



TOWN OF TIBURON  
Tiburon Town Hall  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Action and Approved Minutes - Regular Meeting  
Tiburon Planning Commission  
July 9, 2008 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

#### CALL TO ORDER AND ROLL CALL

**Present:** Chairman O'Donnell, Vice Chairman Kunzweiler, Commissioner Corcoran,  
Commissioner Fraser

**Absent:** Commissioner Frymier

#### ORAL COMMUNICATIONS

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) Minutes. Testimony regarding matters not on the agenda will not be considered part of the administrative record.

ELECTION OF OFFICERS – Emmett O'Donnell Re-Elected Chair  
- John Kunzweiler Re-Elected Vice-Chair

#### COMMISSION AND STAFF BRIEFING

Commission and Committee Reports  
Director's Report

#### PUBLIC HEARING

1. 11 SHEPHERD WAY: CONDITIONAL USE PERMIT AND NEGATIVE DECLARATION TO EXPAND AN EXISTING DAYCARE CENTER (THE LITTLE SCHOOL); Shepherd of the Hills Lutheran Church, Owner; The Little School, Applicant; Assessor's Parcel No. 034-291-31; FILE #10806 [DW]  
**Continued to August 13, 2008**
2. 20-22 MAIN STREET: ACCEPT PUBLIC COMMENT OF A DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE "HARBOR LIGHT" COMMERCIAL PROJECT; Zelinsky Properties, Owner, Hank Bruce Architects, Applicant, Assessor's Parcel No. 059-102-18; File #10705 [LT] **Comments Accepted**

MINUTES

3. PLANNING COMMISSION MINUTES – Regular Meeting of June 11, 2008  
**Approved as Amended**

STUDY SESSION

4. VARIANCES AND FINDINGS (Continued from June 11, 2008) **Study Session Held**

ADJOURNMENT    **9:50 PM**

APPROVED MINUTES NO. 967  
PLANNING COMMISSION  
July 9, 2008  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California

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**CALL TO ORDER AND ROLL CALL:**

Chair O'Donnell called the meeting to order at 7:32 p.m.

Present:        Chair O'Donnell, Vice-Chair Kunzweiler, Commissioners Fraser and Corcoran  
Absent:        Commissioner Frymier  
Staff Present: Planning Manager Dan Watrous, Associate Planner Tyler and Minutes Clerk  
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**ORAL COMMUNICATIONS**

There were none.

**ELECTION OF OFFICERS**

ACTION: It was M/S (Kunzweiler/Fraser) to re-elect Commissioner O'Donnell as Chair. Vote: 4-0.

ACTION: It was M/S (O'Donnell/Fraser) to re-elect Commissioner O'Donnell as Vice-Chair. Vote: 4-0.

## **COMMISSION AND STAFF BRIEFING**

Planning Manager Watrous welcomed John Corcoran to the Planning Commission. He suggested switching the order of Items 1 and 2 of the public hearing and the Commission agreed. Chair O'Donnell reported that he would be absent at the next scheduled Commission meeting.

## **PUBLIC HEARING**

### **2. 20-22 MAIN STREET: ACCEPT PUBLIC COMMENT OF A DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE "HARBOR LIGHT" COMMERCIAL PROJECT; Zelinsky Properties, Owner, Hank Bruce Architects, Applicant, Assessor's Parcel No. 059-102-18; File #10705 [LT]**

Associate Planner Tyler presented the staff report, stating that the Town is processing an application for demolition of an existing 2-story, 2,415 square foot commercial building and replacing it with a new 2-story, 2,941 square foot commercial building. The project is located at 20-22 Main Street with additional frontage on Juanita Lane. A Draft Environmental Impact Report (DEIR) has been prepared for this project, pursuant to the CEQA by Newman Planning Associates, and is currently being circulated for public review and comment. The 45-day comment period will conclude on July 18, 2008, at 5:00 p.m. At the conclusion of the comment period, the consultants will respond to all oral comments made to the Planning Commission as well as written comments submitted during the comment period. She summarized the conclusions of the DEIR stated that the purpose of the public hearing is to receive any public testimony concerning the contents of the DEIR. She recommended that the Planning Commission receive comments on the DEIR and continue the public hearing on the DEIR to the regular meeting of July 23, 2008.

There were no public comments.

Commissioner Corcoran asked what the Town's approach is towards incorporating climate change analysis into EIRs. Associate Planner Tyler said the Planning Commission is only accepting comments on the draft EIR at this time and recommended discussion of the question following the public hearing. Planning Manager Watrous noted that the preparer of the DEIR will attend the next meeting and could answer the question in greater detail.

ACTION: It was M/S (Corcoran/Fraser) to continue the public hearing on the draft EIR to the July 23, 2008 meeting. Vote: 4-0.
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### **1. 11 SHEPHERD WAY: CONDITIONAL USE PERMIT AND NEGATIVE DECLARATION TO EXPAND AN EXISTING DAYCARE CENTER (THE LITTLE SCHOOL); Shepherd of the Hills Lutheran Church, Owner; The Little School, Applicant; Assessor's Parcel No. 034-291-31; FILE #10806 [DW]**

Planning Manager Watrous presented the staff report, stating that The Little School requests a conditional use permit to expand its daycare center by converting an adjacent single-family dwelling to additional classrooms and converting a portion of the existing church parking lot to an outdoor play area. The property at 11 Shepherd Way is currently developed with a church (Shepherd of the Hills Lutheran Church) and a single-family residence. He described the increased enrollment requested and the addition of a fenced play area in a portion of the parking

area adjacent to the residence. He stated that an Initial Study had been prepared to evaluate the application that focused on traffic and circulation issues, along with noise from the play area. He stated that Staff believes that the provided parking would be adequate for the shared church and daycare uses on the site. He stated that Trestle Glen Boulevard has sufficient capacity to handle the increased traffic generated by the proposed expansion and that the lengthy accessway provided by Shepherd Way and the circular driveway on the church site would provide ample queuing capacity in case a larger number of cars arrive at the center at any one time. He noted that the Tiburon Fire Protection District has indicated that the narrowed driveway caused by the proposed play area would not provide adequate room for the passage of fire apparatus, but felt that the play area could be reconfigured to comply with this requirement during the Design Review process. He said that the proposed play area would be somewhat visible from several of the nearby homes along Shepherd Way and Turtle Rock Court, and although several neighboring residents have raised concerns about potential noise from children playing in the play area, the noise from the use of the play area would be intermittent and lessened by the distance from any homes and by mature trees along the parking lot situated between the play area and neighboring residences. He recommended that the Planning Commission hold a public hearing on the application and adopt the draft Resolution adopting the Negative Declaration and conditionally approving the conditional use permit for the project.

Vice-Chair Kunzweiler asked for clarification on the projected traffic counts and the expected additional car trips versus the number of new students. Planning Manager Watrous said these numbers are a worst-case scenario, are supplied by applicant, and take into account that a number of parents carpool or have more than one child in the school. He said it may be more accurate to base the worst-case scenario number on a one child per car basis.

Vice-Chair Kunzweiler asked how the Commission should consider such an application when it comes from the tenant in an owner/tenant situation. Planning Manager Watrous said that similar to commercial activity, the conditional use permit runs with the property and the responsibility ultimately lies with the property owner. However, the tenant typically has the greatest information and control over the specifics operations of the use.

Commissioner Fraser asked if the existing conditional use permit stipulates a cap on number of children that can be enrolled. Planning Manager Watrous said it does not specify a limit, but that the language of the original staff report and the historical basis has been 32 students and the daycare was previously approved to occupy only the fellowship hall.

Commissioner Fraser asked if The Little School is affiliated with the church or simply a tenant. Planning Manager Watrous said he believed it to be a strictly owner/tenant relationship but deferred to the applicant.

Chair O'Donnell questioned and confirmed with Planning Manager Watrous that the current status of zoning on the property is R-1. Chair O'Donnell asked if the zoning would need to change in order to issue a conditional use permit and Planning Manager Watrous noted that a daycare center is a conditionally permitted use in a residential neighborhood.

Chair O'Donnell asked the applicant for their presentation.

Ann Baker, Director of The Little School, stated that the school is a non-profit organization and that the property has housed a daycare program since 1966, with their present license given to

them by Little Lambs, the daycare program preceding them. Ms. Baker stated the school's current license allows for thirty-two students and that the proposed expansion would enable the intake of thirty-two additional children. She clarified that not all of the new enrollments would be in attendance every day. Their current program has thirty-two children attending Mondays, Wednesdays, and Fridays and twenty-eight children attending Tuesdays and Thursdays. The proposed expansion would increase activity to a total of thirty-two children in the downstairs classroom Monday through Friday, twenty-four children upstairs Mondays, Wednesdays, and Fridays and twenty children upstairs Tuesdays and Thursdays. She also noted that the school only enrolls twelve two-year olds at any given time and that the expansion would allow for an additional class each of three and four-year olds.

Ms. Baker noted that while there is opposition based on noise the school has never received a complaint about noise in the past. She said the children who would be housed in the upstairs rooms would be two and three-year olds and she therefore did not feel they would have significant impact. She said any group of children is only outside for an hour in the morning from 10:30 to 11:30 a.m. before going in for lunch, and again from 1:30 to 2:30 p.m. for pickup. She also noted that while there would certainly be more cars using the road, ten of the school's families this year have multiple children enrolled and next year's estimates are for eight to eleven families with siblings enrolled. She thought the impact could be mitigated by further encouraging families to carpool as well as implementing a system where teachers meet and greet students in the parking lot, allowing parents to get in and out of the facility's circular drive expediently.

Ms. Baker said plans call for a 6-foot fence around the new playground as is currently around most of existing playground. She suggested placement of mature plants outside the new fence line to minimize any audible or visual impact. Ms. Baker also said she is willing to obtain an estimate for improving the road conditions on Shepherd Way. She noted that while the school does not own the road, she understands its patrons have the greatest impact on its condition and would be amenable to assisting with the cost of upkeep. She clarified that while the proposal drawings indicate the construction of playground equipment suitable for use with children up to the age of twelve years, The Little School never plans to house children over the age of five or very rarely six years old. She suggested that the architect, John Manchip work with the Fire District to address any access concerns.

Commissioner Fraser asked for clarification on the current number of students attending The Little School. Ms. Baker said that the license allows for a maximum of thirty-two children at any one time and that not all of her students attend on the same days.

Commissioner Fraser asked if the school maintains a waiting list. Ms. Baker said the school has a large waiting list that continues to grow. She noted that with the closures of BTCCC and Marin Mountain School, the lack of preschools in southern Marin has resulted in nearly four phone calls per day inquiring about enrollment at her school.

Commissioner Fraser asked if the plan is to maintain operations in the current facilities as well as add new ones. Ms. Baker confirmed that downstairs operations would continue and the facility would expand into the parsonage already on the property.

Commissioner Fraser asked if The Little School is an independent organization or is affiliated with the church. Ms. Baker said the school is an independent and nondenominational organization.

Vice-Chair Kunzweiler asked how the license would change if the school takes over the parsonage. Ms. Baker said that the license for downstairs would not change and that the expanded area would be covered by an added facilities license. Vice-Chair Kunzweiler asked what the potential maximum number of students would be with the additional license. Ms. Baker said the California requires thirty five square feet per child for indoor use and estimates that the new facility would allow for roughly thirty children; however they only want to take in twenty-four children Mondays, Wednesdays, and Fridays and twenty children Tuesdays and Thursdays. Ms. Baker confirmed that the maximum number of children in attendance on any given day would be fifty-six.

Commissioner Corcoran asked how many parents are currently on the waiting list. Ms. Baker supplied the Commission with a copy of the school's current list and noted that there are approximately twenty-five children on the list for each of their three programs. Mr. Corcoran asked how long the average student waits before coming off of the wait list. Ms. Baker said that nursery and preschool wait list times are up to two years and that the older children are usually placed into a higher grade before a space becomes available for them. Commissioner Corcoran asked how extensive the wait list was prior to the other schools closing. Ms. Baker estimated that those closures added fourteen nursery school, eighteen preschool, and five pre-kindergarten students to the list.

Chair O'Donnell asked if the school currently has a policy for dropping off children. Ms. Baker said that there is a flight of steps the children must be escorted down and currently parents park their cars and bring the children down. Chair O'Donnell asked if there has ever been thought to using a greeter system. Ms. Baker noted that it is not currently an issue but agreed that with the proposed expansion it would probably become necessary.

Chair O'Donnell asked why the expansion would create the need for two distinct play areas. Ms. Baker says that the State requires seventy-five square feet of outside space per child and all the children cannot use the play area at one time.

John Manchip, architect and installer of the proposed playground addition, stated that in his opinion, the existing playground is partly non-compliant and would definitely not accommodate additional students. He reiterated that the State's Licensing Department has requirements on the amount of space available per child and does not think the lower playground can be expanded sufficiently to meet those requirements. Mr. Manchip stated his desire to work with Fire District on the required access and egress, which he felt could be accomplished by deleting a currently planted area in favor of repaving. He clarified that the drawings indicate a playground designed for children ages two to twelve years old and he would recommend the two to five year old size with a lower height.

Commissioner Fraser asked if it is required that the playground be adjacent to the school building. Mr. Manchip replied that it must be accessible to students without crossing traffic.

Commissioner Corcoran asked if there are alternative playground locations. Mr. Manchip indicated several other locations on the plans, noting that some locations would either interfere

with Fire District access, student drop-off or would require a bridge be built for access. Regarding fencing issues, he stated that there are many options ranging from green cyclone fencing to redwood fencing, but State law requires a six-foot height for the playground fence. He explained that the terrain makes it impossible to place the playground between the parsonage and the church.

Chair O'Donnell asked how high the playground equipment would protrude above the fence line. Mr. Manchip explained that the equipment would most likely have a total height of seven feet and that material and color combinations can be customized to blend with the surrounding area.

Chair O'Donnell commented on the "rutty" condition of Shepherd Way and asked if the applicant is willing to repave that road. Mr. Manchip deferred to the applicant but did say that repaving is a very high dollar item and there are budget constraints.

Chair O'Donnell opened the public hearing.

Shaun Coughlin said he resides directly across from the parsonage and opposes the conditional use permit in its present form. He explained that he purchased his home in this neighborhood for its residential character and feels that character would be eroded by the conversion of a single-family dwelling into a daycare facility. He noted that a 75% increase in use is a significant number on its own and he felt that the expansion would have an even greater qualitative impact on his family. He felt that the new playground would directly overlook his backyard and he expressed concerns over both noise and visual impacts. He stated that the dumpster currently placed next to the parsonage gives an indication of how noise travels from that location. He found it troubling that a tenant's use could drive the conversion of a single family home into a school. He did not feel that the current plan showed much effort to mitigate the effect the expansion would have on neighbors and that he expected more creativity in finding a solution to playground placement. He explained that his family is part of the Preserve Homeowners' Association and said the Preserve has attempted to transfer ownership of Shepherd Way to the Town, but the Town has declined this request numerous times. He did not understand how the Town could consider imposing additional wear and tear on a road without taking responsibility for it.

Harry Rice stated that his home is situated much closer to the church and school than any of the other neighbors. He said that his children attended the nursery school there when it was run by the church and he personally enjoys seeing the children there. He said that he would like to see Tiburon remain a child friendly place and he was in favor of the proposed expansion.

Norma Barnes, President of the Church Council for the Shepherd of the Hills Lutheran Church, expressed the church's complete support of the school expansion project and noted that the church is a co-applicant for this project. She explained that the decision to expand was actually initiated by the Church Council who invited The Little School to present a proposal to use the parsonage. Ms. Barnes said the school has been an excellent tenant since 1998 and that the Church Council is aware of the great need for additional preschool space in Tiburon. She explained that the parsonage has not housed a full-time pastor for many years and has been rented out to private families. The Church Council feels that the community would benefit from its expansion of the child care facilities and they would like to work with the neighbors to alleviate concerns and mitigate noise and view issues.

Vice-Chair Kunzweiler asked about the church's lease arrangement with The Little School. Ms. Barnes said the school is currently at the end of a five-year lease that has been extended on a month to month basis. Once the present issue is resolved, she said they hoped to enter into another five to ten year lease with the school, especially considering the school would bear the financial responsibility for the structure conversion.

Commissioner Fraser confirmed with Ms. Barnes that the church would be willing to participate in the renovation and repair of Shepherd Way.

Lori Grace said she recently purchased a home on Shepherd Way and was not informed of the expansion plan at the time of purchase. She said that she suffers from a petro-chemical allergy and must live in areas relatively free from smog and that she never would have purchased her home had she been aware of this project. She expressed her concerns over the presence of up to seventy-seven cars at one time or another, noting that the road is in bad repair. She said that she has real concerns over evacuation of both residents and school children in event of a fire, as the road is quite narrow and fire trucks take up a lot of room, making escape difficult. She questioned the financial capacity of the church to repair the road. She said that she and her sister purchased their home as a writers' retreat and they have real concerns regarding noise. She said that her sister approached the church in an attempt to discuss its financial constraints and possible solutions but felt the church was not open to discussing the issue.

Rosalind Jekowsky said she felt the expansion would have a substantial impact on neighborhood and that while only a few houses would be impacted by noise from the school, they still counted. She said her property extends all the way to Shepherd Way and said the sound from bottles being dropped in the dumpster near the parsonage is very loud. She sympathized with a small budget but did not feel that others should suffer the impact of a poor design. She suggested designers look at using a play structure intended for smaller children rather than two to twelve-year olds. She understood the community need preschool space but felt that the community should look at increasing size of other existing venues. She informed the Commission of a previous lawsuit with the church when one of their water mains broke, damaging Shepherd Way, stating it took nearly two years to resolve. She said that it is unfair to consider imposing additional use on the road if neither the church nor the Town is willing to take responsibility its care.

Bri Tobin, current parent and board member on The Little School Board, said that of her son's class of twelve, eight were siblings and when her daughter starts there in the fall she will be one of the parents with multiple students in her car. She believed great schools are what draws families to Tiburon, felt the Town needs more preschool options to better serve the community and voiced support of The Little School's expansion goals.

Howard Block implored Commissioners to stipulate that any project approval be based on the repair of Shepherd Way. He suggested that this application should prod the Town to take control of the road rather than leave it in the hands of the homeowners' association. He wondered to what extent the church is dependent on the financial support of the school and if a review of their financial statements might not be in order.

Linda Hill said that having raised 2 children in the town, she is familiar with waiting lists and cited concern for her fellow parents. She noted that licensing for childcare centers and preschools are very different and asked Planning Manager Watrous how an R-1 zoned property can be converted to a licensed preschool. Planning Manager Watrous explained that the R1 Zone states

that a conditional use permit is required for a nursery school, day care center or preschool serving more than six children, and therefore, any of those uses are permitted within the R-1 zone.

Tim Geraghty questioned how the conditional use permit could even be considered without first addressing the condition of Shepherd Way. He said that by his calculations, a worst case scenario would involve 170 car trips per day. He said that carpooling is a great idea but does not always happen. He felt that from a risk management perspective, it is inadvisable to congregate more children into a single location. He suggested that there are other locations to create the additional daycare space. He was concerned about Mr. Manchip's earlier comment on the existing playground's questionable compliance and asked how the Town could feel confident that this or any additional playground would be brought to and remain in compliance.

Jinnie Simonsen, Board of the Preserve Homeowners' Association, said that the original easement given to the church was based on its use as a church, but the property then evolved into a daycare center. She said that the Preserve has been very gracious in allowing use of Shepherd Way but there has been a substantial change in use of road over the years. She said the Board has routinely asked that either the Town accept the road or that the church and two homes located on Shepherd Way assist in the repair of the road, but the answer has always been no and therefore the burden has been left with the Preserve. She said that there are engineering concerns for Shepherd Way and additional study and work on the road is in order. She expressed concern over the financial issues of the church and its ability to handle a project of this scope. She said that the association was never contacted by the church or the school. She said that objection to the expansion was nearly unanimous among residents of the Preserve and the formal position of the Board is that it strongly objects to the proposal as it has been presented.

Commissioner Corcoran asked the Planning Manager if the Planning Commission involves itself in matters of easements. Planning Manager Watrous said that it generally does not, but that as the condition of the road is directly related to the proposed use, it is possible to require that the road be made adequate for the proposed use. He explained that staff has not found any indication of a specific written agreement stating who shall maintain the easement. He gave a brief history on the area, stating that the property the Preserve was originally owned by the school district who condemned the portion near Shepherd Way and sold it to a developer, but recorded an easement in 1972 for Shepherd Way for the church and two homes already there. He said that the church was built in 1962 and the conditional use permit for the school was granted in 1966, and he clarified that both the church and preschool were in operation when the easement was initially granted.

Ivan Manchip, father to a Little School student and working with his father, John Manchip on the playground, said there is no other location for the additional playground but there are many options for soundproofing, fencing and landscaping the play area. He noted that the parsonage is well-spaced from other homes. He referred to Mr. Geraghty's question about the current playground's non-compliance and clarified that it is only because of a substandard height for a portion of the fence. He agreed that the condition of Shepherd Way needs to be addressed but said that residents may be exaggerating the road's current condition.

Janet Coughlin said that she bought her home in a residential neighborhood with The Little School's children in the basement so her family hears no sign of the children. She agreed that noise from the dumpster near the parsonage is remarkable and said that if children are allowed to

play in that area there will be a noise impact. She said that when fencing in her yard 15 years ago, they were asked not to extend the fence to the property line.

Wendy Grace stated that she was aware of the church and preschool when purchasing her home and she is concerned with an increase in students and the condition of the road. She said that there needs to be further study on the needs of the church, the school and neighbors funds need to be available to rectify any concerns before any decision is made. She said that she has experienced fires and is terribly concerned about her ability to evacuate should an emergency occur at a time when parents are picking up their children.

Elaina Stephens explained that she has a child enrolled in the school and serves on the school Board. She said that she understands the concerns raised but sincerely hopes they can reach a mutual agreement, reiterating the fact that there are a lot of parents in the community in need of a place for their children to learn.

Ann Baker said she hoped to reach a solution that will work for everyone. She understood that the school will have the greatest use of the road and they are willing to work with everyone on a solution. She reiterated that southern Marin has increasing school needs and that this is a wonderful opportunity for the community.

Commissioner Corcoran asked Ms. Baker if there are ways to offer an incentive or encouragement to parents to carpool. Ms. Baker said she is not sure what would serve as an incentive but suggested distributing the names and addresses of other parents to encourage carpools, as well as implementing a greeter situation.

Commissioner Fraser questioned and confirmed that 25% of the schools' families have more than one child enrolled in the school.

Chair O'Donnell closed the public hearing.

Vice-Chair Kunzweiler said that Tiburon has a large and growing younger population and it is clear that residents want Tiburon to be a family-serving community. He said that the Town's zoning clearly states that daycare and preschools are perfectly legal uses for this property. He recognized that noise concerns were always an issue with preschools. He said that the applicant and the property owner seem very open to finding a solution and he suggested that they take a hard look at acoustic type of fencing and/or vegetation to deal with the noise issue. He noted that previous residents of the parsonage included a rock band that used the home to practice, which surely generated considerable noise. He stated that the easement for Shepherd Way was granted long before there were any houses in the area and he felt that the homeowners' association has assumed the responsibility for that road since the subdivision was developed. He said he lives in similar situation on a private road where they would love for the Town to assume care of the road, but the fact is that the Town generally does not take over private roads. He said that it is a challenge to deal with the issue of the road, knowing that its intensity of use will increase and although the road is not on the verge of collapse, it is in lousy shape and will get worse. He said that the Commission should encourage the homeowner's association, as owners of the road, as well as the church and school, as beneficiaries of use, to find an amicable solution.

Commissioner Fraser stated that Vice-Chair Kunzweiler had articulated the issues fairly well. He said that there is a need within the community for greater preschool capacity and that

previous similar requests turned out to be beneficial to the community as a whole. However, he did not think the proposal was sufficient and that the noise, traffic and road conditions had not been thought out well enough. He suggested that the church, school, and homeowners' association come together and work out a plan for dealing with the roadway before returning to the Planning Commission.

Commissioner Corcoran said that the proposed shared parking was adequate for the overlapping uses on the site. He said that the discussion suggested by Commissioner Fraser was a good idea and reiterated his desire to incentivize carpooling. He understood that the homeowner's association owns Shepherd Way but acknowledged that the majority of use is attributable to the school and the church, and it sounded as though the church is willing to assist in the care of the road. He suggested this be done as a good faith gesture that could go a long way toward resolving this issue. He said that there is definitely a big demand for child care in Tiburon and he felt that most of the other issues regarding noise and visual impact could be mitigated at the design review level by pulling back the fence, installing sound dampening or planting vegetation.

Chair O'Donnell believed that there was an opportunity for a compromise and agreed with his fellow Commissioners regarding the need for daycare and preschool space in Tiburon. He said that he had no objection to the numbers of children or the proposed use but said that the neighbors are owed some degree of good will. He supported Vice-Chair Kunzweiler's suggestion to require sound mitigating fencing and landscaping and he asked to add a condition requiring the school to adopt a drop-off policy to better understand and control traffic circulation. He said that this is a natural expansion that often occurs in residential areas because that is where churches and schools are located. He believed it was unfair to saddle the Preserve homeowners with the cost of resurfacing and maintaining Shepherd Way and felt it is incumbent upon the church and school to establish the means for resurfacing the road to a standard that would be acceptable to the Town.

Vice-Chair Kunzweiler expressed his concern that placing the entire responsibility of the road on the church, school or both, as roads are expensive. He asked if the Commission would entertain a continuance on the item to allow everyone time to address some of the issues raised. He said that he would like to encourage the homeowners' association, church and school to meet with someone who can tell what needs to be done to the road and perhaps establish a plan to repair Shepherd Way. He suggested that two members of the Commission act as a subcommittee to meet with the various parties.

Planning Manager Watrous suggested discussing timeframe constraints with the applicant, as he understood that the applicant desired to complete this in time to allow new enrollment in September.

Ms. Baker confirmed that she had hoped to complete the necessary work by Labor Day in time for fall enrollment. She said one bathroom in the parsonage needs to be remodeled from a single tub/toilet to a two sink/two toilet configuration, which could be done simultaneously with work on the outside.

Commissioner Corcoran asked if the proposal then had to go to the Design Review Board. Planning Manager Watrous said that the play area would only need Staff-level Design Review approval, which would take approximately three weeks. Commissioner Corcoran asked Ms.

Baker if this would leave her enough time to complete the project by her target date, and Ms. Baker said she was unsure of what the necessary lead time is for ordering the play structure.

Chair O'Donnell asked if Commissioners Fraser and Kunzweiler would be willing to serve on the subcommittee, and both agreed. Chair O'Donnell asked that in the interim, Ms. Baker and the church meet with a representative of the homeowners' association and subcommittee members to address the issue of Shepherd Way.

Vice-Chair Kunzweiler said that his neighborhood used a road engineer to assess the situation and provide advice on their road's condition, useful life and the costs associated with maintaining it. He suggested the applicant do the same and that the church, as landlord, will need to work on this with them.

Chair O'Donnell asked that Planning Manager Watrous coordinate a meeting time with everyone.

Ms. Simonsen stated that this feels like it is moving way too quickly and doubted the possibility of obtaining an engineer in such a short timeframe. She noted that their association's attorney was in trial the entire month of August and argued that her association has the responsibility of notifying all of its members which would take time. Planning Manager Watrous said the intention of the continuation is to encourage dialogue that did not require legal action. Chair O'Donnell said that is an internal issue and not that of the Planning Commission.

Commissioner Fraser summarized that the purpose of the meetings would be to address the mitigation of noise, traffic, drop-off policy, visual impact, and emission issues.

<p><b>ACTION:</b> It was M/S (Kunzweiler/Corcoran) to continue the application to the August 13, 2008 meeting. Vote: 4-0.</p>
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## **MINUTES**

### **3. PLANNING COMMISSION MINUTES – Regular Meeting of June 11, 2008**

Commissioners requested the following amendments to the Minutes:

- Page 2, 2nd paragraph from the bottom, last sentence: end with “weekend bicycle traffic is substantial.”

<p><b>ACTION:</b> It was M/S (Fraser/Kunzweiler) to approve the minutes of June 11, 2008, as amended. Vote: 4-0.</p>
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## **STUDY SESSION**

### **4. VARIANCES AND FINDINGS**

Planning Manager Watrous presented the staff report, explaining that at the Town Council / Planning Commission / Design Review Board workshop held on April 29, 2008, it was suggested that a variance and findings study session be held by each of the three groups at future

meetings, based on an internal training session held by staff earlier in the year. He noted that the Planning Commission considers very few applications for variances largely because of the manner in which review authority is apportioned in the Tiburon Zoning Ordinance. He discussed the findings required to approve variances, noting the difficulty in making findings related to practical difficulty or unnecessary physical hardship. He noted that special circumstances do not apply to design issues and must address substantial physical aspects of the property that would deprive applicants of the same privileges other people receive under normal zoning. He emphasized that the Planning Commission should take these variances seriously and to review them with a careful, legal eye.

Chair O'Donnell asked if the variance findings are written by the applicant or architect. Planning Manager Watrous said they are at least rewritten by staff but more often reflect the independent judgment of staff. He noted that architects are not particularly well-suited, in general, to make findings.

### **ADJOURNMENT**

The Planning Commission adjourned the meeting at 9:50 p.m.