

**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT**

ITEM #2

DATE: MARCH 9, 2015

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: APPEAL OF THE COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION THAT "WHOLE LIFE RECOVERY", A "RECOVERY CENTER" PROPOSED AT 34189 PACIFIC COAST HIGHWAY IS A PROHIBITED USE IN THE TOWN CENTER-MIXED USE DISTRICT AND THEREFORE NOT ALLOWED IN ACCORDANCE WITH THE CITY'S MUNICIPAL CODE.

RECOMMENDATION: That the Planning Commission take action to uphold the Community Development Director's determination by adopting the attached Draft Resolution, provided as Action Document 1.

**PROPERTY OWNER/
APPELLANT:**

Joseph Scala/Tom Blakely and Victoria Wall

ADDRESS:

34189 Pacific Coast Highway (APN: 682-301-31)

NOTICE:

Notices of the Public Hearing were mailed on February 25, 2015 to property owners within a 500-foot radius. On February 26, 2015, a Notice of Public Hearing was published within a newspaper of general circulation in the City of Dana Point. In addition, on February 27, 2015, a Notice of Public Hearing was posted at the Dana Point City Hall, the Dana Point and Capistrano Beach branch post offices, as well as the Dana Point Library.

BACKGROUND:

In January 2015, Whole Life Recovery (the "Appellant") inquired about establishing a new business within the Dana Point Town Center. The use was described as a "recovery center" and the Appellant was seeking to occupy an existing building at 34189 Pacific Coast Highway.

After initial discussions with the Appellant at the Planning counter, staff evaluated the proposed use in conjunction with the City's Dana Point Town Center Plan (the "TC Plan") and Municipal/Zoning Codes (the "DPMC"). Recovery Centers are not a listed use within the TC Plan or DPMC. Accordingly, in order to more fully understand the proposed use, staff asked the Appellant to provide a detailed description of the operational characteristics of their business. As discussed below, this information was useful to determine which use definitions, if any, within the TC Plan or DPMC might be considered similar to the proposed use.

The TC Plan provides the regulatory framework for land use regulations, design standards and design guidelines for projects in the Town Center area. The TC Plan contains a land use matrix which indicates uses that are permitted by right, uses that are permitted subject to a Conditional Use Permit, and uses that are prohibited. Uses that are not listed within the matrix are prohibited.

A “recovery center” is not specifically included in the TC Plan’s land use matrix and as a result, is therefore prohibited. In an effort to be as thorough as possible, staff also considered additional language in the TC Plan that states *“If an issue, condition or situation arises that is not sufficiently covered or provided for by the regulations so as to be clearly understandable, the regulations of the Dana Point Municipal Code that are applicable for the most similar issue, condition, or situation shall be used with approval of the Community Development Director.”*

While a definition for a “recovery center” is not included in the Dana Point Zoning Code (Chapter 9 of the Dana Point Municipal Code) (the “Zoning Code”), there are definitions for other uses which are included both in the Zoning Code and in the TC Plan’s land use matrix that were included as part of Staff’s analysis. These uses/definitions include the following:

- Adult Day Health Center - shall mean a facility which provides adult day health care, or a distinct portion of a licensed health facility in which such care is provided by a specialized unit.
- Clinical Service Uses - shall mean establishments which provide physical and mental health services on an out-patient basis. The services may be of preventative, diagnostic, treatment, therapeutic, rehabilitative or counseling nature. Typical uses would include, but not be limited to, medical and health clinics, chiropractic/physical therapy clinics, counselling services and emergency care centers.
- Community Care Facility - shall mean any facility, or building which is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes residential facilities, adult day care facilities, day treatment facilities, foster family homes, small family homes, social rehabilitation facilities, community treatment facilities, and social day care facilities.
- Day Treatment Facility - shall mean any facility which provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care.
- Drug Abuse Recovery or Treatment Facility - shall mean any facility, place, or building which is maintained and operated exclusively to provide 24-hour residential nonmedical services in a group setting to adults, which may include, but need not be limited to, mothers under 18 years of age and their children, who are recovering from alcohol, drug, or drug and alcohol misuse and are currently capable of meeting their life support needs independently, but who temporarily need guidance, counseling, or other alcohol or drug recovery services.

Although not identical, the definitions for *Community Care Facility*, *Day Treatment Facility* and *Drug Abuse Recovery and Treatment Facility* were determined to be the best match for the proposed use based upon the operational characteristics and details provided by the Appellant. These uses are expressly prohibited in the TC Plan's Land Use Matrix. Therefore, the Director of Community Development determined that the proposed use as well as recovery centers generally, are prohibited within the Town Center area. A letter explaining this determination was provided to the Appellant on January 21, 2015 (Supporting Document A).

DISCUSSION: In accordance with Municipal Code Section 9.61.110, any decision rendered by the Community Development Director may be appealed to the Planning Commission. On February 5, 2015, the Appellant submitted a letter appealing the Director's determination (Supporting Document B). In the appeal letter, the Appellant does not specify the basis of the appeal, including how he/she is negatively impacted by the Director's determination to deny an application. This information is required in accordance with Section 9.61.110 of the Municipal Code. Staff attempted to call the Appellant multiple times to obtain more information about the basis of the appeal but didn't receive a return phone call.

CONCLUSION: If the Director's determination is upheld by the Planning Commission, the Appellant would have the option of appealing the Planning Commission's decision to uphold the Director's determination to the City Council prior to the end of a 15-day appeal period (March 24, 2015).

Staff recommends that the Planning Commission uphold the Director's determination that "Whole Life Recovery", a type of recovery center, is a prohibited use within the City's Dana Point Town Center Plan.



Erica H. Demkowicz, AICP
Senior Planner



Ursula Luna-Reynosa, Director
Community Development Department

ACTION DOCUMENTS:

1. Draft PC Resolution #15-03-09-XX

SUPPORTING DOCUMENTS:

- A. January 21, 2015 Director's Determination
- B. Appellant's Appeal Letter dated 2/5/15

RESOLUTION NO. 15-03-09-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, UPHOLDING THE COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION THAT "WHOLE LIFE RECOVERY", A "RECOVERY CENTER" PROPOSED AT 34189 PACIFIC COAST HIGHWAY IS A PROHIBITED USE WITHIN THE CITY'S TOWN CENTER-MIXED USE DISTRICT AND THEREFORE NOT ALLOWED IN ACCORDANCE WITH THE CITY'S MUNICIPAL CODE.

Appellant: Tom Blakely and Victoria Wall
Address: 34189 Pacific Coast Highway, Dana Point

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, in January 2015, Whole Life Recovery inquired with the City of Dana Point about whether a "recovery center" would be a permitted use of the property located at 34189 Pacific Coast Highway (the "Property"); and

WHEREAS, the Property is located within the Town Center zoning district and thus the uses permitted at the Property are generally governed by the Dana Point General Plan, the Dana Point Town Center Plan, and the Dana Point Municipal Code (the "DPMC"); and

WHEREAS, the Dana Point Town Center Plan does not list "recovery centers" as a permitted use; and

WHEREAS, any use that is not specifically listed as a permitted use in the Town Center zoning district is prohibited; and

WHEREAS, the Town Center Plan directs that the Dana Point Municipal Code (including Chapter 9, the Zoning Code) shall be used to supplement the provisions of the Town Center Plan in the event that a particular issue is not sufficiently covered by the Town Center Plan; and

WHEREAS, in accordance with the foregoing, the Director reviewed the Zoning Code and the Town Center Plan to determine whether any uses that were similar to "recovery centers" were listed as either permitted, conditionally permitted, or prohibited uses in the Town Center zoning district; and

WHEREAS, after such review, the Director determined that the uses that are most similar to "recovery centers," such as Adult Health Day Centers, Clinical Services Uses, Community Care Facilities, Day Treatment Facilities, Drug Abuse Recovery or

Treatment Facilities were all listed as prohibited uses in the Town Center zoning district; and

WHEREAS, as a result of all of the foregoing, the Director determined that “recovery centers” are prohibited in the Town Center zoning district; and

WHEREAS, the Director notified Whole Life Recovery of her determination on January 21, 2015; and

WHEREAS, on February 5, 2015, Whole Life Recovery filed an appeal of the Community Development Director’s determination in accordance with DPMC Section 9.61.110; and

WHEREAS, on March 9, 2015, the Planning Commission conducted a duly noticed public hearing on the appeal of the decision of the Community Development Director.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) The above recitals are true and correct and incorporated herein by reference.
- B) After reviewing all documents and testimony, the Planning Commission determines that the determination of the Community Development Director is upheld and that the appeal is denied and makes the following finding.

Findings

1. The “recovery center” use proposed by Whole Life Recovery at 34189 Pacific Coast Highway is regulated by the Dana Point Town Center Plan which provides the regulatory framework for land use regulations, design standards and design guidelines for projects in the Town Center area as well as the Dana Point Municipal Code, which provides regulations for issues, concerns or situations that are not sufficiently covered or provided for in the Dana Point Town Center Plan.
2. “Recovery centers” are not listed as a permitted use in the Dana Point Town Center Plan, and therefore this use is prohibited.
3. All uses defined in the Dana Point Municipal Code which might be considered similar to a recovery center are also prohibited in the Dana Point Town Center

Plan, although no determination has been made as to whether any of these uses would be appropriate substitutes for the proposed recovery center use since they are expressly prohibited.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 9th day of March, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Liz Claus, Chairwoman
Planning Commission

ATTEST:

Ursula Luna-Reynosa
Director of Community Development



CITY OF DANA POINT

COMMUNITY DEVELOPMENT

33282 Golden Lantern, Suite 212

Dana Point, Ca 92629

949.248.3564

(www.danapoint.org)

January 21, 2015

Mr. Tom Blakeley
Whole Life Recovery
3004 Calle Grande Vista
San Clemente, CA 92672

Dear Mr. Blakeley:

This letter is in response to your recent inquiry related to a proposed use within the Dana Point Town Center. The City of Dana Point (the "City") has recently received a number of inquiries similar to yours, from entities generally characterizing their use as a "recovery center" and seeking to occupy existing buildings located within the Dana Point Town Center Area. The *Dana Point Town Center Plan* (the "Plan") is the document that provides the regulatory framework for land use regulations, design standards and design guidelines in the Town Center Area. The Plan contains a land use matrix which indicates uses that are permitted by right, uses that are permitted subject to a Conditional Use Permit, and uses that are prohibited. Uses not listed within the matrix are prohibited uses.

A "recovery center" is not specifically included in the Plan's land use matrix, as previously mentioned, uses not listed are prohibited. In an effort to be as diligent as possible, staff has considered the following language included in the Plan:

If an issue, condition, or situation arises that is not sufficiently covered or provided by these regulations so as to be clearly understandable, the regulations of the Dana Point Municipal Code that are applicable for the most similar issue, condition, or situation shall be used with approval of the Community Development Director.

A definition for a "recovery center" is not included in the Dana Point Zoning Code (Chapter 9 of the Dana Point Municipal Code) (the "Zoning Code"). Definitions for the following uses are included in the Zoning Code **AND** included in the Plan's land use matrix; *Adult Day Health Center, Community Care Facility, Clinical Services, Day Treatment Facility, and Drug Abuse Recovery Treatment Facility*. Entities making inquiries about occupying buildings within the Town Center Area as "recovery centers" (hereinafter collectively referred to as "Applicants") were asked to provide detailed descriptions of the operational characteristics of their industry so staff could determine which of the above definitions is the most similar. The definitions (taken directly from the Zoning Code) under consideration are as follows:

PC Supporting Document A

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"WHOLE LIFE RECOVERY"

34198 Pacific Coast Highway

"Adult Day Health Center" – shall mean a facility which provides adult day health care, or a distinct portion of a licensed health facility in which such care is provided by a specialized unit.

"Clinical Service Uses" – shall mean establishments which provide physical and mental health services on an out-patient basis. The services may be of preventative, diagnostic, treatment, therapeutic, rehabilitative or counseling nature. Typical uses would include, but not be limited to, medical and health clinics, chiropractic/ physical therapy clinics, counseling services and emergency care centers.

"Community Care Facility" – shall mean any facility, or building which is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes residential facilities, adult day care facilities, day treatment facilities, foster family homes, small family homes, social rehabilitation facilities, community treatment facilities, and social day care facilities.

"Day Treatment Facility" – shall mean any facility which provides nonmedical care, counseling, education or vocations support, or social rehabilitation on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care.

"Drug Abuse Recovery or Treatment Facility" – shall mean any facility, place, or building which is maintained and operated exclusively to provide 24-hour residential nonmedical services in a group setting to adults, which may include, but need not be limited to, mothers under 18 years of age and their children, who are recovering from alcohol, drug, or drug and alcohol misuse and are currently capable of meeting their life support needs independently, but who temporarily need guidance, counseling, or other alcohol or drug recovery services.

Your proposed use is very similar to the various other inquiries the City has received in which applicants submitted written materials describing the operational characteristics of their use. Features common among these entities as outlined in their written materials include:

- Applicants referred to their clients as "patients" and "adults seeking to recover from substance abuse"; and
- Applicants described their industry as "Day Treatment", "Intensive Outpatient", and "State Certified Addiction Counseling Center"; and
- Applicants indicated that they provide transportation for their clients to and from their facility; and

- Applicants indicated that their clients are dropped off in the mid-morning and stay through the mid-afternoon; it appears that the average length of time is approximately 5 hours with meals served; and
- Applicants indicated that their clients arrive in groups with one applicant projecting that they could have up to "40 clients at any given time"; and
- Applicants indicated that individual, group and vocational counseling sessions are provided.

The definitions for *Community Care Facility*, *Day Treatment Facility* and *Drug Abuse Recovery and Treatment Facility* appear to be the best match for your proposed use based on the operational characteristics provided by you and the other Applicants proposing a similar use. These uses are expressly prohibited in the Plan's land use matrix. Therefore, the Community Development Director has determined that your proposed use, as well as recovery centers generally, are **PROHIBITED** in the Town Center Area.

This decision is in alignment with the goals and policies of the Plan. The proper mix of land uses in the Town Center Area, particularly at the street level, is a critical component for creating a vibrant, pedestrian oriented environment. The type, range and intensity of activity are at the core of life within the Town Center and its successfulness as a place that is attractive with a critical mass of retail and restaurant uses that promotes a vibrant business district and walkable community. The following policies are contained in the Plan to support the overarching goal: *Achieve development in the Town Center area that enhances the areas as a primary business district in the City.*

Policy 1.1: Provide a diversity of retail, office and residential land uses that establish the Town Center as a major center of social and economic activity in the community.

Policy 1.2: Encourage retail businesses and mixtures of land uses that help to generate positive pedestrian activity in the area.

Policy 1.3: Establish patterns of land use and circulation that promote the desired pedestrian character of the area.

Policy 1.5: Support street level uses that are pedestrian-oriented and contribute to the vibrancy of the street.

Recovery centers as described by the various Applicants generally, and the use you have specifically proposed, do not achieve the overarching goal and policies contained within the Plan. This use will not activate the sidewalk as would a restaurant or café with outdoor dining or a retail shop with large storefront windows that encourage passersby to window shop. Recovery centers will not add a daytime population that is likely to patronize the retail and restaurant uses encouraged by the Plan as they are a transient population transported to the facility for the day where they stay until they are transported back to their lodging facility.

The decision of the Community Development Director can be appealed to the Dana Point Planning Commission pursuant to Section 9.61.110 of the Dana Point Municipal Code. Please reference the Dana Point Municipal Code online at the following URL: <http://www.danapoint.org/index.aspx?page=57> for full details regarding the appeal process. Summarily, an appeal must be filed within 15 calendar days of the rendering of a decision. This letter serves as a decision that triggers the 15 day period. Any appeal should be in writing and directed to attention of the Director of Community Development:

Ursula Luna-Reynosa, Director of Community Development
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

The appeal shall specifically cite the basis of the appeal, including how the person filing the appeal is negatively impacted by the Community Development Director's determination. Appeals are not deemed to be filed until the above requirements are met and the \$500.00 appeal fee established by our fee schedule via Resolution No. 98-01-13-05 has been delivered to the City Clerk.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ursula Luna-Reynosa', written over a horizontal line.

Ursula Luna-Reynosa
Director of Community Development
City of Dana Point

February 5, 2015

Ursula Luna-Reynosa, Director of Community Development
City of Dana Point

33282 Golden Lantern

Dana Point, CA 92629

Re: Whole Life Recovery, 34189 PCH, Dana Point

Dear Mrs. Luna-Reynosa,

I am a board certified physician who has been working with Whole Life Recovery to lease 34189 PCH. This is a recovery center that is overseen by a board certified psychiatrist that currently practices in Dana Point. The client's home successfully finished drug rehabilitation elsewhere, and are coming to Whole Life Recovery only to undergo continuing therapy to maintain their sobriety. We are formally appealing your decision given to Tom Blakey.

Thank you,

Victoria Wall M.D.

California Hope Trust

vkwall1234@gmail.com

(949) 226-4011

RECEIVED

FEB 06 2015

cc

PC Supporting Document B

03/09/15 — Item 2

"WHOLE LIFE RECOVERY"

34198 Pacific Coast Highway