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Admitted in: MA, ME, NH

September 16, 2013

Lowrie Sargent, Vice Chair
Planning Board
Town of Camden
29 Elm Street
P.O. Box 1207
Camden, ME 04843

Re: F.H.R.E., LLC Ordinance Amendment Proposal

Dear Mr. Sargent:

This purpose of this letter is to summarize the reasons the Planning Board should recommend to the Camden Select Board that the Select Board not include the F.H.R.E. ordinance amendment proposal on the town meeting ballot, and to offer an additional reason (#11 below) the Planning Board should make that negative recommendation.

1. No Standing. F.H.R.E., LLC does not have standing to request an ordinance amendment, because F.H.R.E., LLC is not a qualified voter. See my August 27, 2013 letter to you for additional discussion of this point.
2. No Need for Rezoning. The proposed facility is already allowed in the B-2 and B-3 districts. See my August 13, 2013 letter to Bill Kelly for additional discussion of this point.
3. Conditional Zoning.
 - o The ordinance amendment proposal is in effect a conditional zoning proposal that must comply with Maine law governing conditional zoning. See Exhibit A of my August 27, 2013 letter to you, and my August 13, 2013 letter to Bill Kelly, for additional discussion of this point.
 - o The proposed ordinance does not comply with conditional zoning requirements in Maine law. See my August 27, 2013 letter to you for additional discussion of this point.
 - o At the Board's August 29 meeting Mr. Gibbons cited *Vella v. Town of Camden*, 677 A.2d 1051 (Me. 1996), to argue that the F.H.R.E. proposal is not conditional zoning.¹ But *Vella* did not address the issue of conditional zoning; there was no argument made in *Vella* that the ordinance amendment proposal there was in effect conditional zoning. So *Vella* is not an appropriate case for the Planning

¹ Although you asked Mr. Gibbons at the August 29 meeting to submit a letter addressing this issue, I have not seen any such letter from him.

Board to consider when determining whether F.H.R.E.'s proposal constitutes conditional zoning. Furthermore, the amendment considered in *Vella* was much less detailed than F.H.R.E.'s proposed ordinance amendment, so the comparison is not valid even if there had been an argument in *Vella* that the amendment proposed in that case was conditional zoning.

- Conditional zoning ordinances can provide that the permitted use must obtain special exception approval from the ZBA. At the Board's August 29 meeting Mr. Goodall argued that F.H.R.E. is simply proposing to make alcohol treatment facilities such as their proposed facility a special exception use in the CR District, and therefore their proposal is not conditional zoning. The fact that their ordinance amendment proposes to make alcohol treatment facilities permitted special exception uses in the CR District does not mean that their proposal is not, in effect, conditional zoning.
- Just because a proponent does not label something "conditional zoning," and just because an amendment proposal would on its face apply to more than one property, does not mean that it is not in fact conditional zoning. "Conditional zoning" means "the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned." 30-A M.R.S. § 4301(4). F.H.R.E.'s proposed amendment would effectively rezone the Fox Hill property because it seeks to permit the use of the property in a way that applies only to this specific property.² Because the proposed amendment would apply only to this property, the conditions in the ordinance amendment would not be "generally applicable to other properties similarly zoned."³ This means that this proposal meets the definition of conditional zoning, regardless of how the proponent refers to it.
- Crafting this proposal as an amendment to the entire CR District is simply an attempt to circumvent the contract and conditional zoning law. The intent of the Maine Legislature in the contract and conditional zoning law (30-A M.R.S. § 4352(8)) is for the statutory limits to be imposed on conditional zoning, given that its use as a zoning tool is generally antithetical to the principle of uniformity and thus needs to have defined limits. In enacting the contract and conditional zoning law, in fact, the Legislature stated that it was intended to "preserve the integrity of existing neighborhoods and the zoning process." Comm. Amend. A to L.D. 1809, No. H-627 (110th Legis. 1982), Statement of Fact. If this proposal is not treated as conditional zoning, then the proponent will be allowed to

² The proposed ordinance includes the following restrictions that would limit its application to Fox Hill: (1) 10-acre lot currently in existence, (2) one building currently in existence with at least five bedrooms, (3) all residential buildings set back at least 100 feet from roads and 50 feet from lot lines, and (4) must have at least eight private bedrooms and baths with at least 275 square feet each, with access to at least 3,500 square feet of common space.

³ Even if the amendment might apply to several other properties in the CR District – which is unlikely – F.H.R.E.'s proposed amendment states that it is designed to allow "very large residential estates on large lots" and that it is allowing treatment facilities as "an alternative use of these large residential estates under restrictive circumstances." Thus, the amendment focuses on, if not one, a handful of properties within the CR District, and thus seeks to impose conditions not "generally applicable" to other properties similarly zoned.

circumvent the purpose of Section 4352(8) and its processes and limitations, making the State statute meaningless. In that case, when would the statutory limits on conditional zoning be triggered, absent an offer by the proponent to comply with it?

4. Inconsistency with Comprehensive Plan. The proposed ordinance is inconsistent with the Camden Comprehensive Plan. State law requires consistency. See Exhibit A of my August 27, 2013 letter to you, and my July 31, 2013 letter to you, for additional discussion of this point. In the *Vella* case discussed above, the Court addressed whether a zoning amendment was inconsistent with Camden's Comprehensive Plan. In *Vella*, the property was already grandfathered as a hotel operation, and it was located in the Traditional Village District, which was designated in the Comprehensive Plan as a growth area. Under that circumstance, the Court determined that it was consistent with the Comprehensive Plan to allow the facility to expand its existing operations by increasing the number of rooms offered and allowing meals to be served for guests of the facility. To further clarify this matter, the establishment at issue in *Vella* was the Norumbega Inn, not the Whitehall Inn as represented by Mr. Gibbons at the Board's August 29 meeting.
5. Inconsistency with Existing and Permitted Uses in the CR District. The proposed ordinance is inconsistent with existing and permitted uses in the CR District. See Exhibit A of my August 27, 2013 letter to you for additional discussion of this point. See also the map enclosed with this letter as Exhibit A, which shows the existing commercial uses in the CR District, demonstrating that the F.H.R.E. proposal is not consistent with those uses. In fact, there are only five commercial uses in the CR District today, four of which are hotels or motels and one of which is a boat storage facility. A substance abuse treatment facility is not consistent with either of these types of commercial uses operating in the CR District today. Furthermore, all five commercial uses are grandfathered uses; all of these uses predate the current (1992) zoning ordinance and none of them is located in the Bay View / Chestnut Street corridor.
6. Economic Benefits. The alleged economic benefits of the proposed facility would be the same or greater if the use were required to be located in the B-2 or B-3 districts, where it is currently allowed. See footnote 1 in my August 27, 2013 letter to you for additional discussion of this point. In addition, there is nothing in the proposed ordinance language that prevents the property owner from converting to, or selling to, a non-profit entity, and thereby removing the land from the Town's property tax rolls.
7. Spot Zoning Precedent. Adopting the proposed ordinance would set a precedent for spot zoning in Camden and specifically for spot zoning of residential properties in the CR District to allow commercial uses. This kind of spot zoning is bad policy and threatens the integrity of the zoning ordinance. See my July 31, 2013 letter to you for additional discussion of this point.
8. Unintended Consequences. Adopting the proposed ordinance would open the door to all types of substance abuse treatment centers at Fox Hill, and in the CR District generally. See my August 13, 2013 letter to Bill Kelly, and my August 27, 2013 letter to you, for additional discussion on this point.
 - o Mr. Kelly acknowledged at the Board's August 29 meeting that once this facility is allowed at Fox Hill, the ordinance cannot limit Fox Hill to alcohol treatment if the operator later wants to expand the services offered there to address other disabilities.

- Additionally, once a town determines that a zoning district is appropriate for facilities that treat one type of disability, case law and experience show that such treatment centers, of all types, multiply and cluster, and that it is extremely difficult, if not legally impossible, to stop this from occurring.⁴
 - Mr. LaChance, from Princeton, Massachusetts, argued that the Fernside facility did not lead to additional substance abuse treatment facilities in Princeton. But Mr. LaChance admitted that substance abuse treatment facilities are permitted anywhere in Massachusetts – unlike in Maine – because of the Dover Amendment, which allows a structure that provides certain educational services to ignore local zoning laws. Thus, there is no increased pressure on any particular town on Massachusetts once a substance abuse facility is located there. In fact, McLean has proposed within the past year new facilities in Marlborough and Templeton, Massachusetts; Templeton is only 15 miles away from Fernside and is only 14 miles from another McLean treatment facility in Ashburnham. Because Maine does not have any law similar to the Dover Amendment, developers of these kinds of facilities cannot site them in residential sections of other Maine towns unless those towns allow it, as the proposed amendment would do with respect to the CR District in Camden. Developers can't force those Maine towns to allow such facilities in their residential districts, but they could force Camden to allow them in the CR District, once the proposed Fox Hill facility is allowed.
9. Traffic impacts. The proposed facility would have significant adverse impacts on the neighborhood, given that Bay View Street is so narrow, with curves and short sight distances. See my July 31, 2013 letter to you for additional discussion of this point.
10. Flawed Ordinance Language. The proposed ordinance language is ambiguous and leaves many issues unresolved. See Exhibit B of my August 27, 2013 letter to you for additional discussion of this point. In addition, the proposed ordinance language continues to evolve, and several changes have been made since the version I commented on in my August 27 letter:
- The version provided to me on September 5 applies the setbacks for accessory structures only to structures built after enactment of the proposed amendment. If this provision is intended to protect neighboring uses, why shouldn't it apply to all accessory structures, even if they are currently in existence?
 - The version provided to me on September 5 states that "the following" special exception requirements apply, but then does not list any such requirements. I understand from Mr. Gibbons that this is an error, and that the original language (stating simply that the facility must meet the special exception requirements in the ordinance) should be maintained.
11. Wastewater Concerns. While we continue to oppose this project and do not think that it is suitable for the proposed location, I want to raise an additional issue that the Town of Camden must carefully consider, should it move forward with this proposal. I expect that the Town will fully consider the capacity of the current septic system at this site to handle the additional wastewater that would result from this proposed use, as this is a largely routine matter. What is a little less routine are wastewater concerns associated with this particular proposed use.

⁴ See, e.g., the article from yesterday's New York Times, enclosed as Exhibit B.
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- As the Town is aware, many properties in the Fox Hill neighborhood rely on wells. Moreover, Fox Hill itself relies on a septic system. Adequate precautions must be taken to ensure local wells and Camden's groundwater are not contaminated by pharmaceuticals in Fox Hill's wastewater.
- Even with protocols regarding the disposal of unused pharmaceuticals, drugs inevitably enter wastewater through human excretion due to the fact that not all medications are fully metabolized by the human body. What is a fact of life for our homes and businesses, however, can become a major concern for facilities such as the one proposed at Fox Hill. Drug and alcohol treatment facilities (1) use more types of pharmaceuticals than the average home to treat patients and (2) use higher volumes of pharmaceuticals than the average home due to the concentration of people in one location seeking treatment. It is important that the Town of Camden has a complete understanding of the types of drugs and the volume of drugs that would be used at this proposed facility in order to protect Camden's groundwater as well as local wells.
- There is a growing body of science raising concerns about pharmaceuticals in wastewater as this poses both an ecological threat and a threat to human health. The U.S. Environmental Protection Agency ("EPA") has done considerable work trying to further understand the impacts of what they term "pharmaceuticals and personal care products" or "PPCPs" (See www.epa.gov/ppcp/). In fact, the EPA has catalogued over 17,000 separate scientific writings examining PPCPs (See <http://www.epa.gov/ppcp/pdf/Synopsis-of-PPCPs.pdf>).
- Studies have found septic systems do not completely treat pharmaceuticals and that detectable quantities of drugs can be present in septic tank effluent.⁵ Pharmaceuticals that reach groundwater before being fully treated can have widespread and long-lasting impacts. Drugs can persist in groundwater for over 30 years, which has the potential to contaminate large volumes of groundwater.⁶ The impacts of these pharmaceuticals can be shocking, including concerns regarding the feminization of male fish.⁷
- We believe these risks are yet another reason to reject this proposed location for a substance abuse treatment facility; such a facility is more appropriately sited in the B-2 or B-3 districts, where it is currently allowed and where wastewater would be treated in the public sewer system.

⁵ Godfrey E and Woessner WW. "Screening Level Study of Pharmaceuticals in Septic Tank Effluent and a Wastewater Treatment Plant Waste Stream." Proceedings of the 4th International Conference on Pharmaceuticals and Endocrine Disrupting Chemicals in Water, Minneapolis, NM, 13-14 October 2004, 296-308.

⁶ Barber LB II, Thurman EM, Schroeder MP, LeBlanc DR. "Long-term fate of organic micropollutants in sewage-contaminated groundwater." *Environmental Science & Technology* 1988, 22:205-211.

⁷ Jobling S, Nolan M, Tyler CR, Brighty G, Sumpter JP. "Widespread Sexual Disruption in Wild Fish." *Environmental Science and Technology* 1998 32:2498-2506.

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We again request that the Planning Board recommend to the Camden Select Board that the Select Board not include the F.H.R.E. ordinance amendment proposal on the town meeting ballot. Thank you for considering this additional information.

Sincerely,

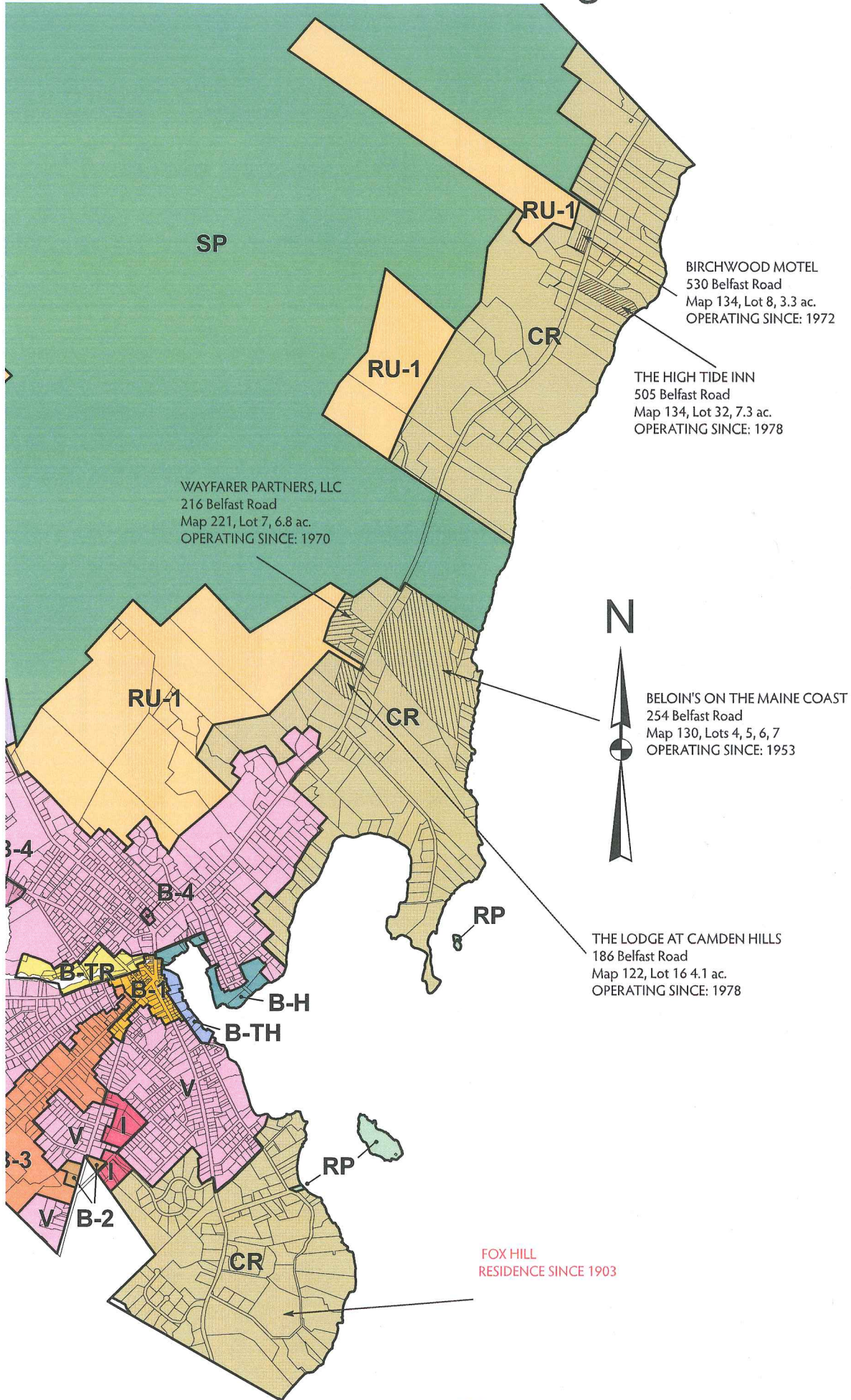


Matthew D. Manahan

Enclosures

cc: Steve Wilson (for distribution to Planning Board and Select Board members)
William Kelly, Esq.
Leonard and Madlyn Abramson
John J. Sanford, Esq.
Paul L. Gibbons, Esq.

CR District — Existing Uses



The New York Times

September 13, 2013

An Intervention for Malibu

By PETER HALDEMAN

MALIBU, CALIF. — Cliffside, Summit, Milestones, Seasons. The names suggest New Age spas or, perhaps, recent-vintage vineyards. They sprawl across the scrubby foothills of this storied coastal town and survey its expensive, eroding beaches, their comforts rivaling those of world-class resorts.

They promote their privacy and exclusivity even as they bask in the reflected glory of their celebrated patrons. (Anyone who passed a newsstand last month knows that Lindsay Lohan spent her summer vacation at Cliffside.) And they're spreading. As of July, there were 35 state-licensed drug and alcohol rehabilitation facilities in this city (population 12,645), in addition to a multiplying number of unlicensed sober-living homes.

Question: What are Malibu's only growth industries? Answer: Winemaking and sobriety. The locals may have a sense of humor about the situation, but that doesn't mean they are happy with it. They fret that the playground of the rich and famous is turning into the capital of detox for the rich and famous. "The rehabs are overwhelming our neighborhoods," Lou La Monte, a Malibu city councilman, recently said. "We have safety issues, noise issues, traffic issues. We're going to take our city back."

The largest and most expensive treatment center here is called Passages, which sits on a bluff across the Pacific Coast Highway from the ocean in the Sycamore Park neighborhood. Passages' 35 clients live in several palatial residences scattered across a 10-acre campus that includes two pools overlooking the ocean, a tennis court and a glass-enclosed gym. Guests receive "integrative holistic treatment" that eschews traditional 12-step recovery methods in favor of such ministrations as hypnosis, life-purpose counseling and sound therapy. Marc Jacobs was a Passages client, as was Mel Gibson. Treatment starts at \$64,000 a month.

In April, Rey Cano, a real estate appraiser who lives in Sycamore Park, appeared at a biweekly meeting of the Malibu City Council to report that he had recently come home in the middle of the day and found a naked Passages client wandering in front of his house. (He gave the man a blanket and called the Los Angeles County Sheriff's Department to pick him up.) Mr. Cano said he was thankful the incident had occurred during the day, when his young daughter was at school, and urged the council to hold Malibu's treatment centers to stricter standards for the sake of community safety.

That was not the first local incident involving a menacing patient. A few years ago, a resident at a Trancas Canyon facility set fire to a structure and threatened to ignite the neighborhood before being apprehended by sheriff's deputies. A knife-wielding employee (and former patient) of another treatment center held up a pharmacy in the Point Dume area.

A month after Mr. Cano's appearance before the City Council, Christi Hogin, Malibu city attorney, sent a letter to the state Department of Alcohol and Drug Programs asking the agency to revoke three of Passages' operating licenses. The city's official objection: Passages has exceeded its bed count by putting up some patients in guesthouses and a pool house rather than in discrete residences, as required by law. (A Passages representative did not return calls for comment.)

City leaders have pledged to improve the accountability of all of the treatment centers. In August, they met with state representatives to air issues ranging from code violations to the facilities' tendency to cluster, or take over multiple homes in residential neighborhoods. "These mega-facilities are buying up three and four properties and creating compounds that are changing the nature of Malibu's neighborhoods," Ms. Hogin said. "They're becoming hospital zones."

The objections of homeowners who find themselves in these zones include noise and allegations that they're being driven out of their own communities. Large or small, the grievances have a distinctly local flavor. "There's nothing quite like having the paparazzi descend on your neighborhood," said Scott Tallal, an entrepreneur who lives down the street from a now-defunct rehab facility in Trancas Canyon. "You can't even get in and out of the neighborhood because they block the road with these huge black S.U.V.'s."

Even critics like Councilman La Monte admit to the rush of pulling up to a stoplight and spotting Ben Affleck and Robert Downey Jr. in a single shuttle van from a rehab center. But celebrities who make repeated visits to Malibu to rehabilitate their images as much as their behavior are less warmly received, except by the tabloid photographers, who are also known to employ doorless helicopters and offshore speedboats for better access.

Ms. Lohan's recent court-ordered stint at Cliffside, a whitewashed Cape Cod-style facility overlooking the Pacific, was her sixth such effort: TMZ had LiLo checking in (skull cap, aviator shades, poofy lips) and was there when she was checking out (strawberry blond hair extensions, aviator shades, less poofy lips).

Blame the Malibu Model for it all. Fifteen years ago, Richard Rogg, a real estate developer who turned to treating substance abuse after kicking a cocaine habit, opened Malibu's first drug and alcohol rehabilitation center. From the beginning, Promises Malibu, originally

housed in two rambling Mediterranean-style residences in the Big Rock area, was meant to serve as an alternative to hard-line traditional programs. Promises offered customized care — drawing on psychotherapy and holistic practices like yoga, meditation, and biofeedback — in vacationland surroundings. Mr. Rogg registered Malibu Model as a service mark for his treatment plan.

Lots of high-octane substance abusers embraced this model. That van containing Mr. Affleck, Mr. Downey and Charlie Sheen belonged to Promises. Britney Spears and Diana Ross are graduates. Promises grew: there are now five houses (and three pools) accommodating 24 rehab patients. Their daily regimen revolves around a therapy session (group or individual) in the morning and two in the afternoon. These are broken up by meals prepared by a chef (specialties include lobster tail and osso bucco) and complemented by optional activities like massage, tennis lessons and equine therapy. There are also excursions to A.A. meetings, a local gym and a beauty salon.

The Malibu Model proved to be a highly marketable paradigm. A surge in prescription drug use, along with a 2000 state statute promoting treatment rather than jail time for drug offenders and lax state licensing procedures, fueled a sharp increase in residential rehab centers. Nowhere was the growth more significant than in Malibu, whose setting and high-profile inhabitants, detoxifying or not, provided free advertising for the programs. By 2007, there were two dozen treatment centers in the city.

“Why Malibu? Because they can charge the big prices here,” Mayor Joan House said. While 85 percent of drug and alcohol treatment programs in the United States are nonprofit ventures, the luxury facilities in Malibu are commercial operations. Room tabs at the better-known centers make the Four Seasons look like a discount chain: rates start at around \$60,000 a month and can exceed \$100,000 a month for V.I.P. accommodations like private rooms or pet boarding. (By comparison, Hazelden, the 64-year-old treatment center network founded in Minnesota, charges as much as \$32,000 a month.)

It’s a competitive market, trading in luxe amenities, esoteric-sounding treatment modalities and household-name graduates. Passages has marble bathrooms, biochemical repair supplements and David Hasselhoff. SOBA offers beach cottages, wellness coaches and Daniel Baldwin. Cliffside has turndown service, orthomolecular therapy and Chaka Khan.

Graduates of Malibu treatment programs who don’t have “sobriety coaches” on their payroll, or who find themselves otherwise ill prepared to re-enter the real world, can check in to one of the many sober-living homes in the area. These group homes, in which residents live under supervision without receiving treatment, are not licensed by the state and impossible

to track, but they are proliferating by all accounts. The actor Matthew Perry, a Promises alumnus, recently opened Perry House, a seven-bed men's facility in his former beach house, an ultramodern glass box in Serra Retreat that offers ocean views, a surround-sound theater and a lap pool with a flat-screen TV overhead.

Neither the sober-living homes nor the rehabilitation centers are licensed medical facilities. In the past, this has not stopped a number of Malibu rehab businesses from advertising in-house physicians or offering medical services, like dispensing drugs, for which they've been cited by state regulators. (The facilities can have physicians on staff, but they are only allowed to perform nonmedical procedures like monitoring a detox.)

The Malibu programs have also been criticized for inflating success rates. Passages says it has a 70 percent "cure rate," and the Cliffside founder Richard Taite recently asserted on the NBC show "Today" that "90 percent of clients who complete treatment stay sober." According to John Kelly, director of the Addiction Recovery Management Service at Massachusetts General Hospital and an associate professor of psychiatry at Harvard Medical School, such statements are "just snake oil salesmanship." He added, "There aren't hard figures, but on average probably about a third of residential program inpatients are in remission one year after intervention."

How do the high-end facilities and their patented mind/body/soul regimens stack up against bare-bones programs? "There's absolutely no evidence to suggest they're more successful," said Richard Rawson, associate director of Integrated Substance Abuse Programs at the University of California, Los Angeles. "There's nothing wrong with having fun things for patients to do, but to call yoga or surfing evidence-based therapy is ludicrous."

The actor Ryan O'Neal, a 42-year resident of La Costa Beach whose family's struggles with substance abuse have been tabloid hay, would agree. "We never had any luck with Malibu," he said. "The Malibu places are basically for the parents to get away from their children."

Jeff Wald is a talent manager in Hollywood who got clean 27 years ago at the no-frills Betty Ford Center in Rancho Mirage, Calif., where rooms are shared, there are daily chores and visitors and offsite activities are taboo. He says there is something wrong with providing fun for patients. "If you're living the way you lived before you went in, with your inflated sense of your own importance, what's the lesson you learn?" he said. "These places that are like the Ritz serve no purpose whatsoever."

Proponents of the facilities maintain that creature comforts and a sense of exclusivity are the carrots they must dangle to entice their clientele. "The Malibu Model says people who don't complete treatment don't get better," said Dr. David Sack, chief executive of Promises. "We

see people who are highly successful individuals. If they're not in a comfortable environment, they're not going to stay long enough to benefit from treatment."

The rehab centers have their defenders among Malibu residents as well. From May Rindge (who owned the rancho that became the city and in the early 1900s tried to stop the state from running the Pacific Coast Highway through her property) to David Geffen (who fought for years to keep the public off his beach), the area has been home to some of the most famous nimbys in the world. Some locals believe much of the hostility toward the facilities stems from a similar impulse. "As liberal as this town is, everybody is looking out for number one," said Karen Farrer, a longtime resident of Point Dume.

For some time, in fact, those who can afford to be adversaries of the rehab centers have been taking matters into their own hands. One couple who lived down the street from Promises Malibu and watched it snap up home after home in the neighborhood took the facility to court three times, for issues like disturbing the peace, before leasing their house to Promises. (The plaintiffs, who moved to Zuma Beach, signed a confidentiality agreement.) In Broad Beach, neighbors of a treatment center and a sober-living home are suing their respective operators over traffic and noise issues.

Malibu officials expect that such lone efforts will become less common. This month, they are reconvening in Sacramento with officials from other rehab-facility-dense communities in the state to consider legislation requiring treatment centers to be more thinly distributed. They're hoping their sheer numbers will help sway state regulators. "Reseda and Long Beach and Riverside have exactly the same problems," Councilman La Monte said. "This isn't some whiny Malibu issue."

Chances are good, however, that doorless helicopters will remain a problem particular to Malibu. And that, whatever happens, the paparazzi will endure, ambushing their subjects outside Seasons as well as Starbucks. Will LiLo rejoin the quarry? Inquiring minds want to know.