

Town Council Meeting 5/8/12

Agenda Item: Drug & Alcohol Treatment Facility proposed for 6380 Wells Avenue

My name is Wendy Steinmetz. My family and I live at 6400 Wells Rd within the Town limits of Loomis. We feel severely impacted by the ramifications of tonight's subject, the proposed alcohol and drug rehab facility at the foot of our private driveway. We have unfortunately discovered that some state laws were written with the sole purpose of protecting such a commercial operation from local jurisdiction by legally defining what is clearly a business as a "single-family dwelling". You feel your hands are tied.

We are here tonight to continue to bring our numerous concerns to your attention. We understand you feel your hands are tied, but we believe the laws protecting these '6 or less' facilities can be proven irrelevant and give our Town the power to untie its hands. An attorney that has been advising us on this matter is confident that there is one very critical statement in the law that will show we do not have to simply throw our hands up in defeat. (Please reference letter for our advising attorney). Our town DOES have a say - it clearly stated in the **FIRST** sentence of the **FIRST** paragraph of Health & Safety Code 11834.20 – "*sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need."* This statement should absolutely not be ignored. In fact, if not being commensurate with the local need is established first than the remaining Sections of the code that provide absurd State protections are irrelevant.

Let's explore that a moment.

- How is this operation helping our local needs? We will not see a penny of tax revenue.
- Does Loomis NEED another drug & alcohol treatment facility, and if so have the local citizens of Loomis been requesting this TYPE of high-end treatment center?
- With a small town of only 6500 residents, many who are not of legal drinking age, surely the existing local treatment facilities are meeting our community needs.
- If we allow this rehab center to open at the end of a private driveway, how many more private driveways will soon be at risk? It is a very lucrative business, and our State believes "the more the merrier".

This outfit advertises that they will "pay your air fare". This screams "destination nestled in the pastoral tranquility of the Sierra foothills", not a local help program. The patients of the facility will most likely not be from our local community, but rather patients flown in from all around the country. Keeping in mind, these temporary, out-of-town patients will change every 30 days. Is this something our community really needs?

In looking up the definition of 'commensurate', Webster's defines it as 'in alignment with'; 'in agreement with'; 'in proportion with'. Our question tonight is who will define the scope & meaning with regard to being commensurate with our local needs? The State? We feel that it is the right, and responsibility, of our locally elected Town Council to evaluate IF this particular facility is truly commensurate with our local need. Our community depends on you to accurately evaluate our need and protect our community from the type of alarming threats currently being experienced in Fair Oaks.

- WHO is going to monitor the program to ensure it continues to meet our needs in Loomis?

- WHO is going to ensure there are enough beds reserved for our local needs versus filling to capacity with **non-locals** flown in from around the country?
- How much does it cost to for this type of 30-day program? The website for this multi-facility chain indicates their programs can run upwards of \$10,000 per month – that is one steep price.
- Does the facility offer programs for **all** income levels?
- Is it appropriate for the Town to approve a location that is right next to the long-standing, year-round youth retreat program at St. Joseph's?
- What about the two elementary schools, Franklin & Loomis Basin Charter, that are just 1.5 miles down the road?
- Is it responsible for our Town Council to approve this drug & alcohol rehab facility so close to so many school children in our community? Realize there will be many numerous unknown visitors and the likeliness of coming & going privileges for the patients?
- Does allowing this facility to operate in this location **knowingly** put our local children and families at great risk?

This facility it is NOT based on local need. If for some reason the Town decides that the facility is commensurate with the local need, shouldn't the Town then take on the responsibility to ensure the facility has adequate public utilities such as water & sewage? This facility has access to only well water and septic. In addition, shouldn't the Town also be responsible for proper 'up-to-code' egress & ingress to the facility particularly in the case of a fire? And shouldn't it also then be the Town's responsibility to maintain the overburden easement?

Community need is the key, and the Town of Loomis must make a stand.

I, my family, and many concerned Loomis residents appreciate the attention and care the Town is giving to this alarming situation, as we believe this facility has nothing to do with being commensurate with our local need. Our elected Town Council must take responsibility and take immediate action to stop any "rubber-stamping" approvals that could happen quickly if our Town Council simply allows this facility to open by falsely believing that our hands are tied.

Town Council members **do not** have to throw their hands up. In fact, our community needs you, and our Town attorney, to focus careful attention on 'commensurate with local need'. It is the responsibility of the Town to use this stated power to untie its hands and protect the Town of Loomis from the looming nightmare that is about to be unleashed.

Wendy Steinmetz  
 6400 Wells Avenue  
 Loomis, CA 95650  
 916-415-0999 home  
 916-276-6319 cell  
 wendy@thrifftown.com

HEALTH AND SAFETY CODE

SECTION 11834.20-11834.25

**11834.20.** The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need. The provisions of this article apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity. For the purposes of this article, "six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

**INSERTED NOTE:**

***This first sentence in the first section should absolutely not be overlooked or ignored. In fact, if not being commensurate with the local need is established first, then the remaining Sections of the code that provide absurd State protections (below) become irrelevant.***

***The Loomis Town Council members do not have to throw their hands up. In fact, our community needs you and our Town attorney to focus careful attention on 'commensurate with local need' within the State statute (above). It is the responsibility of the Town to use this stated power to regulate the facility.***

***Please see letter dated 5/8/12 from Michael W. Pearson, attorney at law, for supporting opinion.***

**11834.21.** Any person licensed under this chapter who operates or proposes to operate an alcoholism or drug abuse recovery or treatment facility, the department or other public agency authorized to license such a facility, or any public or private agency which uses or may use the services of the facility to place its clients, may invoke the provisions of this article. This section shall not be construed to prohibit any interested party from bringing suit to invoke the provisions of this article.

**11834.22.** An alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 11834.23, local bond assessments, and other fees, charges, and assessments to which other single-family dwellings are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons.

**11834.23.** Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article. For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence. This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences. This section shall not be construed to forbid the application to an alcoholism or drug abuse recovery or treatment facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. However, the ordinance shall not distinguish alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons from other single-family dwellings or distinguish residents of alcoholism or drug abuse recovery or treatment facilities from persons who reside in other single-family dwellings. No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone. Use of a single-family dwelling for purposes of an alcoholism or drug abuse recovery facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent those sections are applicable to alcoholism or drug abuse recovery or treatment facilities serving six or fewer residents.

**11834.24.** No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to an alcoholism or drug abuse recovery or treatment facility because of a failure to comply with local ordinances from which the facility is exempt under Section 11834.23, if the applicant otherwise qualifies for a fire clearance, license, permit, or similar authorization.

**11834.25.** For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

COHEN  DURRETT LLP

CIZICKET  
STROCK.

May 8, 2012

VIA U.S. HAND DELIVERY

Loomis Town Council  
3665 Taylor Road  
Loomis, CA 95650

Re: Alcohol and Drug Treatment Facility at 6380 Wells Ave

Honorable Mr. Scherer and Distinguished Council Members;

I have been asked to write to you on behalf of my clients Wendy and Lane Steinmetz regarding the Alcohol and Drug Treatment Facility being planned for the home located at the end of a 2400 foot private driveway at 6380 Wells Avenue, Loomis, California.

Based on the history of the owners, the Morton Family, and their ownership of two other residential Alcohol and Drug Treatment Facilities, my clients believe that this home will apply for a license from the California Department of Alcohol and Drug Programs. While it is true that licensed facilities "commensurate with local need" are exempt from many local zoning regulations, it is reasonable for a local governing body to read that statute as permitting local regulation based on local need. I urge you to use this power to regulate these facilities.

The current trend and the sheer number of residential treatment programs with six beds or less is far beyond the scope of the original legislative intent of the law permitting these businesses. There are currently over 800 such facilities statewide and 27 in Sacramento County. Many of the current facility operators are abusing the protections of the applicable statutes by creating destination facilities that have no connection to local need, but advertise for national and international clientele.

Even in the case of appropriately licensed facilities commensurate with local need, local governments are still allowed to regulate these facilities using traditional police powers that have always been reserved for towns and counties (i.e. health and safety, building standards, environmental impact standards, etc.). Even if you find that this facility is needed, I believe that the traditional police powers of the Town could be used to prohibit this facility based on the inaccessibility of the building, the history of fires and the nature of the surrounding terrain.

Very truly yours,

COHEN  DURRETT, LLP



MICHAEL W. PEARSON

MWP/smg

2100 Northrop Avenue, Suite 900, Sacramento, California 95825  
(916) 927-8797 www.cohendurrett.com (916) 927-8798 fax

**(916) 652-5776**

**BILL BRANCH  
6605 WELLS AVENUE  
LOOMIS, CA 95650**

**Branch982@gmail.com**

RECEIVED

MAY 08 2012

TOWN OF LOOMIS

**DATE:** May 6, 2012  
**TO:** Loomis Town Council  
**FROM:** Bill Branch (on behalf of several Wells Avenue families)  
**SUBJECT:** Clarifying what actions we are asking Town Council to take

Our group of residents from Wells Avenue is suggesting the following actions by the Town Council:

**FINDINGS:**

1. Town Council is responsible for protecting public health & safety in the Town of Loomis, and for ensuring that land use complies with the town's legal standards.
2. If Town Council knows that a proposed land use is dangerous or the location is inappropriate for the proposed use, then Council has a duty to raise those issues.
3. The alleged plans for this property raise serious concerns in all of the categories listed above.
4. The half-mile length of the dead-end driveway leading to this structure in an area of high fire danger, with no alternate escape route, is four times longer than allowed by a Loomis Town ordinance under those circumstances – a violation.
5. Importing unsuspecting patients into a potentially dangerous entrapment in the event of another wildfire like the one in 2001 would be a serious threat to the public health & safety.
6. The California Department of Drug & Alcohol Programs Web site shows two drug & alcohol recovery facilities already located in this small town of only 6,500 population – more than enough to meet all "local needs" as required in Health & Safety Code Section 11834.20.
7. The Web site for New Dawn Recovery Centers advertises that it will pay air fare up to \$500 to attract and import patients from the San Francisco Bay Area and more distant locations. This indicates the facility is not designed to

meet “local needs” as required in Section 11834.20.

8. The steep price advertised on the New Dawn Web site, up to \$10,000 per month, is priced out of reach for many or most Loomis residents – one fourth of their annual income for a single month for some families. This again suggests it is designed to attract wealthy patients from outside the immediate area instead of meeting “local needs” in Section 11834.20.

### **CONTENT OF LETTER TO STATE AGENCIES:**

1. Incorporate all findings in section listed above.
2. Request that State agencies include the above findings in the official license application record – and that State agencies respond in detail to each of these findings before issuing any license.
3. Request that State agency *immediately* notify Town Hall if-and-when a license application is received for this location and that license not be issued before Town government has time to respond.
4. Appropriate State agency should hold its own public hearing before issuing any license for this location.
5. Because of danger of entrapment in a fire storm with no alternate escape route, ask State agency, as a condition of licensing, to require the prominent posting of instructions for emergency evacuation and mandatory education of all incoming patients in those evacuation procedures.

### **COUNCIL DIRECTION TO TOWN STAFF:**

1. With regard to mutual aid, ask Loomis Fire District chief to meet with and conduct site inspections with the *newly hired* South Placer fire chief, who takes office June 1 – and specifically reassess the possible entrapment of patients in a dead end driveway with no alternate escape route. The two chiefs should confer and report back to Council whether the length of that sole escape route meets *both* the standard in Loomis Town Ordinance 14.36.080 and the South Placer Fire District requirements for Subdivision Site Infrastructure under paragraph labeled “Dead End Roadways” – and all other fire safety requirements.
2. Ask the two fire chiefs to evaluate and report back to Council whether an alternate escape route should be provided for fire safety.

3. Ask the South Placer Fire District chief to *immediately* notify Town Council if a fire permit is issued for 6380 Wells Avenue, with an explanation of why that issuance did not raise concerns about possible entrapment.
4. Schedule another Town Council agenda item *immediately*, when an actual license application is received for 6380 Wells Avenue, or, if the State agency fails to release that information in a timely manner, then when a fire permit is issued for the property.
5. Notify all Loomis residents in that particular RA Zone when that follow-up agenda item is scheduled – and make contact with all schools, churches, religious organizations, and youth groups in that zone, including the adjacent Joseph Mareello Youth Center at Mount St. Joseph Novitiate.

We appreciate the Council's concern. We know the Council is just as concerned as we are for the safety of patients sent to such a facility – and for the appropriateness of this location.

###