend NA meetings on the
18 beach. This is not true. In fact, the
19 operator himself has provided the City with his
20 residents' schedules, and they show they
21 clearly attend.

22 "Furthermore, as I sit on my deck Saturday
23 and Sunday mornings, I routinely see residents
24 leaving the 1115 facility, beach chairs in hand
25 and yelling back at slow residents to hurry up,

1 'We're going to be late for the meeting.' I
2 have followed these groups on several occasions
3 and verified that they do attend these meetings
4 the 15th Street."

5 So I wanted to just make sure I understood
6 whether or not you think they have attended in the past
7 and will stop attending. And I need to -- before you
8 answer that, it's not illegal for Narcotics Anonymous to
9 meet on the beach.

10 It is a big group of people, and I think they
11 are ignoring our smoking -- no smoking on the beach law.
12 And I think there is a problem with loitering and
13 intimidation. But that's not something that is something
14 that's on your shoulders. It's more on mine. But I did
15 want to clarify what your thoughts were about your
16 clients at that meeting.

17 MR. MC CLOSKEY: Yeah. I'd like to address
18 that in a couple of ways. One, have our clients ever
19 attended it? They did. But they have not attended it
20 for about three years. It was not a good environment for
21 our clients. We discouraged them from doing -- we
22 stopped them from doing it.

23 I brought actually this book here. There are
24 1800 meetings with AA in Orange County. Just the Alana
25 Club across the street here, there's 60 per week. You're

1 talking about one meeting. So I'm talking about 60 that
2 meet one week just right across the street here.

3 There's almost any hour of any day you can go
4 to a meeting. Do our clients go the other meetings?
5 Yes. Do they go to the Alana Club? Yes, they do. Do
6 they attend the one on the beach there? No, they do not
7 attend the one on the beach.

8 MR. KIFF: Okay.

9 MR. ALLEN: There seems to be some real
10 difference of opinion with respect to your residents
11 having vehicles. I noticed that some of the
12 communications indicated that a lot of your residents
13 have vehicles. How does that work with your
14 organizational plan?

15 MR. MC CLOSKEY: Yeah. Your clients are not
16 allowed vehicles at either facility. Is there ever a
17 case where a client has had one? There was. And I had
18 to report to Mr. Kiff.

19 There was a case where a gentleman got stuck.
20 He was trying to go home. He had a car that was not
21 allowed when he was part of our facility. He was stuck
22 over for a two-week period where he did have a car in our
23 facility.

24 But that is the only case that I'm aware of
25 that a client has ever had a car at our facility, one in

1 the five-plus years that we've been in operation there,
2 or four years, I should say.

3 MR. ALLEN: Okay. Do you have -- can you
4 address this smoking issue anymore? It just seems such
5 an important one, on the one hand, to a lot of people.
6 And by the same token, the City's Ordinances, again I
7 say, clearly prohibits smoke from disbursing to abutting
8 properties that can't be detected.

9 How can you do that?

10 MR. MC CLOSKEY: It's a difficult item to
11 address. All I can tell you is that we're more than
12 willing to work with Mr. Kiff and do the best that we can
13 to control that environment and make it work for
14 everybody.

15 What the right answer is at this particular
16 point in time, to be honest, I don't know. But it's
17 something that we can work towards together to try to
18 accomplish that goal.

19 MR. ALLEN: Okay. Thank you.

20 MR. MC CLOSKEY: Thank you.

21 MR. ALLEN: Let's go with the public hearing
22 and get started here and hear the views of the public on
23 1115.

24 MR. MYERS: Hello. My name is Jeff Myers,
25 spelled M-y-e-r-s.

1 First thing I'd like to give is, Mr. Kiff, a
2 copy of the City records. Back on 5-23-06, there was an
3 investigation into 1115, code investigation. "Please
4 remove accumulated trash and debris from the alley."

5 Now I'd like to start. I'd like to discuss my
6 experience with the company Ocean Recovery. They claim
7 to be a good operator. But in reality, the
8 representatives have been far less than honest with
9 myself, my neighbors, City officials, and also the public
10 in general.

11 Ocean Recovery is a for-profit company that
12 cares more about their profit than preserving our
13 residential neighborhoods. The property at 1115 West
14 Balboa has been investigated in the past by the City Code
15 Enforcement for accumulation of trash and debris in the
16 alley. Yet, they continue to burden the neighbors with
17 this trash.

18 The neighbors still complain that, "Their,"
19 meaning Ocean Recovery, "trash is so bad and overstacked,
20 that in the summertime, the flies from the trash have
21 become such a nuisance."

22 Even the past City attorneys states, "Ocean
23 Recovery does not appear to be following a pattern of
24 openness and honesty with either its proposed neighbors
25 or the City."

1 So Ocean Recovery as a history of not playing
2 by the rules. They have been ordered by the City
3 Building Department on several occasions, several
4 occasions, to stop work on modifications of one of their
5 properties that did not have the proper permits.

6 In addition to Ocean Recovery's poor civic
7 responsibility, the 1115 West Balboa location is too
8 close to the existing approved Balboa Horizons location,
9 which leads to the overconcentration and detrimental
10 effects to the families living in the area and the
11 character of the neighborhood.

12 In reviewing the City's code requirements that
13 were up there a few minutes ago that must be considered
14 for this permit to happen, Ocean Recovery does not meet
15 eight out of the eleven code requirements for approval.
16 Given their history of playing games, I respectfully
17 request that you deny Ocean Recovery this request for a
18 permit at this location.

19 Thank you.

20 MR. MATHENA: Forgive me. This is sitting out
21 front. But I just want to make absolutely sure, because
22 it seems like nobody sees the chicken in -- the fox in
23 the henhouse.

24 In Ocean Recovery's submittal package, it's 43
25 of 85 in the PDF, their schedule, point blank, says that

1 at 9:30 on Saturdays, they send people to the NA meeting
2 on the beach at 15th. Period.

3 So the three-year comment -- and I really do
4 appreciate the reiteration of it for the record -- is
5 false. And what also troubles me is, even though -- and
6 I appreciate your comment -- we go to the effort to make
7 this as explicitly clear as we can, and it's sitting out
8 there, nobody's read it. So that's my first observation.

9 My second observation is --

10 MR. ALLEN: I've read it.

11 MR. MATHENA: Thank you. I appreciate that
12 greatly, actually.

13 My second observation is you have code
14 violations. City knows about them. I checked with Code
15 Enforcement. City doesn't choose to enforce them. City
16 doesn't choose to turn them in. I don't understand why.

17 Above and beyond that -- and, in fact, once you
18 get to that point and once you accept that people are
19 going to the beach, are going that playground, they are
20 impacting or potentially may effect or be effected by the
21 presence of this use at the elementary school.

22 And I find it personally offensive that, sort
23 of as a black line rule, we're attempting to say, oh, we
24 can't consider the impact of this location of this use on
25 the school. Just because you didn't have evidence or

1 evidence you deemed important prior to this hearing
2 doesn't mean it couldn't walk in kind of like it has,
3 although it was there all along.

4 I'm glad you read what I wrote, and I don't
5 know want to waste time, then.

6 To quickly hit some other points, 1601 is easy,
7 if you go look at the facility. The patio where people
8 smoke, what it fronts is a 70 foot wide empty street.
9 It's fortuitously in the right place. And, in fact, if
10 you set up a zoning ordinance for these sorts of
11 facilities that made them have a no-man's zone around
12 them, it would make sense. That's not -- in fact, you
13 have the exact opposite situation.

14 I find it offensive, by the way, that the City
15 says, oh, these are good operators. They don't know.
16 Nobody at the City ever came and asked me what I thought
17 until this hearing began.

18 And in fact, the City went out of its way to
19 discourage people's attendance as these things. Period.
20 And it does so by scheduling a hearing. And if it gets
21 too much data, it doesn't go to the same effort to change
22 the hearing date that it did to initially publish it.

23 And last point -- and actually, Paul, we'd be
24 happy to have college students. And no, there was never
25 more than two bodies to in any single bedroom in the nine

1 years I've lived next door to this place. Period. So I
2 think you have a clear path.

3 MR. WETHERHOLT: Drew Weatherholt, resident of
4 Newport Beach.

5 Mr. Kiff, I do have to disagree with you
6 regarding the cost of the burden, cost to the City of
7 Newport Beach. Calls for police service may not be
8 directed specifically to this property; however, if you
9 look at calls per services in the surrounding area versus
10 individuals loitering, the various crime issues, stuff of
11 that nature, I think there clearly would be an impact.

12 Just this past week, the police department
13 passed out a yellow flier indicating that was there was
14 theft and robbery activity in that surrounding area.
15 Perhaps coincidence. Can you link it directly to this
16 property? No, you cannot. But again, the coincidences
17 keep piling up.

18 Also, conversations with Hoag Hospital.
19 Individuals at the ER department directly reflect that
20 three to five people come from Newport Beach rehabs on a
21 weekly basis. Can they disclose names? Can they
22 complete statistics in that regards? No, again, because
23 these people are protected by privacy laws and,
24 obviously, the drug rehab aspects that are involved with
25 them. Clearly there's an impact there with the fire

1 services, medical services, emergency services.

2 Conversations with local police officers.

3 Please ask them. Just ask them. They deal with it on a
4 daily basis. Is there a specific call or log for us?

5 No, there may not be. But they have to deal with it on a
6 regular basis.

7 The beach main, which we have discussed here
8 many times. I go to that park there on Newport El on a
9 regular basis. Is it fair that my children have to
10 listen to the words "fuck," "god damn it"? And I
11 apologize. That's not appropriate language for a
12 meeting, but it's certainly not appropriate for a
13 3-year-old or a 5-year-old.

14 Smoking is atrocious. Please, I welcome you to
15 go down there anywhere between 9 and 11 o'clock on a
16 Saturday and see what is taking place there. Many of
17 those people at that meeting are walking down in the
18 direction of this particular address.

19 Best operator? I almost find that kind of
20 humorous here. And we have an attorney that's making
21 that representation? I'd like to see what creates the
22 best operator of Newport Beach.

23 The reduction of bed counts from 22 to 14.
24 That's going to put them out of business? I'd like to
25 see their financials to that effect. I'd like you to

1 request to see their corporate financials, corporate
2 Federal tax returns and the individual tax returns for
3 the operators of that organization.

4 Because my rental properties receive \$2500 per
5 month. These guys are getting anywhere between \$10- to
6 \$25,000 per head per bed on a quarterly basis.

7 With that said, I'll recommend denial.

8 Thank you.

9 MR. RUSH: Bob Rush. You said I could come up
10 and finish what I was in the middle of saying, so I am
11 going to take you up on that.

12 On the issue of density, Mr. Kiff, good points.
13 But if you really examine what he's saying, with respect,
14 David, it flies in the face of the Fire and Building
15 Code. Specifically identified in the last 24 months
16 targeting rehab group homes and applied to the rehab
17 homes, in particular, unfortunately, on -- fairly, this
18 operator has been the target of more citations
19 and -- more fireability citations than any other operator
20 that I'm aware of. It has a portfolio.

21 And these new rehab Fire and Building Codes are
22 really -- if you look at them, their origins are based in
23 density and use issues. And that's why they're so
24 effective at calming new locations. And that's why the
25 City went into the investigation mode, identified these

1 things in State codes, and started applying them where
2 they hadn't applied them in the last 24 months, I'd say
3 18.

4 This operator, Mr. McCloskey, has one location
5 that the amount of citations has delayed his opening of
6 that location for a year and a half. So I really differ,
7 and it flies in the face of what Mr. Kiff says in that
8 there is no cost. There is no burden difference.

9 The burden difference is very subtle, but if
10 you look at what the State does, you'll understand that
11 these Fire and Building Codes are use and density driven,
12 and so their use is -- I think it's prima facia evidence
13 that there is a difference. There is a difference
14 between the density of rehab and the density of vacation
15 rentals. There is, clearly.

16 Secondly, State laws. State laws in general
17 around drug rehabs, if you look, they all predate Prop.
18 36's initial passage. They all predate 2000. And so a
19 lot of the separation in density rules aren't there.

20 And what does Mr. Kiff and the City Council,
21 what have they done so far to kind of push that agenda?
22 Nothing. There's not been one legal effort exerted to
23 push that density definition, other than a trip up by a
24 Councilman to have lunch with some legislators. But
25 there's not been any legal actions to push the density

1 question.

2 And if you look at the different categories of
3 group homes that are spatially dispersed under law -- of
4 State code, you'll see that things like trauma homes and
5 ambulatory care homes, where there's no mobility of the
6 patients, they are mandated to be 700, 1,000 feet apart.

7 And yet, we have highly mobile, highly capable
8 type of rehab patient that's more of a burden to our
9 area, and there's nothing there. The law hasn't
10 clearly -- has not caught up with the post-Prop. 36 flood
11 of otherwise prison inmates into our community.

12 Thank you.

13 MR. LOPEZ: Paul Lopez, 1125 1/2 West Balboa
14 Boulevard.

15 Very personal item to me. I've lived next to
16 this facility for five years. It's actually good to hear
17 the operator speak tonight, because I think there's a
18 pattern developing here, which I'm going to share some
19 insights on, related to the staff report. And I'm going
20 to read so I can try to fit in to three minutes.

21 So as it relates to the operator's comments in
22 the staff report, "The operator states that 1115
23 residents don't attend weekend Narcotics Anonymous
24 meetings."

25 Mr. Kiff, I think, fleshed that out quite

1 adequately today. I've observed them sitting on my deck.
2 I'm directly next door. They walk down the alley. I
3 have followed them to the beach within the last three
4 months. So three years versus three months. Something
5 is wrong with the operator's potential memory.

6 "The operator states that they discourage
7 smoking at the facility," written in the staff report.

8 There's no evidence of that. And, in fact,
9 direct neighbors on the east, west and south side of 1115
10 have gone on record complaining about the amount of
11 secondhand smoke that is being generated from this
12 facility, and voicing their concerns over the families'
13 health and restricted living environment it creates for
14 their families.

15 It is a fact that large groups of residents
16 smoke daily in the courtyard and around that facility,
17 both front and back. Immediate neighbors have also
18 documented to the City their concerns related to the
19 impact negative impact of this.

20 To prove that the operator not being forthright
21 on this issue with the neighbors and the City, up to 40
22 people, mostly guests, on Thursday night visit for a
23 Thursday barbecue. There are more than 30 people smoking
24 in the courtyard burdening the neighbors next door.

25 I think the City needs to ask the operator to

1 explain his definition of discouraging smoking. Because
2 they have already installed -- they just recently
3 installed a tent over the courtyard smoking table to
4 shield their smokers from getting wet during the recent
5 rains.

6 "The operator states that most of the residents
7 don't have personal cars, but just a few that are in late
8 stages of treatment."

9 In fact, this evening, I just heard that there
10 was one isolated incident of a car. This is not true. I
11 believe you should have stated, "most residents have
12 cars." Neighbors provided the City with personal
13 observations, including pictures, that show 1115
14 residents are seen and heard at all times of the day or
15 night in their personal vehicles.

16 "Additional, the operator states there's a
17 maximum of five cars parked for the Thursday night
18 barbeque."

19 This is not true. Thursday gatherings generate
20 30 to 40 people, most of these guests arrive by personal
21 automobile. Anybody trying to park at the 1100 block on
22 Thursday evening would see this.

23 "The operator also states that local neighbors'
24 observations and the unhealthy living environment is due
25 to adverse behavior of the residents at 1129 West Balboa,

1 not his 1115 facility."

2 This is absolutely not true. The record shows
3 that all observed behaviors, code violations, secondhand
4 smoke, offensive language, are emanating strictly from
5 1115 West Balboa Boulevard. The record is clear on this
6 issue and substantiated by petition signatures, letters,
7 and pictures that have been submitted to the City.

8 Can I go on? I know my time is up. I just
9 want to finish.

10 MR. ALLEN: It's not fair to the other people
11 in case -- because I'm told we do have to leave at 6.
12 And I don't know how many more people are going to talk.

13 MR. LOPEZ: Can I make just one last comment?

14 THE COURT: Sure.

15 MR. LOPEZ: Okay. In the City's
16 recommendations, and what appears to be rather arbitrary
17 designation of West Balboa Boulevard as being some kind
18 of dividing line for a block, the facility at 1132 that's
19 already been approved by the City sits 80 feet from my
20 residence. 1115 is 5 feet from my residence.

21 That arbitrary designation, that somehow West
22 Balboa Boulevard is a designation, I think dually
23 unbiases this discussion that we're having right now.
24 Because from a practical living standpoint, I've got two
25 facilities --

1 MR. ALLEN: You made that point really clear in
2 your material.

3 MR. LOPEZ: Can I ask one last question?

4 MR. ALLEN: Yes.

5 MR. LOPEZ: One last question. Did you see my
6 pictures?

7 MR. ALLEN: No.

8 MR. LOPEZ: You haven't seen the pictures that
9 I've submitted to Dave Kiff, 18 of them?

10 MR. ALLEN: No, I have not.

11 MR. KIFF: They are in your file, and here they
12 are. You can thumb through them.

13 MR. LOPEZ: Could you, please?

14 UNKNOWN SPEAKER: Mr. Lopez can have my time.

15 MR. ALLEN: Are they part of what was e-mailed
16 to me?

17 MR. KIFF: Yeah.

18 MR. ALLEN: I didn't get through them. I will
19 look at them before.

20 MR. LOPEZ: Would you, please, because I think
21 they kind of graphically represent -- can I have that
22 woman's time? I'm able to have that? Is she able to
23 designate her time to me?

24 MR. ALLEN: We don't have any procedure or
25 rules for these meetings, as I understand it. Take two

1 more minutes.

2 MR. LOPEZ: Okay. So again, I just want to
3 show a little bit of a pattern here by the operator.

4 "The operator states" --

5 MR. ALLEN: Because you lived next door, you do
6 have a vested interest here. Go ahead.

7 MR. LOPEZ: I appreciate that. I've lived
8 there for five years.

9 "The operator states there's at least four
10 staff members on site at the 1115."

11 This is not true. Several local residents have
12 gone on record questioning whether any staff is there
13 during the day.

14 "The operate states one man transports all 22
15 residents to off-site events and meetings."

16 This is not true. In fact, the number of vans
17 is at least two, and you'll see in your package there is
18 a picture of the vans in the alleyway picking -- two vans
19 picking up the residents.

20 "Operate states curfew is 10 p.m. on weekdays
21 and 12 o'clock on weekends, and lights are out at 11
22 o'clock."

23 This is not true. Local residents have gone on
24 record with observations that residents are coming and
25 going on bikes and cars at all hours of the night well

1 past any of these stated times. Rarely are lights ever
2 out at this facility.

3 And then finally, the overconcentration issue,
4 which I think is a big one. I talked about kind of the
5 arbitration assignment of West Balboa Boulevard. I've
6 got two recommended approvals. One approved facility,
7 one being recommended by the City staff. That's going
8 put two facilities within 80 feet of my residence.

9 And we've submitted in our package
10 documentation that the residents at 1115 are in
11 interacting back and forth with the apartment complex at
12 1120.

13 MR. ALLEN: You've gotten all that documented
14 well in your --

15 MR. LOPEZ: Thank you.

16 MR. ALLEN: -- material.

17 MR. LOPEZ: I very respectfully request denial
18 of the application.

19 MS. DARLING: Hi. My name is Colleen Darling,
20 and I'm the owner of the property at 1113.

21 MR. ALLEN: Spell the last name, please?

22 MS. DARLING: D-a-r-l-i-n-g.

23 MR. ALLEN: Thank you.

24 MS. DARLING: I've owned the property for 13
25 years, and I lived there before I had children, when it

1 was a residential apartment house. There was never the
2 amount of people that you had stated there. At the most,
3 there was two people in every apartment, which was a
4 normal apartment. And there were two studios.

5 And even with them not hitting any kind of
6 code, the people that lived in the single places were
7 totally respectful of the neighborhood. They were nice
8 to be with, and we all used to hang out and have a great
9 time.

10 When the facility moved in next door, I moved
11 out. I've got two tenants now, and I rent the houses.
12 And I've got to tell you something. It's pretty hard to
13 tell somebody that you can have a house in Newport Beach
14 and live next to a recovery home.

15 I experienced it firsthand last year. We were
16 there for six months. And the hours of use? The noise?
17 I went to that fence many times, because my kids' bedroom
18 is right on that corner. 10:30, 11, 12 o'clock at night,
19 there's guys out smoking. They are drumming their hands.
20 They are singing. They are talking. And then they all
21 go in when you go in.

22 And when you say something, then you hear the
23 door slam. And they're aluminum doors, and they said,
24 "Well, we'll take care of it. We'll put closers on it."
25 See the guy the next day, and he said, "You know what?

1 It's kind of expensive. We're going to do our best."

2 So then they are in their houses, and the
3 windows are all open. I can't open my window at night
4 when it's 90 degrees last summer because the TVs are
5 blarring. And it's not that the TV was off at 12
6 o'clock. That TV is on all night long.

7 And those people are up and about at 6 o'clock
8 in the morning, because that's when they start their day.
9 It's not 8 o'clock. Never did I experience no noise
10 until 8 o'clock.

11 They have got the talking, the drumming, the
12 doors slamming. We can't open our windows. We can't
13 have a life down there, and that's not fair. I have two
14 little girls who deserve to have freedom at the beach,
15 and they can't do that because of what's next door to me.

16 The trash, we've addressed that. We've
17 addressed the flies. My tenants can't go out on the
18 patio because of the Thursday meetings. They don't know
19 who's next door. They both have girls, also. The guy
20 across the wall talk to the girls next door. They are
21 like 12 and 16 years old and really pretty.

22 You know what? The mother's experienced it.
23 She's like, "I don't know who these people are. I don't
24 want them talking to me." So we've seen it firsthand.

25 You know, you mentioned the other building

1 that's going to be at Bay 1129. Why do we have to wait
2 six months? I experienced it last year. I called the
3 City when the place was going to happen in the beginning,
4 and they said, "There's nothing we can do. It's going to
5 be discriminatory, and the Federal government says we
6 have to allow this."

7 So I do thank you for at least putting some
8 practices in that we can maybe move forward and get some
9 of these places cleaned up.

10 You mentioned a reduction of income of 36
11 percent? If I lose one tenant, I lose 50 percent. If I
12 lose two, I lose 100 percent. That's doesn't help me at
13 all.

14 So, you know, looking at your side saying 36
15 percent, I lose a lot. I've got a vacant property, which
16 becomes a nuisance to Newport Beach. And the reason I
17 live in Newport was because it was a beautiful place. I
18 moved from back East, and I landed in Newport. I thought
19 it was the greatest city in the world. I want you guys
20 to see if you can keep it that way.

21 My suggestions with the smoking, which is just
22 ridiculous, there's smokeless ashtrays. Build a wall
23 between my house. I've got a pony wall like this high,
24 and then goes up to four or five feet higher. Build a
25 wall that's 8 for 10 feet high. I don't want to see your

1 people. Put some greenery there. Put some big trees
2 that absorb some of the smoke. We don't want it. Maybe
3 it will help absorb some of the noise.

4 So I thank you.

5 MR. WOOD: My name is Douglas Wood. My family
6 has lived in Newport Beach for 60 years. My wife's
7 family, even longer.

8 I want to talk about one issue, and that's the
9 overconcentration of these properties. If you place that
10 chart to North, Mr. Allen --

11 MR. ALLEN: Sir?

12 MR. WOOD: Did you get a chart?

13 MR. ALLEN: I was just handed the chart, yes.

14 MR. WOOD: Right. If you look at that chart,
15 place it North, see "North" at the top left side?

16 MR. ALLEN: Yes.

17 MR. WOOD: My property is at 1119. It's the
18 one than outlined in green, okay? And beside it at 1111
19 is a property that's been identified by the City as being
20 a rehab home. And then you go directly behind my house
21 at 1119, 1132 is a rehab home. And if you go toward the
22 east, 1120 is a rehab home. And if you go across the
23 street, the 1115 and 1129 are there. And if you go to
24 the west, beyond 12th Street, there's 1217 and 1216.

25 This is clearly an overconcentration of rehab

1 facilities in this area, and this application and any
2 others in that area should be denied.

3 I thank you.

4 MR. ALLEN: Thank you.

5 MS. CURRAN: My name is Laura Curran. I live in
6 Corona Del Mar.

7 MR. ALLEN: Spell the last name, please.

8 MS. CURRAN: C-u-r-r-a-n.

9 MR. ALLEN: Thank you.

10 MS. CURRAN: I go to the beach frequently, and
11 there are also group residential facilities in Corona
12 Del Mar, so this hearing creates precedents, so those are
13 my interests.

14 First, I want to talk about my own personal
15 perspective and then ask to provide some comments from a
16 neighbor. Why does the City not site it for violations,
17 such as the garage use? Why are we considering approval
18 with conditions when we've shown -- when the operator has
19 shown they can't control inappropriate behavior and
20 violates codes, specifically the use of the garage for
21 assembly and other uses.

22 This is a use that happens here and happens in
23 other group homes facilities in part to support smoking.
24 So if the operator is currently using the garage for an
25 illegal use, why has the City not stopped it before, and

1 what confidence do we have that we are going to continue
2 to comply with the revised terms of permit stated on page
3 6 and further in the document?

4 Further, related to Exhibit 1, item eight,
5 smoking and tobacco products, I'm trying to understand
6 what it says. "Smoking on-site shall be restricted to a
7 designated area interior to the facility or an area
8 enclosed on all sides but open to the sky to prevent
9 secondhand smoke from impacting adjacent residents."

10 Now, if the smoke goes to the sky from all
11 sides, aren't we outside or, de facto, experiencing the
12 same activity? So I would like some clarification and a
13 firm understanding that this is interior smoking in a
14 room which is a part of the residence.

15 I was also asked to reiterate input from a
16 resident who lives approximate to this facility. I'll
17 identify her as a mother with children, and I'll just
18 exert. This person moved into recently and has issues,
19 such as loitering.

20 And I'll quote. It says, "As I come home with
21 my children in tow, we have a rather rough looking person
22 standing in our yard smoking his cigarette as if he lives
23 there. As we park, he continues to remain on our steps
24 smoking a cigarette. We have to walk through side stream
25 smoke to get to our front door. It's an intimidating and

1 unhealthy situation."

2 Loud noises and profanity. This person
3 discusses, "I lay in bed listening to groups of people
4 talking, laughing, yelling, coughing, banging,
5 televisions blarring, in and out of doors, just beyond
6 the bedroom windows, and this happens to the children."

7 Paraphrasing, "When my school children ask
8 about -- tell me about it, they say they fall asleep
9 listening to the neighbors every night. And this is a
10 especially disruptive on schools nights."

11 Again, related to the smoke. "Constant smoking
12 next door has prohibited my children from be able to play
13 in the backyard, which is a part of our property. When
14 someone goes outside to smoke, we are required to send
15 our children inside, so that they are not affected by the
16 smoke again."

17 Finally, this person wants to reiterate that,
18 "Newport Elementary School is in close proximity to this
19 and many like kind facilities, which the City has allowed
20 to operate. This is not right and poses an unnecessary
21 danger to children. It is within close proximity to
22 other facilities of like kind and other situations the
23 City has allowed to occur."

24 Again, this resident and others ask that you
25 deny this permit.

1 Thank you.

2 MS. VERDUGO: Hi. I'm not quite sure the set
3 up. I've never spoken at a City meeting. I live
4 adjacent to 1115 West Balboa.

5 MR. KIFF: Your name, please?

6 MS. VERDUGO: Christine Verdugo.

7 And I -- basically, I'm not up here to discuss
8 real specific issues. I've submitted a letter that is in
9 your package. I wanted to just come face-to-face with
10 you and just make sure that you are going to review
11 everything in the packages that you've received on this
12 before coming to a determination so that you can see
13 everybody's story.

14 Because I think three minutes per person is
15 really not enough time to give you all the information
16 that you might need to make a decision, which obviously,
17 from a general perspective, is side stream smoke,
18 loitering, language, intimidation, age-inappropriate
19 contact, waving at the children over the fence, handing
20 cake -- birthdays cake over to my children to bring it
21 the home. It's a problem.

22 I did want to clarify directly to you that it
23 is misleading to put on record that 1129 has any direct
24 effect on the situation that's going on at this property.
25 Okay. Please look at that as a separate issue and then

1 the issues that are brought up in our letters and our
2 comments that are directed to this property.

3 Certainly we live there. We can tell you if we
4 see direct contact between the two properties. Not that
5 they don't come into contact with each other, but the
6 issues that we're complaining about are specific to this
7 location.

8 I did also want to make a note about the
9 misleading date of the hearing. The signs that are all
10 posted all over the City state, you know, the February
11 5th, or whenever the initial date was. So an interested
12 party walking by the home could still see the 5th on the
13 7th and think they missed the hearing, when, in fact, the
14 here was still upcoming and would have an opportunity to
15 come to the meeting. So they are misled in that sense.

16 Again, I'm just a little bit nervous. I
17 apologize. I ask that you please read all the
18 information in the record and make a determination using
19 your leadership, which I've seen a lack of within the
20 City.

21 And I feel very offended that my letter is
22 being used to build conditions that they would be using
23 to abide by, rather than using it as my defense in
24 helping you find a way to stop it altogether.

25 And I feel also offended that we have to suffer

1 while they figure out the solution to the problems. So
2 while he's stated specifically they don't have a solution
3 to the side stream smoke specifically, and da, da, da,
4 we're going to sit around breathing it every day while
5 you decide what you're going to do. And I don't think
6 that's right either, because every second that we breathe
7 it, we have consequences from that specifically.

8 So I think the solution, based on the
9 overconcentration -- I mean, this guy is naming 1111,
10 1132, 1217. I mean, how many more do we have to have in
11 one specific area?

12 We pay a lot of money -- and we don't own.
13 We're not wealthy. We don't own. We go -- we live here
14 for the schools for our kids. So we want to -- we're
15 willing to pay a higher price to have a nice area, and I
16 think that's just too many people congregating in that
17 demeanor.

18 So thank you.

19 MR. BUNCH: Good evening. My name is Ray
20 Bunch. I'm the husband of Colleen Darling. We're the
21 owners of the 1113 building next door to 1115. And I
22 wanted to give you my perspective when we stayed there
23 this summer. It may be a little bit different than
24 you've already heard.

25 I see this business next door to us that is

1 doing their rehab, which is obviously a fine thing and a
2 needed thing. It turns out this is a beautiful area, and
3 it's a very -- I see it as a very attractive place to
4 draw clients to, knowing that they are going to be near
5 the beach, and it's a good selling point.

6 But that means we have a business next to our
7 property. And instead of apartment buildings with
8 separate individuals that would stay there on a regular
9 basis, what we're getting is people that are cycling
10 through.

11 Now, these people are -- I don't know the exact
12 conditions of why they there are, whether it's drug
13 rehab, or alcoholism, or what have you, but in not
14 knowing that, that's a little concern being a parent.

15 And knowing that there's guys coming through on
16 a regular basis -- I don't know their histories, I don't
17 know, you know, they are right next door -- there's a
18 little bit of a fear that comes with that. And, you
19 know, it's a home, you know. It's where you have your
20 family, and that shouldn't be there.

21 In a place where there's more room and less,
22 you know, less concentrated than Newport Beach,
23 especially along the boulevard there, I can see having
24 something like that. But when the quarters are so close
25 together, so confined, I mean, where there's just a short

1 wall away, and guys are leaning over saying hi to my
2 daughters, is not okay with me.

3 So this is just a small example of what could
4 possibly -- what has gone on there. So what could
5 happen? I don't want to even consider that. But having
6 those people cycle through, we've already covered the
7 smoke and the noise, and all the other uncomfortable
8 things of it.

9 But I think just because it's an attractive and
10 it's good for their business, it's not necessarily good
11 for us, which is the homeowners. All right. That's all
12 I need to say.

13 MS. OBERMAN: Denys Oberman.

14 First, I'd like to say that Mr. McCloskey has
15 always been personally courteous to me in the times that
16 I have seen him, which is not been whenever I've
17 experienced incidents from his residence.

18 I do have a number of questions that I'd like
19 to address to you, and perhaps you can address them to
20 Mr. McCloskey and get answers.

21 First of all, this is a large facility by any
22 standard. Who is the on-site manager? Is there one?
23 That's my first question. I'd like to get an answer.

24 Shall I just go through what I want to
25 say, Mr. Allen? I need some direction here. Okay. So

1 that's the first question.

2 MR. ALLEN: I mean, if you asked those
3 questions, then I hope we can get them and I hope the
4 Applicant is listening.

5 MS. OBERMAN: Okay. Who is the on-site
6 manager, and is that manager, in fact, on-site?

7 Secondly, there is evidence of people going
8 from 1115 West Balboa to 1120 West Balboa. There is a
9 going back and forth. We'd like to know, what is 1120
10 West Balboa? There is clearly a relationship between
11 that physical facility and the people in it and 1115.

12 Thirdly, we'd like to know -- we do believe
13 that Mr. McCloskey, in certain respects, is trying to be
14 a better operator than others. Having said that, the law
15 is very clear in saying that institutionalization
16 overconcentration is bad for the people seeking
17 legitimate recovery.

18 So, we ask why is Mr. McCloskey intent on
19 establishing another facility, which would be the third
20 facility within a thousand feet, at 1217 West Bay in
21 addition to the facility at 1115? And those two
22 facilities are within 200 to 250 feet of one another,
23 contributing to overconcentration. So that is a bad
24 business decision, because it creates a rehab community,
25 which is institutionalization. So we don't understand

1 that, and it's bad for his clients.

2 Lastly, we have not observed any evidence of
3 significant adverse impact from 1601. There are
4 significant adverse impacts from 1115. And we feel it
5 may be worthwhile to consider these as two uses to be
6 considered and approved individually or denied on a
7 conditional basis rather than commingling them. That may
8 make the best use management for the City and may be the
9 more equitable thing to the operator as well.

10 So we request that 1115 be denied, and we are
11 comfortable with 1601 West Balboa being approved.

12 Thank you.

13 MR. ALLEN: Any more who would like to speak?

14 MR. MYERS: Can I have 10 seconds?

15 MR. ALLEN: Pardon?

16 MR. MYERS: Can I have 10 seconds?

17 MR. ALLEN: Sure.

18 MR. MYERS: Jeff Myers, M-y-e-r-s.

19 I want to say that we value the rehab effort
20 that they are doing. This particular location, 1115,
21 they don't own that facility. We don't wish them a
22 financial hardship. We just wish them to move to a more
23 adequate location.

24 Thank you.

25 MR. ALLEN: Okay. Anyone else want to say

1 anything?

2 Okay. Then -- is it compelling, and did you
3 not write it?

4 MR. LOPEZ: I didn't write it, I don't think.

5 Paul Lopez.

6 I just wanted to make note in the staff report
7 that when we talked about the box without a ceiling on it
8 for smoking -- I don't know how you defined it -- is that
9 you recognize that on all three sides of the building are
10 buildings that are actually taller than the 1115
11 facility. So if you shoot smoke up in the air, you're
12 shooting in the master bedrooms of three different
13 facilities.

14 Okay. Thanks.

15 MR. ALLEN: Thanks. Okay. Let's close the
16 public hearing then, and bring back -- let's see. It's
17 10 minutes to 6. We're required to stop at 6, and we
18 have some questions to respond to, and I think the
19 Applicant should respond to some of these comments as
20 well.

21 Mr. Kiff, do you have a recommendation as to
22 what direction we might take here?

23 MR. KIFF: As I noted earlier, I think a number
24 of the very specific concerns, and you heard them again
25 today, need to appropriately be addressed. We actually

1 could try to address them until maybe about 6:15. The
2 Planning Commission meets at 6:30. We need to give them
3 a little bit of time to set up, if that were amenable to
4 you. And then maybe see how we do, and then you can use
5 your judgment, if you feel like too many things are
6 unaddressed, which may, indeed, be.

7 So your choice, Mr. Allen. I can comment on a
8 number of things that have been said. Maybe it's better
9 to let the Applicant do that first, and then I can follow
10 up maybe with some questions of them as well.

11 MR. ALLEN: I think that's a good idea, and I
12 don't mind spending the extra time if we have the
13 location.

14 MR. KIFF: We've just talked to the Planning
15 Commission secretary. There's no meeting. We can go a
16 little longer, then.

17 MR. ALLEN: There seems to be one disconnect
18 that keeps coming up here, from my perspective, and that
19 is that there's contentions that there hasn't been staff
20 involvement, and why have these garages been used for
21 assembly uses and not parking.

22 And the question becomes, has the City received
23 a lot of complaints about this? And I realize that
24 that's a wide open question. But I'd just be interested
25 in trying to understand the difference between the

1 observations of all of these people that have gotten up
2 and spoken and the seeming lack of records or information
3 about responses to the complaints.

4 MR. KIFF: I can offer a couple of comments
5 there, Mr. Allen, maybe because that may address some of
6 the questions that came up, including one from Ms. Curran
7 about noting that in the staff report, we cite that -- we
8 note that there are at least two ongoing Code violations
9 that have been occurring at this facility and at 1601,
10 and that is the conversion of garages to non-parking
11 uses, and then assembly uses on-site.

12 And we do operate Code enforcement on a
13 complaint basis. So we're not out -- we do some
14 inspections on other own that are obvious to us, illegal
15 signs, a hedge that, for instance, is a potential hazard
16 in terms of line of sight for cars, trash violations, and
17 things like that.

18 But a number of them, it does take someone to
19 call in and say, "Hey, look. This is what's happening at
20 my neighbor's house," and we go out and do an inspection.

21 I oversee Code enforcement, and this was one
22 that either we weren't contacted about or we genuinely
23 missed. And I tried to note that in the staff report
24 these are violations that should have been corrected.
25 And I believe, had they come to our attention earlier, we

1 would have districted that they be corrected. So that's
2 an error on our part.

3 I will state, though, that these are
4 common -- one of them, converting a garage, is a very
5 common violation. And we don't penalize the homeowner
6 beyond -- we start with a notice of violation that has no
7 monetary fine. We'll say, you know, you've got to
8 convert that back. You've got to clean out the stuff
9 that's in there so you can park two cars.

10 It's very common in Newport Beach. It's very
11 common in many beach communities. So I don't think it's
12 fair to pick on Ocean Recovery for something that we
13 don't pick on everybody for and/or when they make the
14 remedy, they are good.

15 Similar to the correction that Mr. Myers
16 brought up, we have all kinds of trash in the alley
17 violations. We have hundreds a year. So is it a
18 violation? Definitely. Is it unfair to penalize Ocean
19 Recovery for a violation that happens all the time with
20 other folks? Yes, I think it is unfair.

21 And that's why we did develop a condition to
22 say, "Look, no more of this. You have a lot of trash.
23 You need a cover." But I also know that our General
24 Services Department doesn't allow you to put a cover on
25 there if you've got a plastic bin, and you leave it out

1 the night before. And, arguably, they leave it out too
2 early.

3 So one of the conditions does direct them to go
4 to a bin service with a cover with collection during the
5 day on a weekday, when hopefully not a lot of folks are
6 around to hear the trash truck come by.

7 So with that, I'll stop talking and maybe you
8 have further questions.

9 MR. ALLEN: I think it would be good idea if
10 the Applicant would come forward and try to address some
11 of these issues as well.

12 MR. MC CLOSKEY: Sure. Again, Jim McCloskey.

13 We have tried to address, first off, the trash
14 issue, which Dave was talking about. We did go to a
15 trash can with a lid to try to take care of the noise.
16 And we actually got cited for it the way Dave just
17 mentioned.

18 So I know a lot of these things are difficult,
19 but we've tried to do it. There are no more barbeques.
20 There's no more outings at either facility, so those are
21 gone. We have enacted that ourselves. Thursday meetings
22 are gone.

23 MR. ALLEN: I'm sorry. You said there's no
24 more barbeques, no more assemblies. And then you said
25 something like alleys or what?

1 MR. MC CLOSKEY: From this point forward, we're
2 no longer having the barbeques or assemblies, so it's
3 dismissed. It's gone.

4 The other thing I'd probably like to address
5 that got mentioned is the trips to Hoag Hospital. You
6 know, there's a difference between what we do and maybe
7 what some of other rehabs do.

8 What some of the other rehabs do is what's
9 caused primary care. Primary care means to get involved
10 in detox, which is a more direct situation where people
11 are more susceptible to having to have emergency service.
12 We do not do that. In order for them to come to our
13 facility, they have to have some mobility and some
14 stability within their program.

15 So to my knowledge, Kevin, correct me if I'm
16 wrong, have we ever had anybody had to go to Hoag
17 Hospital? There's nobody from our facility that's ever
18 had -- for medical reasons had to go to Hoag Hospital for
19 an emergency situation. So that kind of differs us a
20 little bit.

21 We talked about the Thursday meetings.

22 Our managers are on-site. The person that runs
23 1115 West Balboa, Karen Knab, as I mentioned before,
24 she's a master level -- has a Master education. Worked
25 for Hazelton, which is one of the largest rehab

1 facilities in the country. We were lucky to get her from
2 that facility.

3 So -- and there is somebody there 24/7.
4 There's supervision during the day. Our -- I'm sorry.
5 During the week, there is at least three people there;
6 sometimes there's four people there. We can address
7 that. And there is somebody. We do have supervision
8 24/7 there.

9 MR. ALLEN: Ms. Oberman specifically asked the
10 identity of the on-site manager.

11 MR. MC CLOSKEY: Karen Knab.

12 MR. ALLEN: And that's Karen Knab, K-n-a-b?

13 MR. MC CLOSKEY: Yes, correct.

14 UNKNOWN LADY: Can we make a comment?

15 MR. ALLEN: No, not now, thanks.

16 MR. MC CLOSKEY: The other issue I'd like to
17 address is the recommendation to we build a wall or build
18 plants in between the two facilities. We'd be more than
19 willing to do that or consider that if the City would
20 allow us to do that. We're willing to make changes. So
21 we're open up to the suggestions on that.

22 MR. ALLEN: What about the question about what
23 is 1120 West Balboa? I don't know what the connection
24 is?

25 MR. MC CLOSKEY: We have no affiliation with

1 it. It's not ours. We don't own it. We don't control
2 it. I tried to do -- I just found out about this.

3 One of the things that is perplexing to us or
4 hard for us is we are just learning about some of these
5 today. Myself, I just learned about some of them. So
6 some of them I don't have all the answers to. I tried to
7 find out about 1120. Is that what it was?

8 MR. ALLEN: I thought that's what Ms. Oberman
9 said.

10 MR. MC CLOSKEY: It's not ours. I tried to. I
11 could be that there was some friends that were visiting
12 there, but it's not our facility. We don't have any
13 affiliation with that facility or that residence.

14 MR. KIFF: So, Mr. McCloskey, to put a finer
15 point on that, then, you don't know about anybody
16 operating 1120?

17 MR. MC CLOSKEY: I'm going to say we have
18 nothing to do with it. I haven't had a chance to fully
19 research it to find out who is in there, and what's going
20 on, if our clients -- if they are friends, or what
21 relationship our people have in there, but that is not
22 our facility.

23 MR. KIFF: I would note, Mr. Allen, for the
24 record, the City is not aware of whether 1120 was or is
25 operated as a group residential use. If it is, it's

1 subject to abatement in 13 days or 11 days.

2 And similarly, Mr. Wood's map, he brought up
3 another address, 1111 West Bay. I was not aware that
4 that was being used as a group residential use. It's not
5 on our list, but that would be subject to abatement in 11
6 days as well, just like 1129.

7 THE REPORTER: Paper, please?

8 (Pause in proceeding.)

9 MR. MC CLOSKEY: You know, the last thing that
10 I forgot to mention was the NA meeting. That's actually
11 in our clients', for lack of a better word, daily
12 routines. In my haste -- I'm going to take a fall for
13 that. In my haste, I actually grabbed a very old
14 calendar that we used.

15 Again, our clients do not go to that NA
16 meeting. It's not part of our program. We do not send
17 them there, and they do not go there, so --

18 MR. ALLEN: That's the meeting where they
19 talked about walking up to the 15th Street?

20 MR. MC CLOSKEY: Yeah, on the beach.

21 MR. ALLEN: Yeah.

22 MR. MC CLOSKEY: It is a very large meeting.
23 Our clients do not go there. We have no control of it,
24 and we are not associated with it.

25 MR. ALLEN: And you don't encourage your

1 residents to attend that meeting?

2 MR. MC CLOSKEY: Absolutely not. In fact, we
3 discourage them and tell them that they are not allowed.

4 MS. BROWN: Why is it on the schedule?

5 MR. MC CLOSKEY: Again, as I said, it's my
6 error. In the haste to get this into our workup, I
7 actually grabbed an old schedule that was there from
8 quite some time ago. So that was actually my error.

9 UNKNOWN PERSON: I quit.

10 UNKNOWN PERSON: What about the eyewitness
11 account?

12 MR. KIFF: I'm trying to think of what
13 questions -- Ms. Oberman asked two more. One of them was
14 more, I think, directed to the City. Do we consider
15 these two application independent? And we do, which is
16 why they are set up on the same day but they are two
17 separate agenda items.

18 And then her other question was, why establish
19 1217 West Bay?

20 MR. MC CLOSKEY: All I can tell you about 1217
21 is that it's not operational. It has not been. We've
22 owned that property for two years.

23 MR. KIFF: I guess that would allow me to make
24 a couple of comments based on what Mr. Rush said. We did
25 follow that 1217 West Bay property closely,

1 because -- and it's a little different from what folks
2 may understand.

3 Remember, if you're starting a new facility
4 today and seeking an ADP license, and you're seeking one
5 for more than six people, you do need a fire clearance.
6 And the fire clearance applies to the Codes in effect at
7 the time you ask. And the Codes change nearly every two
8 years.

9 So the Codes become more and more challenging
10 each time they get updated and, in some cases, more and
11 more protective of what they call group residential use
12 or group residential occupancies. And it doesn't always
13 distinguish between someone's ambulatory ability and
14 non-ambulatory ability.

15 We don't think that makes a lot of sense, but
16 the Codes are the way the Codes are. So with
17 Mr. McCloskey's facility at 1217 West Bay, I believe the
18 initial application was for eight people in this
19 facility. And it involved what the Fire Department
20 believes was a three-story building, because of split
21 levels and lofts, which a different level of Code
22 standard apply.

23 And I don't know if you've ever read the Fire
24 Code, but it's highly complex. Even the Fire Marshal
25 struggles with it. But we believe we acted fairly at

1 1217 West Bay. And then eventually, because the bed
2 count was dropped to six, we were able to sign off on a
3 fire clearance at that location.

4 MR. ALLEN: Okay. Any other comments or
5 questions here?

6 Okay. Thank you.

7 MR. KIFF: Mr. Allen, I'll give you a number of
8 potential answers to questions folks raised. They don't
9 involve Mr. McCloskey. Forgive me. I'm just going to go
10 through my notes here a little bit.

11 I think I addressed how we would deal with Code
12 violations. In some cases, they're relatively minor and
13 happen all the time throughout the City. They are still
14 important to us, but many times we rely on people to
15 report things to us.

16 I did want to touch on something Mr. Mathena
17 spoke about, and that is the definition of a block,
18 basically. He didn't quite phrase it that way, but in
19 the APA standard, we talked about one or two uses per
20 block.

21 Now, our Ordinance defines what an block is.
22 And a block is an area bounded by streets. Now, if you
23 look on the board there, our interpretation of this has
24 been an area bounded by streets and/or the boardwalk or
25 the sand, in some cases.

1 That the block, in this case where Ocean
2 Recovery sits, is the 1100 block of West Balboa in the
3 odd numbered section. And it also would include those
4 properties that face Ocean Front West.

5 Now, the definition of the block also allows
6 you to stretch that out. It doesn't allow you, unless
7 you specifically choose to do so, and I would -- staff
8 would argue it's not the appropriate interpretation -- it
9 doesn't allow you to draw a circle around something and
10 go 617 feet.

11 It allows you to stretch out a rectangle. And
12 the rectangle is restarted again when you cross a street.
13 Again, the definition of the block is in the Ordinance.
14 It's as defined. We even, at one point, had a diagram
15 showing what a block was. So I wanted to make sure. I
16 don't think it's arbitrary at all. It's based on the
17 Ordinance.

18 I'm going to keep going through some of my
19 notes. I do think that the number of times folks have
20 brought up that beach meeting -- and I'll stress it once
21 again, I think that's something the City needs to
22 address.

23 I don't think it's appropriate to shoulder that
24 burden on one operator, because I've been told people
25 from throughout the region attend that meeting. What the

1 City will have to do -- and I know Council Member Henn
2 has spoke about doing this -- is to require special event
3 permits for things like that, so we can more
4 appropriately regulate them.

5 Today, the only special event that requires a
6 special event permit on the beach is things like large
7 surf events. I think we even had a threshold of the
8 amount of people that are in that type of meeting.

9 So we may have to ratchet that down. Because I
10 think the loitering is a problem, and breaking in law and
11 smoking is definitely a problem. So that message has
12 been heard. We need a change the Ordinance and fix that.

13 I wanted to address one thing that Ms. Verdugo
14 brought up, and I apologize. She noted that she was
15 offended that her letter was used to build conditions.
16 It wasn't just her letter, and conditions are built to
17 address -- conditions for use permits are built to
18 address concerns raised because of that use.

19 And I do very sincerely want folks in the
20 audience to understand that people in recovery are a
21 protected class and entitled to fair housing
22 opportunities. And that is why the Ordinance was written
23 the way it was written.

24 It didn't say we can never have any recovery
25 homes in Newport Beach anymore. It doesn't say they

1 couldn't be in any residential district. Because Court
2 cases up and down the nation have shown that they need to
3 be allowed in residential districts because this is their
4 home.

5 So whether it's a business operating in a
6 residential district, it sure is. You're right. But
7 we're clearly directed by law to allow that in a
8 residential district.

9 What our Ordinance tried to do -- and you're
10 right. And probably two years ago when you would have
11 called and said, hey, we can't do anything. What we
12 decided to do was change that mindset and said, maybe we
13 can do something. Maybe we can address the secondary
14 impacts of a overconcentration of homes.

15 And that's what led to the Ordinance's adoption
16 more than a year ago. What you're seeing is the
17 consequences of that Ordinance. It gave folks until
18 February 22nd to either file for a use permit and get one
19 or leave.

20 And cities across the state, and even across
21 the nation, are looking at this Ordinance to see if it
22 survives. We're committed to trying to implement it
23 fairly, and "fairly" includes allowing folks in recovery
24 to continue to reside in Newport Beach, but to address
25 the secondary impacts of those residences, to make sure

1 that people around them are protected to the maximum
2 extent practicable.

3 We're hopeful this Ordinance succeeds is doing
4 that. An Ordinance is a device written by humans, and so
5 it has human error in it. So, thus, you can see all the
6 struggles we've been going with in crafting conditions.

7 With that, as we're approaching 6:15,
8 Mr. Allen, I'd be interested in some of your thoughts.

9 I guess I'd offer one thing. I think there's
10 enough uncertainty in this, especially as it relates to
11 1129, and that certainly a lot of encouraging comments, I
12 think -- maybe that's not the right word -- by the
13 Applicant to try to resolve things that I'm reluctant to
14 ask you to issue a use permit based on the staff's
15 recommendation.

16 What I'd rather do, I imagine, is if there was
17 a way we can continue this action and have a period of
18 time where the Applicant could prove that they could live
19 by those conditions, maybe it's -- maybe it's six months.
20 Then we come back.

21 And then the assurance that we have is that
22 something is not issued today, there isn't a guarantee of
23 this operator's ability to stay, until we pass through
24 that six-month period with compliance or not, and with
25 potentially the removal of 1129 from the picture and,

1 gosh, maybe 1120 across the street, and the other ones
2 that didn't apply, and use that as a test period to see
3 whether or not this application is worthy of being
4 approved or denied at that point.

5 MR. ALLEN: Well, I think that's worth
6 consideration. This is a very difficult one. It's just
7 wrought with issues, you know. Sheppard Mullin saying
8 that the Ordinance isn't enforceable, it's
9 unconstitutional, but we want to work with you.

10 The Applicant also says that they can abide by
11 most of the conditions here. The most compelling issue,
12 obviously, is the number of beds that are permitted. The
13 neighbors say that this is a verbal nuisance; that
14 there's a series of problems.

15 And it clearly is a problem from their
16 perspective, given the tight dense relationship.
17 Mr. Mathena, Mr. Lopez and their families live within 5
18 feet of it. And I think it was an interesting comment by
19 one gentleman that you just don't know these people,
20 because they are here today and gone 90 days later.

21 I am not persuaded it's a good idea to issue a
22 use permit at this time, because it becomes a vested
23 right for this organization. Because once that happens,
24 that permit vests. And despite -- the recommendation of
25 staff is to do that. I just don't think it's a good

1 idea. And Mr. Kiff is maybe beginning to go that
2 direction as well.

3 Because revocation of a use permit is a very
4 difficult thing. And Mr. Mathena tried to quantify it or
5 asked us to quantify that in one of his communications.
6 And frankly, you just virtually can't do that, because
7 it's such a wide range of issues, and the degree of which
8 due process is granted in going forward, with the time
9 involved in doing it, it's just a very difficult
10 undertaking.

11 So I much prefer to see us do, as you alluded
12 to, Mr. Kiff, and continue this for -- the recommendation
13 was to issue the use permit and then have it reviewed in
14 six months. I'd rather see us -- unless there's some
15 compelling issue here from the Applicant where it's
16 unacceptable, in which event, then, we have to make some
17 real hard decisions here -- that we continue it for six
18 months.

19 And I don't know that we can set a date
20 certain, but we do a noticed hearing at that time. And
21 there certainly has been some grumbling about the fact
22 that we do a noticed hearings and then continue them. So
23 let's make it certain when we do it.

24 But to reopen the hearing in six months, and
25 see the extent to which the Applicant has been able to

1 live with these conditions. And so we're getting out of
2 time.

3 The hard issue that gets put to me is, how many
4 beds? And if they can't make it with 14 beds, it makes
5 no sense to restrict them to 14 beds and then see if they
6 can otherwise comply with conditions, because they are
7 not going to be there. And that might be beneficial to
8 the neighbors, but certainly not to them.

9 So I'm not any more able to know what that
10 right number is than anyone else, but I think I'm there.
11 And it just seems to me that 16 is one that works.

12 But do you have a recommendation in that
13 respect, Mr. Kiff?

14 MR. KIFF: I was wrestling with that, too. And
15 we talked in the staff recommendation about coming back
16 in six months and potentially allowing an increase if --
17 an increase for good behavior.

18 To me, it may make more sense to see if Ocean
19 Recovery can succeed in addressing all of these concerns,
20 all of the conditions that are proposed, maybe through an
21 Operations and Management Plan, which I think would be
22 good to see back from them in two weeks for this
23 six-month period.

24 But there's two schools of thought. One is
25 that the beds should be reduced. The other is the beds

1 should be at a level that they suggest they can operate
2 at, and we can make them prove they can operate at that
3 level. And if they suggested 18 beds, I think that's
4 arguably more challenging for them to show that they can
5 manage that within these conditions.

6 So maybe they need to be careful what they wish
7 for, because I do want to really see how this operation
8 may succeed or fail at the level that it says that they
9 say they need to operate on.

10 MR. ALLEN: So this presents us with some
11 pretty difficulty issues, because we say continue it for
12 six months and comply with all the issues. And yet, we
13 don't really have the legal force in place to compel it
14 the way I would see that here, because we don't have the
15 Resolution adopted.

16 So the question becomes, are you willing to
17 live with this process? And we really do have to get out
18 of here, I guess.

19 But would you be willing to attempt to do that,
20 and not -- I guess the City could open up a hearing in a
21 shorter period of time, I mean, if things went wild
22 there. But what is your thought?

23 MR. O'CONNOR: I think the short answer is we'd
24 be willing to work along the lines of Mr. Kiff's
25 suggestion. We've heard a lot of things tonight. As I

1 mentioned, we're hearing this for the first time.

2 As we're hearing some of these suggestions made
3 as to how we could become a better operator,
4 Mr. McCloskey and I have been nodding each other, saying,
5 "Let's try that."

6 For example, when Mrs. Darling came up here and
7 made some suggestions about what we would do to control
8 secondhand smoke, we looked at each other saying, "That's
9 a good idea. Let's give that a shot."

10 So we would be willing to try to implement
11 these procedures and come back in a period of time, six
12 months sounds reasonable to me, in an attempt to show
13 that we can, in fact, comply with these suggested
14 conditions.

15 In terms of the bed count, I think that 18 is a
16 number that is manageable. It is, coincidentally enough,
17 the mid-point between our currently licensed 22 and the
18 14 that was recommended in the conditions that are part
19 of the staff report. So I think that 18 is a good
20 number.

21 I do note Mr. Kiff's comment that that may
22 presented more challenges to us, but we're willing to
23 show you that we can make it work.

24 I would like to note and ask those in
25 attendance to work with us as well, and I hope that we're

1 not being set up for failure here. Because I can assure
2 you, and Mr. McCloskey will do the same, that you will
3 see legitimate efforts on our part to make this better.

4 And I don't want to have this a situation where
5 we're just giving the people that, if there are people
6 that fall in this category, will be against us no matter
7 what we do an opportunity to come back again.

8 MR. ALLEN: Well, of course, you can't control
9 that. If they are against you, they will stay against
10 you. But hopefully, they can get work. And if there's
11 lines of communication that can be set up and workable,
12 then that's all the better.

13 There's the discussion about -- it's not peer
14 group, it's the vested -- the stakeholders' organization,
15 Maybe there's a communication line that can be set up in
16 that manner.

17 MR. KIFF: Let me try to pull together maybe a
18 recommendation for your consideration, Mr. Allen, in that
19 we do believe this probably needs to be continued to a
20 date certain, with the understanding that we could call
21 it earlier, as you noted, if things were untenable.

22 And that six months is August 12th, if my math
23 is correct. And during that time, we would obligate the
24 operator and enter into an agreement providing that they
25 would agree to an Operations and Management Plan based on

1 the conditions.

2 I wanted to make sure we don't have a violation
3 of the Permit Streamlining Act, too. We would -- this
4 would be a mutual consent by yourself and your client to
5 not state that this is a delay in the City's operations.
6 It would be a violation of Permit Streamlining Act by
7 continuing the hearing for six months.

8 So we want to see that that protection was in
9 there. And that the bed count be 18, because I think
10 that is be careful what you wish for. And that that
11 Operations and Management Plan be brought back to us at a
12 staff level, which we'll make available to the public,
13 and talk to you about within two weeks. Because I think
14 it's pretty clear what needs to be done.

15 MR. O'CONNOR: I think that all sounds
16 reasonable. I might request a little breathing room on
17 the two weeks for the following two reasons: Number one,
18 I'm going to be out of state all of next week on
19 vacation, not that my personal schedule should burden
20 everyone else's, but I do envision myself having an
21 active role in this.

22 And number two, it's possible that we may want
23 to solicit some opinions based on some of the comments
24 we've heard tonight. We do intend to be a good neighbor.
25 The comments are not falling on deaf ears. And frankly,

1 I'd like to take up some of these people out here on some
2 of their suggestions as to how we can become a better
3 operator, and that may take a little bit more time on our
4 part to do so.

5 MR. KIFF: Well, as long as that effort was
6 being made, and I think Mr. McCloskey knows how important
7 it is to -- he's already addressing some of the problems,
8 but I think there needs it be a really broad effort to
9 address the concerns.

10 I'm comfortable with bringing it back in a
11 month, then, but you understand that a lot of these
12 concerns, I think, need to be addressed within that
13 month, which you've heard.

14 MR. O'CONNOR: That will be more than enough
15 time. We're planning to get it done in two weeks, but in
16 case we can't, I would like a little more breathing room.

17 Thank you.

18 MR. KIFF: Okay.

19 MR. ALLEN: All right. Well, that will be the
20 decision, and hopefully it works, and we get together on
21 August the 12th. And if there seems to be satisfactory
22 progress, it can be continued. If there isn't; it won't.

23 Okay. Thank you very much for all your
24 participation. I realize nobody -- not everybody's
25 happy, and that's how the way things usually work. But

1 let's see if we can't make progress on this.

2 Thank you.

3 MR. O'CONNOR: Thank you.

4 I'd like a copy, please.

5 (Ending time: 6:25 p.m.)

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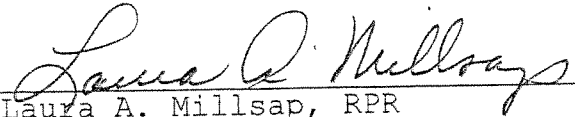
I, the undersigned, a Certified Shorthand Reporter for the State of California, do hereby certify:

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: FEB 25 2009



Laura A. Millsap, RPR
CSR No. 9266

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