



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

Action and Approved Minutes - Regular Meeting  
Tiburon Planning Commission  
August 13, 2008 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

#### CALL TO ORDER AND ROLL CALL 7:30 PM

Chairman O'Donnell, Vice Chairman Kunzweiler, Commissioner Corcoran, Commissioner Fraser, Commissioner Frymier **All Commissioners Present**

#### 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. **There Were None**

#### COMMISSION AND STAFF BRIEFING

Commission and Committee Reports  
Director's Report

#### PUBLIC HEARING

1. 20-22 MAIN STREET: CONDITIONAL USE PERMIT FOR DEMOLITION OF AN EXISTING TWO-STORY COMMERCIAL BUILDING (THE "HARBOR LIGHT") BUILDING, CONSTRUCTION OF A NEW TWO-STORY, 2,950 SQUARE FOOT COMMERCIAL BUILDING, AND CONSIDERATION OF CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) FOR THE PROJECT; FILE #10705; Zelinsky Properties, Owner; Hank Bruce Architects, Applicant; Assessor Parcel No. 059-102-22 [LT] **EIR Certified; CEQA Findings Made; Conditional Use Permit Approved (5-0)**
2. 11 SHEPHERD WAY (THE LITTLE SCHOOL): CONDITIONAL USE PERMIT AND NEGATIVE DECLARATION TO EXPAND AN EXISTING DAYCARE CENTER; FILE #10806; Shepherd of The Hills Lutheran Church, Owner; The Little School, Applicant; Assessor's Parcel No. 034-291-31 (Continued From July 9, 2008) [DW] **Approved (5-0)**

DISCUSSION ITEMS

3. GREEN BUILDING PROGRAM---REFERRAL FROM TOWN COUNCIL REGARDING POSSIBLE AMENDMENTS TO THE DRAFT GREEN BUILDING ORDINANCE NOT REVIOUSLY CONSIDERED BY THE PLANNING COMMISSION; FILE MCA 2008-02 [SA] **Recommended Approval to Town Council (3-2)**

MINUTES

4. PLANNING COMMISSION MINUTES – Regular Meeting of July 23, 2008 **Approved as Amended (4-0-1)**

ADJOURNMENT    **10:25 PM**

PLANNING COMMISSION MEETING  
APPROVED MINUTES NO. 969  
August 13, 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 7:30 p.m.

Present:        Chair O'Donnell, Vice-Chair Kunzweiler, Commissioners Fraser, Frymier and Corcoran

Absent:         None

Staff Present: Planning Manager Watrous, Community Development Director Anderson, Associate Planner Tyler, EIR Consultant Newman and Minutes Clerk Levison

**ORAL COMMUNICATIONS:** None

**COMMISSION AND STAFF BRIEFING:**

Community Development Director Anderson provided a briefing on the near completion of the Highway 101 off-ramp improvements, noting a January 1993 resolution of the Tiburon Town Council urged CalTrans to promptly complete the improvement which was supposedly fully funded at that time.

Planning Manager Watrous noted that the annual review of the Kol Shofar conditional use permit is on the agenda for the August 27, 2008 meeting.

**PUBLIC HEARING:**

**1. 20-22 MAIN STREET: CONDITIONAL USE PERMIT FOR DEMOLITION OF AN EXISTING TWO-STORY COMMERCIAL BUILDING (THE “HARBOR LIGHT”) BUILDING, CONSTRUCTION OF A NEW TWO-STORY, 2,950 SQUARE FOOT COMMERCIAL BUILDING, AND CONSIDERATION OF CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) FOR THE PROJECT; FILE #10705; Zelinsky Properties, Owner; Hank Bruce Architects, Applicant; Assessor Parcel No. 059-102-22**

Associate Planner Tyler presented the staff report, stating that the approximately 2,415 square foot “Harbor Light” building at 20-22 Main Street has been vacant since approximately 2006 and is uninhabitable due to its extensive deterioration and poor structural condition. The property owner has submitted an application to demolish the existing commercial building and replace it with a somewhat larger, 2,941 square foot retail/office building. A conditional use permit is required pursuant to the Tiburon Zoning Ordinance for construction of the new building. She explained that a focused environmental impact report had been prepared for the project that concludes that all but one impact will be mitigated to a level of less-than-significant, with the sole exception being that the proposed project would result in the demolition of a structure that is eligible for listing on the California Register of Historic Places. She stated that staff has concluded that there is ample justification for rejecting all the project alternatives discussed in the EIR and adopting a statement of overriding considerations for approval of the project.

Commissioner Frymier asked for clarification on the application of a transfer of intensity for the site. Associate Planner Tyler explained that there is approximately 867 square feet of undeveloped property in the Main Street parking lot site and a recorded agreement between the Town of Tiburon and that property owner allowing the owner to transfer the portion of that square footage that will be developed to another building.

Commissioner Corcoran asked how frequently a transfer of intensity takes place. Community Development Director Anderson said he could recall two or three instances since the General Plan with that policy was adopted.

Chair O’Donnell opened the public hearing.

Hank Bruce, architect, said that the Harbor Light building has been a part of Tiburon since the 1880s. He said that the original building burned down in 1921, was rebuilt and remains today although in sad disrepair. He said his intent was to retain the presence of the existing building and as much of its atmospheric essence as possible. He said that the design attempts to pick up the flavor, forms, and colors of the downtown area so that when completed, the building and its use will remain, but the building will be structurally sound. Mr. Bruce distributed a draft rendering of the historical plaque he proposed to install on the column beneath the gaslight on the front of the building.

Commissioner Corcoran asked if the plaque was designed to follow certain guidelines or was a strictly independent creation. Mr. Bruce explained that the wording is similar to that found on other historical buildings. Director of Community Development Anderson said there is not a specific framework for historical plaque design but that staff would typically consult with the Heritage and Arts Commission before final approval.

Commissioner Frymier asked why the height increase and additional square footage are necessary. Mr. Bruce explained that this is a commercial structure with an economic cost and return on construction, and he felt that it was appropriate to utilize the available square footage so long as the building would not impact the community. He stated that the additional height was necessary in order to properly address the needs and requirements of current construction as well design aesthetics.

Chair O'Donnell pointed to requests by both the Heritage and Arts Commission and the Belvedere-Tiburon Landmarks Society that the design and individual elements of the building retain their historical context within the Town. Mr. Bruce said the design drawings were good indications of this intent and although certain elements would have to be compromised for energy efficiency, he felt the overall shape and impact of the building would echo that of the original. Mr. Bruce did concede that the light at the rear of the building may look too modern.

Chair O'Donnell closed the public hearing.

Vice-Chair Kunzweiler expressed his full support of the project. He said that the project would replace a historical building which has fallen into disrepair and could represent a public hazard if not addressed. He found that the additional square footage fit well within the requirements of the zoning ordinance and general plan and that the conceptual design was sensitive to the Town's design guidelines.

Commissioner Fraser echoed Vice-Chair Kunzweiler's comments and complimented Mr. Bruce on all of his efforts. He found the design to be consistent with the general plan and he hoped that this would help continue the momentum of revitalization in the downtown area.

Commissioner Corcoran echoed Commissioner Fraser's sentiments. He spoke of the concerns raised by Ms. Jackson's letter regarding construction and is satisfied that the Building Department is capable of handling any issues that may arise. He stated that any construction is not ideal but the benefits of a new structure within the downtown area are worth it. He said that it was unfortunate that this building has to be replaced but Mr. Bruce has designed the building in a sensitive way that contributes something to the downtown atmosphere.

Commissioner Frymier expressed her support of the project and the plaque as well as her desire to see some conformity in the plaques throughout the Town. Commissioner Corcoran agreed, stating that he would like to see the Heritage and Arts Commission and the Landmarks Society use this as an opportunity to develop guidelines for historical markings.

Chair O'Donnell stated his agreement with the comments of the other commissioners and wished the applicants success.

<p><b>ACTION:</b> It was M/S (Kunzweiler/Fraser) to adopt the resolution certifying the final EIR for the Harbor Light Commercial Project. Vote: 5-0.</p>
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ACTION: It was M/S (Kunzweiler/Fraser) to adopt the resolution adopting the findings relating to the approval of the Harbor Light Commercial Project pursuant to the California Environmental Quality Act. Vote: 5-0.

ACTION: It was M/S (Fraser/Kunzweiler) to adopt the resolution approving the Conditional Use Permit to demolish and reconstruct the Harbor Light building: Vote 5-0.

**2. 11 SHEPHERD WAY (THE LITTLE SCHOOL): CONDITIONAL USE PERMIT AND NEGATIVE DECLARATION TO EXPAND AN EXISTING DAYCARE CENTER; FILE #10806; Shepherd of The Hills Lutheran Church, Owner; The Little School, Applicant; Assessor's Parcel No. 034-291-31 (Continued From July 9, 2008)**

Planning Manager Watrous presented staff report. He stated that on July 9, 2008, the Planning Commission reviewed an application by The Little School for a conditional use permit to expand its daycare center at 11 Shepherd Way (owned by Shepherd of the Hills Lutheran Church) by converting an adjacent single-family dwelling on church property to additional classrooms and converting a portion of the existing church parking lot to an outdoor play area. Several neighboring residents raised concerns about potential traffic, noise, visual and roadway maintenance issues that could result from this project.

The Planning Commission indicated that the proposed daycare expansion would appear to serve a need in the Tiburon community for such services, but that the Little School needed to provide additional information to address the neighbors' concerns. The Commission appointed an ad hoc subcommittee which met with the applicants and the neighbors to discuss these issues.

Chair O'Donnell asked for a report from the subcommittee.

Vice-Chair Kunzweiler stated that the sense of the subcommittee was that the project was generally pointed in the right direction but there was not enough information on which to base a sound decision. He said that points of concern revolved around visual impact, the sound level generated by placement of the new playground, and an increase in traffic. He emphasized that the condition of Shepherd Way is definitely an issue but is covered by an easement reaching back to early 1970s and so he remained unconvinced that it is an issue that is germane to a decision on the conditional use permit. He described meetings that the subcommittee held with representatives from the church, the Little School, the Preserve Homeowners Association, parents, and neighbors. He reported that these meetings provided a good airing of the issues, adding a sharper focus on the need for a clearer understanding of the issues of visual impact, sound level and traffic. He said that he also had one-on-one conversations with representatives of both sides and attended two onsite meetings between school representatives and neighbors.

Commissioner Fraser said he attended an August 5, 2008 meeting with church representatives, the applicant, the applicant's playground designer, and neighbors. He felt that the meeting showed movement from both parties and he was pleased to see willingness to compromise, but he noted that some neighbors found the adjustments to the siting of the play area to be inadequate. He said that he asked the applicant to evaluate this feedback from the neighbors and be prepared to articulate their response to the Planning Commission. Commissioner Fraser

commended both the Preserve Homeowners Association and the church and school representatives on their concerted efforts to reach a common ground.

Chair O'Donnell opened the public hearing.

Norma Barnes, President of Shepherd of the Hills Lutheran Church Council, said that the church and school have made a very good faith effort to address the concerns of their neighbors. She said that they invited all parties to meet onsite and playground designer John Manchip had revised the proposed layout based on several suggestions by neighbors. She said that the play area had been relocated to an area in front of the house and garage where it would reduce any sound or visual impacts. She said that the playground fence was moved in nine feet from the original plan and sound dampening vegetation would be planted along its length. She said that the neighbors were then invited back to view the revised layout. She stated that they had completed an analysis of daily attendance and car trips which indicated a maximum of 56 children attending the Little School on any one day. She clarified the analysis of car trips, stating that the trip information should read as a total number of daily or one-way trips, not round trips and that the current 60 one-way trips per day would increase to approximately 105 per day.

Ms. Barnes stated that the church and representatives of the Preserve Homeowners Association have met to discuss various options for the maintenance of Shepherd Way. She explained that twenty-two homeowner's on Turtle Rock Court each own an undivided 1/22 interest in Shepherd Way but do not use the road to access their properties. She said that the Church Council approved a resolution to support efforts of the Turtle Rock Court residents to transfer ownership of Shepherd Way to the church. She said that she spoke with Basil Plastiras, attorney representing the Preserve Homeowners Association, and was informed that a transfer in title would be difficult and he suggested that instead the church and the school consider entering into a maintenance agreement for the roadway.

Vice-Chair Kunzweiler asked if a maintenance agreement has been drafted and Ms. Barnes said it had not.

Basil Plastiras, attorney representing the Preserve Homeowners Association, stated this was an odd situation where a group of homeowners own a road they do not use. He reiterated the desire and previous failed attempts by the Preserve Homeowners Association to unburden itself by giving the road away. He explained that in some cases, the individual homeowner's title to the road is unclear, remaining in the possession of the developers or previous homeowners, and that it would be difficult to transfer ownership of the roadway. He stated that he spoke to the Town Attorney, who said that it would be unlikely that the Town would take over the road. He stated that the homeowners association is mainly seeking liability protection and assumed costs with a maintenance agreement, both of which are typically assumed by those who use the road. He felt that a maintenance agreement was doable and estimated that reaching a formal agreement would take several weeks. He asked the Planning Commission to defer a decision on the conditional use permit until the concerned parties are able to reach the agreement.

Vice-Chair Kunzweiler said he understood the frustration in dealing with a privately owned road but questioned if there is a legitimate bifurcation of issues of the road versus the application. He said that the road has been an issue for many years but has come under the spotlight as the result of a legitimate request to expand the daycare use.

Mr. Plastiras stated that increased use of the road beyond that allowed by the easement theoretically would entitle the homeowners association to obtain a court order. He assured the Planning Commission that it was not the desire of the homeowners association to go to court, but the association desires only to limit their liability exposure. He said that the homeowners association itself had no objections to this application, but there is some question as to whether their insurance currently covers the liability for the roadway. In response to a question from Vice-Chair Kunzweiler, he acknowledged that the CC&Rs of the homeowners association allows the association to enter into agreements.

Commissioner Corcoran questioned whether the homeowners association can make a nexus between the roadway and the conditional use permit, if the issue with the roadway does not change as a result of this application. Mr. Plastiras stated that the Planning Commission should not make a decision that would increase the burden on the homeowners association instead of the applicant. He stated that the Town has twice previously refused to accept the road and he stated that there would be a substantial cost to bring the roadway up to accepted street standards. He felt that it was fair to forebear a decision on the use permit until a maintenance agreement has been reached, but added that the Commission could make a decision contingent upon an agreement being reached by the church, school and the homeowners association.

Vice-Chair Kunzweiler cautioned that the failure to reach an agreement would result in a continuance of the situation that exists today. Mr. Plastiras responded that failure to reach an agreement could result in legal action. He stated that the expansion of the Little School was not contemplated when the easement was first established. He reiterated that the homeowners association does not want to go to court, but wanted an agreement that would indemnify the homeowners association and/or the homeowners themselves against any loss that may arise out of use of that road, and have those parties named as additional named insured on their insurance policy. He believed the church and school to be in agreement on the general provisions but that there are specific questions pertaining to the amount of insurance necessary.

Ted Bayer spoke on behalf of Sean and Janet Coughlin. He expressed their primary concern to be the morphing of the property's use from a church to a daycare facility and finally to a preschool with a small church operation. He said the Coughlins maintain concern over the visual and sound impact to adjacent homes as well as the condition and further wear to Shepherd Way. He said that they feel strongly that the fence line should be moved back 15 feet from the existing trees, rather than the proposed 9 feet. He said that the roadway easement was granted at a time that the property was used as a church and the Planning Commission is being asked to intensify that usage. He said that there would be a 75% increase in car trips which the roadway cannot handle. He said that if the road breaks down, there would be impacts on downhill properties and liability problems.

Commissioner Corcoran suggested that a 75% increase might be an inflated value and does not take into account the other car trips resulting from churchgoers and the road's residents. He noted that the easement does not specify how the road is to be used. Mr. Bayer responded that the Planning Commission has a responsibility to consider the impact on the physical environment of the road and neighborhood that would result from a significant increase in the use of the road.

Rosalind Jekowsky stated that the requested fence setback of 15 feet was decided upon the advice of a sound engineer and should be taken seriously. She wanted to know why drawings

showing the 15 foot setback had not been presented this evening nor has the applicant explained why this setback was not possible. She said that there are only a few days per year where parking capacity at the church is an issue and they have a lot of space to address the issue. She reiterated that the proposed expansion would change the quality of their lifestyle and she objected to this request to meet the needs of a tenant of the property.

Chair O'Donnell asked Ms. Jekowsky if the nature of her complaint pertained to the fence placement or the intensification of use. Ms. Jekowsky explained that they would naturally prefer to minimize the level of use but are looking for a compromise.

Lori Grace said she lives in the house that would be most impacted by the proposed expansion and restated her shock that she was not apprised of this application prior to the purchase of her home. She said that she attended both of the subcommittee meetings where she raised several objections, most notably due to her chemical sensitivities. She suggested several design alternatives which included adding an outlet onto Trestle Glen Boulevard, forced carpooling, and busing students from a meeting point at Blackie's Pasture. She stated that the car trip calculations need to account for both a trip up and a trip back down the road, estimating that the actual number would be closer to 1,030 trips per week. She was also concerned about potential traffic jams in an emergency situation. She expressed her displeasure that none of her ideas were taken seriously and informed the Planning Commission that she has asked her attorney to be present for this meeting and is seriously considering an appeal should the conditional use permit be approved. She restated her concern for herself, the air quality, safety and the impact of emotional people waiting in a line of traffic for the preschool.

Bob Knox, attorney representing Ms. Grace, stated that there is confusion about the number of car trips and that the most recent document understated the total number of car trips by 100%. Chair O'Donnell and Commissioner Corcoran reminded Mr. Knox that those numbers do not take into account carpooling students or multi-student families.

Mr. Knox stated that the application should be continued and he felt that it would be inappropriate for the Commission to establish time constraints for the finalization of a maintenance agreement, but suggested alternatively making the agreement a condition of approval. He said that the entire project appeared to be in flux and the true impacts are still unclear. He suggested further development of information to include a formal noise study and its impact on his client before a decision is made. He felt that the school's activities were beyond the scope of typical daycare activities and may not be allowed in an R-1 zone. He said that the condition of the road would be a noise issue.

Vice-Chair Kunzweiler asked Mr. Knox if his client, as a user of the road, would be willing to be a party to the maintenance agreement. Mr. Knox felt that she would probably not be willing to participate in an agreement that allows increased use of the roadway.

Monique Atkins introduced herself as a new Tiburon resident and noted that as a mother, she feels there is an incredible need for preschools like this. She said that her son should begin preschool this year but is on every wait list in Tiburon as well as three in Mill Valley. In response to a question from Commissioner Corcoran, she said that the Tiburon preschools had indicated no possibility of enrollment for this school year and that at one preschool she was number 100 on the wait list for the following year.

Tanya McGregor, also a parent and new to Tiburon, echoed the sentiments of Ms. Atkins, adding that some schools actually have closed their wait lists. She said that she has heard great things about the Little School and thinks this need is a true concern.

Tim Geraghty thanked the subcommittee for their work. He agreed that a formal decision should be postponed until enough information was available to properly address the concerns of neighbors. He said that he would like clarification on setting the fence back either 9 or 15 feet, including from where that distance is measured. He said that most of the volume of traffic using the roadway is related to the school and that the expansion would result in a meaningful increase in traffic. He asked for a cap on enrollment and expressed his desire for the expense related to obtaining sound studies to be borne by the applicant. He asked if enrollment priority at the preschool would be given to Tiburon residents or if the new Tiburon children are being boxed out by residents of other communities that have not taken the initiative to address their preschool needs.

Chair O'Donnell said he believed that the enrollment cap is related to what State law and Fire codes allow. Planning Manager Watrous supported this, adding that the draft resolution spells out the requested enrollment levels.

Susan Geraghty said she visited the school site and viewed the proposed play area layout. She said that the new fence line was measured from the precipice rather than the tree line where she thought it would be.

Buddy Staright asked to see an up-to-date drawing showing the exact proposed layout. He thanked everyone for their efforts to reach an agreement and asked when the Belvedere-Tiburon Child Care Center which had burned was scheduled to resume operations. Planning Manager Watrous responded that they were hopeful for later this fall.

Wendy Grace reiterated her concern to resolve the ambiguities of the easement before a decision is reached, adding that she did want to be a part of litigation.

John Manchip, playground designer for the applicant, stated that a road engineer recommended grinding down and resurfacing the roadway instead of a slurry seal which would last no longer than six months. He stated that the 9-foot fence setback was measured from the edge of the asphalt, not the hillside precipice. He said that he reviewed the idea of moving the fence back a total of 15 feet and found that it would be impractical, involving a complete realignment of the driveway and elimination of five parking spaces. He explained that the Fire District requires a 30 foot inside radius for its equipment and that he is guided by safety guidelines for school playgrounds which include a requirement for a 6 foot fence. He said that the proposed plan incorporates the minimum requirements and cannot be reduced further without compromising compliance and safety.

Commissioner Corcoran asked if the play area could be rotated and moved to a point he demonstrated on the drawings. Mr. Manchip agreed this could be done, but it would involve relocating the playground in front of the entry for the church and school. He said that his initial design placed the play area within the parking lot island but this was unacceptable due to the visual impact on neighbors and cross-traffic with other students. He said that moving the play area closer to the existing building would help screen the area and minimize the removal of parking spaces.

Norma Barnes stated that a nursery school has existed at the church since shortly after its construction in 1964 and significantly prior to the creation of the Preserve subdivision. She noted that the existing building would only allow a maximum of 32 children and they will not return to ask for an increased allowance. She reiterated Mr. Manchip's statements that moving the play area further would require cutting into the landscaped island to satisfy the requirements of the Fire District and any other changes would interfere with the flow of through traffic interfere with parents walking their students to the designated drop-off point.

Commissioner Corcoran asked if there is any reason parents could not walk through the playground to deliver their children. Ms. Barnes explained that the playground would be fenced on the sides that are not bordered by the residence and would be accessed via a security gate.

Commissioner Corcoran inquired about unused space in one corner of the lot. Ms. Barnes explained that it is a hillside with an entrance to open space, noting that many people park in their lot and then hike into the open space.

Ann Baker, Director of the Little School, stated that it is not their intention to grow more, adding that while the structure and their license could allow for 32 children, they plan on a maximum of 24 per day. She said that parents could walk through the playground security gate, but its current placement allows teachers to easily greet students and maintain a good traffic flow. She reminded the Commission there State requirements for the amount of square footage of indoor and outdoor space per child. She stated that moving the fence line back 9 feet is as far as they can go while also accommodating the Fire District and she was unsure what moving it back 15 feet would mean.

Commissioner Frymier asked Ms. Barnes to clarify the numbers of students attending school each day. She stated that on Mondays, Wednesdays and Fridays there would be 32 children downstairs and 24 upstairs, while on Tuesdays and Thursdays there would be 32 children downstairs and 20 upstairs.

Commissioner Frymier commented that on her recent visit to the site she noted that the staircase railings appeared to be out of code compliance and she hoped that that will be addressed.

Chair O'Donnell closed the public hearing.

Commissioner Fraser expressed his appreciation for places of worship and places where residents can come together to enjoy the community and he recognized the need for adequate space for young children in preschool and daycare. He said that the initial application lacked focus and was difficult to understand but the applicant has made good strides to adjust to the needs of the homeowners. He was not sure that a sound study was needed and felt that the Planning Commission should request sound mitigation measures from the applicant and leave the design process in the hands of staff and the design review process. He said that he was sensitive to the Graces' concerns over emissions on Shepherd Way but felt that it was up to the applicant to come up with any possible mitigation measures. He said that he remained unconvinced that the applicant should be saddled with correcting the roadway maintenance issues of the homeowners association.

Vice-Chair Kunzweiler stated that the role of the Planning Commission is to execute and bring to life the General Plan which was carefully drafted over an 18-month period and incorporated input from over 1,000 Town citizens. He agreed that the Town is woefully inadequate in the realm of day care and child serving facilities and the church and school have the right to ask for expanded activities based on an established use that is allowed by zoning guidelines. He said that the Commission must devise a reasonable solution that neither bankrupts the applicant with conditions nor overlooks the rights of the neighbors. He found that the requested number of additional children to be acceptable and a reasonable request and the playground design was also reasonable given the site constraints. He felt that the visual impact of the fence was not a big issue but that the sound from the playground was unknown. He suggested that the applicant present additional information on materials for the fence to ensure that any sound impact is accommodated as reasonably as possible. He noted that it was not reasonable for neighbors to expect silence from a property. He characterized the roadway issue as a can of worms that needs to be resolved. He agreed that the condition of Shepherd Way is a liability but stated that it is unfair to the applicant to place a long-standing issue in the way of a conditional use permit application. He did not support conditioning approval of the use permit on a maintenance agreement to be reached later as there is significantly more discussion that needs to take place on the matter. He said that both parties have looked the other way for a long time and the issue of maintaining the roadway is there now. While he sympathized with the residents of Shepherd Way, he said that they chose to purchase their home on a mixed use road in poor condition and the increase in traffic is consistent with a reasonable extension of the use. He therefore was in support of the resolution as drafted.

Commissioner Frymier asked and confirmed that the Commission's role is to vote on whether or not to approve a conditional use permit that allows for a greater number of students. She asked what would happen if staff was not satisfied with the sound impact. Planning Manager Watrous explained that staff would review the analysis of the fencing's sound deadening materials before making suggestions and that ultimately, staff was capable of handling this process.

Commissioner Frymier expressed her support of the idea and stated that the Town could use more preschools. She supported in changing the condition of approval to specifically require sound mitigating building practices to be reviewed through the design review process.

Commissioner Corcoran noted that the Planning Commission gets very specific with its amendments and approvals at times. He recognized the need for the school and said granting the conditional use permit could be a great thing for the Town. He was uncomfortable with the Planning Commission deferring to Town staff on the matter and proposed to continue the item until suitable information is obtained, particularly about carpooling.

Chair O'Donnell stated that schools and religious institutions are town treasures and a part of what makes the community so successful and desirable. He recognized the dire need for preschool space in the area and while he felt compassion for the neighbors, he found the request to be consistent with a long-standing precedent throughout the country for schools to operate in residential neighborhoods. He expressed his support of the resolution as written with the addition of the suggestion for additional sound attenuation. He recalled a conditional use permit for a daycare center on Tiburon Boulevard that required a similar sound fence. He referenced a similar experience with the conditional use permit for St. Hilary Church, explaining that everybody loves that project now. He felt that the preschool expansion would be an

enhancement and a benefit to the area. He said that he would like to see a requirement that the church and school maintain the roadway to an acceptable standard.

Community Development Director Anderson explained that the Planning Commission had required the applicant to install a double layered, sound-attenuating fence that would have a substantial effect on the decibel level.

The Planning Commission discussed amendments to the draft resolution to address issues related to the submitted drop-off and pick-up policy, requirements for sound-attenuating fencing and a roadway maintenance agreement. Planning Manager Watrous summarized the consensus of the Commission that the resolution would be modified in the following ways:

- Page 2, Section 2 – change to read “Now, therefore, be it resolved that the Planning Commission of the Town of Tiburon does hereby adopt the negative declaration and approve the Conditional Use Permit....”
- Page 2, Section 1A – add the language including the drop-off and pick-up policy that has been submitted.
- Condition 3 – add following “playground fencing” “with an evaluation of sound-attenuating fencing that would have a substantial effect on noise to downhill neighbors.”
- Add Condition stating that “Shepherd of the Hills Lutheran Church and The Little School shall enter into a maintenance agreement with the Preserve Homeowners’ Association for long-term maintenance of the Shepherd Way roadway.”

MOTION: It was M/S (Kunzweiler/Frymier) to adopt the resolution, as amended as described by staff. Vote: 5-0.
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### **DISCUSSION ITEM:**

### **3. GREEN BUILDING PROGRAM--REFERRAL FROM TOWN COUNCIL REGARDING POSSIBLE AMENDMENTS TO THE DRAFT GREEN BUILDING ORDINANCE NOT REVIOUSLY CONSIDERED BY THE PLANNING COMMISSION; FILE MCA 2008-02 [SA]**

Community Development Director Anderson presented staff report. He stated that on June 11, 2008, the Planning Commission held a public hearing and recommended that the Town Council adopt an ordinance establishing green building regulations for new construction and additions. The Town Council held a public hearing on the draft ordinance on July 16, 2008 and indicated its intent to possibly modify the ordinance in one procedural aspect, namely that green building rating checklists prepared by applicants are to be submitted to the Town only once, at the building permit stage of review, rather than both at the design review stage and the building permit stage. He said that since this alternate procedure was not considered by the Commission during its public hearing, the item must be referred to the Planning Commission for its report and recommendation on the possible amendment.

Chair O'Donnell noted the Town Council's idea was to lower the point total to sixty. Commissioner Corcoran asked if that was on the table at this time and Community Development Director explained that the Commission's role is to focus on the ordinance and the checklist is not a part of the ordinance.

Chair O'Donnell asked about Commissioner Frymier's suggestion to initiate an outreach program to builders. Community Development Director Anderson said that this was included in the resolution which was forwarded to the Council, and should the Town adopt a green building program, there will be an outreach event.

Commissioner Corcoran asked staff if the process will be that once approval is received from the Design Review Board the design and checklist will be submitted to the building permit office. Community Development Director Anderson agreed and explained that staff's role in the Planning Division is to make sure that people are aware when they first pick up their application for design review what design factors to incorporate into their plan.

Commissioner Corcoran confirmed that the program is not being changed, just the point at which the official green points checklist is submitted.

Commissioner Fraser said that he finds the recommendation acceptable.

Commissioner Corcoran expressed his support of the adoption of a green building program. He thought that it might be helpful for people to know more about the program at the design review level, but he did not believe that the proposed change would have a significant functional difference.

Vice-Chair Kunzweiler voiced his support of the program.

Commissioner Frymier stated her dissatisfaction with the entire ordinance. She granted that discarding the entire item was beyond the scope of what the Commission was allowed to do and she noted she could abstain from voting.

Chair O'Donnell reiterated his fundamental disagreement with the green points checklist and characterized the point system as arbitrary. He said that some items on the checklist did not make sense for Tiburon. He stated that to do something meaningful, he would recommend selecting key elements from the generic checklist and amending the building codes to encourage a green Tiburon. He said that the green points program was morphing into a larger system and he did not want a cottage industry of green point raters simply to certify a green points checklist while expecting homeowners to bear the financial burden. He said that the Town was wrapping itself in a green blanket rather than doing something meaningful.

Commissioner Corcoran asked Chair O'Donnell if he has taken into account that the changes will ultimately save homeowners money in terms of energy consumption. Chair O'Donnell said that the Planning Commission dealt with energy consumption when it passed an ordinance to strengthen the provisions under Title 24.

Vice-Chair Kunzweiler stated that while he understands and respects Chair O'Donnell's point of view, the issue was really for the Town Council to decide. Chair O'Donnell said he wanted to

explain why he voted against the resolution at its first hearing and said he would do so again this evening.

Vice-Chair Kunzweiler conceded that the issue was a tough one. Chair O'Donnell echoed his earlier statements stating that if the Town had constructed a set of guidelines that actually pertained and mattered to the Town of Tiburon rather than cookie-cutter homes in Tracy, he would be more amenable to the idea.

Vice-Chair Kunzweiler clarified that he would actually be voting against the amendment when he really disagreed with the ordinance. Chair O'Donnell responded that he had already voted against the ordinance and now will vote against the amendment to the ordinance.

MOTION: It was M/S (Fraser/Kunzweiler) to adopt the amendments to the draft Green Building Ordinance, as submitted. Vote: 3-2 (O'Donnell & Frymier voted no).

**MINUTES:**

**4. PLANNING COMMISSION MINUTES – Regular Meeting of July 9, 2008**

Planning Manager Watrous stated that Commissioner Corcoran had already submitted his comments.

Commissioners requested the following amendments to the minutes:

- Page 4, 4<sup>th</sup> paragraph, amend the last line to read “impact on global climate change.”
- Page 6, 5<sup>th</sup> paragraph, amend the 2<sup>nd</sup> sentence to read “He asked if there would be a fee”
- Page 7, last paragraph, delete “advised” and retain “said” in the first sentence
- Page 8, 6<sup>th</sup> paragraph, correct the typo to “this” in the second sentence

MOTION: It was M/S (Kunzweiler/Fraser) to approve the minutes of July 23, 2008, as amended. Vote: 4-0. (O'Donnell abstained)

**ADJOURNMENT:**

The Planning Commission adjourned the meeting at 10:25 p.m.

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EMMETT O'DONNELL, CHAIRMAN

ATTEST:

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DANIEL M. WATROUS, SECRETARY