

RESOLUTION NO. 2006-DRAFT

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON DENYING A CONDITIONAL USE PERMIT APPLICATION FOR EXPANSION OF AN EXISTING SYNAGOGUE AND DAY SCHOOL AT 215 BLACKFIELD DRIVE AND ADOPTING FINDINGS SUPPORTING THE DENIAL (AP 38-351-34)

WHEREAS, the Planning Commission of the Town of Tiburon does resolve as follows:

Section 1. Summary of Proceedings.

- A. In 1985, the Town of Tiburon approved a conditional use permit authorizing synagogue and day school uses on property located at 215 Blackfield Drive. The use permit conditions were subsequently amended by adoption of Planning Commission Resolution Nos. 97-17, 2001-07, and 2004-10.
- B. On April 21, 2004, the Town of Tiburon received a Land Development Application (File #10404) (the "Application") from Congregation Kol Shofar ("Kol Shofar" or "Applicant") with regard to its property at 215 Blackfield Drive (the "Property"). The Application requested a conditional use permit ("CUP") for remodeling of existing structures and construction of new facilities on the Property, specifically: a single-story, 9,733 square foot multi-purpose addition (the "Multi-purpose Room") to the existing circular building; four new single-story classrooms and a service room totaling 3,662 square feet; remodeling of the existing building; paving of an existing unpaved overflow parking lot for a net gain of approximately 22 parking spaces; and related lighting and landscaping improvements. In addition, the Application requested an increase in the maximum enrollment of the day school from 100 to 150 children, as well as allowing new special and congregational event evening and other programs. The existing facility contains 43,751 gross square feet of building area; proposed additions would increase this figure by 31%. The Application also requested new and expanded use of the Property, as set forth in Table 1 of the Draft EIR.

The Application consists of, but is not limited to, the following:

1. Conditional Use Permit and Environmental Review Submission, dated April, 19, 2004, containing:
 - a. Geotechnical Report prepared by Herzog Engineers, dated February, 2004
 - b. Traffic and Parking Study prepared by Robert Harrison Traffic Engineers, dated April, 2004

- c. Environmental Noise Study prepared by Charles M. Salter Associates, Inc., dated April, 2004
 - d. Lighting Study and Recommendations prepared by Architectural Lighting Design, dated April, 2004
 - e. Congregation Kol Shofar Use Summary, dated March, 2004
 - f. Visual Impact Study prepared by Herman and Coliver Architecture, dated April, 2004
2. Project Plans (14 sheets) prepared by Herman and Coliver Architecture, received April 21, 2004, including revised Sheet A1.1 dated 11/4/2005
 3. Revised project description prepared by IPA, Inc., dated July 14, 2004
 4. Addenda to Traffic and Parking Study prepared by Robert Harrison Traffic Engineers, dated June 21, 2004 and August 18, 2004
 5. Addenda to Environmental Noise Study prepared by Charles M. Salter Associates, Inc., dated June 30, 2004 and August 18, 2004
- C. On December 8, 2004, the Planning Commission held a Scoping Session for preparation of a Draft Environmental Impact Report (“Draft EIR”) on the Application. In June 2005, the Town of Tiburon circulated the Draft EIR for public comment, and on August 24, 2005, the Planning Commission held a hearing on the Draft EIR.
- D. On August 24, 2005, the Planning Commission authorized preparation of the Final EIR and in February, 2006, the Town of Tiburon released a Final EIR, which included responses to comments and edits to the Draft EIR.
- E. After publication of the Final EIR, the Applicant submitted revisions to the Application, set forth in the document entitled “Modified Use-Impact Analysis” prepared by IPA, Inc., dated April 11, 2006, with the stated intent of reducing impacts identified in the EIR. This revised proposal, hereinafter the “Project”, was labeled “Alternative 7” for EIR purposes and analyzed by the EIR preparer in the document entitled “Final EIR for the Congregation Kol Shofar Conditional Use Permit Application: Alternative 7 Analysis, dated April 18, 2006. On April 24, 2006 and May 10, 2006, the Planning Commission held hearings on the Project and on the Draft and Final EIRs.
- F. At the May 10, 2006 meeting, four of five Planning Commissioners indicated that they could not support the Project based on, among other things, inconsistency with General Plan goals and policies and failure of the Project to conform to Tiburon Zoning Ordinance standards and provisions. The Planning Commission majority found the Project over-reaching in its scope, scale, and level of intrusion,

given its quiet residential surroundings. The Planning Commission offered the Applicant a choice of either an “up or down” vote on the Project or a continuance of the hearing to a later date to enable a Planning Commission subcommittee to attempt to craft a resolution of conditional approval based on modifications necessary to satisfactorily address the inadequacies identified by the Planning Commission at the May 10, 2006 meeting. The Applicant initially indicated a willingness to consider such an approach for conditional approval by the Planning Commission, but on May 16, 2006, informed Town Staff that Kol Shofar did not wish to support such an approach and requested an “up or down” vote on the Project.

- G. The Planning Commission has reviewed and considered the information in the Draft and Final EIRs, the written and oral testimony presented to the Planning Commission, and the Entire Record, as described in Section 2 below.
- H. The Planning Commissions is charged with the responsibility of determining, after a review of the Entire Record before it, whether or not the Project is consistent with the Tiburon General Plan and is in compliance with the Tiburon Zoning Ordinance and other applicable regulations. The Planning Commission finds that based upon evidence in the record, the Project would be inconsistent with numerous goals and policies of the Tiburon General Plan, would not be in conformance with standards and requirements of the Tiburon Zoning Ordinance, and would be incompatible and not in harmony with surrounding residential uses.
- I. The Planning Commission finds, based upon the evidence in the Entire Record, that the project is inconsistent with numerous Tiburon General Plan goals and policies, and is not in compliance with provisions of the Tiburon Zoning Ordinance because of parking deficiencies and the cumulative activity levels, noise, disruption, and the sensitivity of the days and hours that these activity levels would occur. The Planning Commission further finds that the Project is incompatible with surrounding residential development; and would be materially detrimental to the quiet enjoyment of people’s homes and neighborhoods. Specifically, the Planning Commission finds that the Project would be inconsistent with Tiburon General Plan Land Use Element Goals LU-A, LU-B, LU-C, LU-D, LU-H, and LU-I; with Land Use Element Policies LU-2, LU-6, and LU-13; Circulation Element Goals C-C, C-D, C-F, and C-I and Circulation Element Policy C-1; with Safety Element Goal SE-A; and with Noise Element Goals N-A, N-B, and N-C. The Planning Commission further finds that the Project is not in conformance with, or fails to comply with, Tiburon Zoning Ordinance Sections 4.04.02 (a), (b), (c), (d) and (e); Sections 4.04.03 (a)(1), (a)(2), and (a)(3); Sections 4.04.03 (b)(1) and (b)(3); Section 5.08.04; Section 5.08.10; and Section 5.08.11.
- J. The Planning Commission finds that although the EIR concludes that the Project would not result in significant unavoidable adverse impacts on the environment as characterized under the California Environmental Quality Act, the Planning

Commission disagrees with certain conclusions of the EIR based on evidence in the Entire Record. Specifically, the Planning Commission received written testimony from two acoustical experts stating that the Draft EIR's use of a 24-hour average metric, "Ldn," to assess the impact of intermittent noise spikes during the evening was not appropriate, as it trivializes short-term spikes in noise by averaging them against the ambient noise levels during the rest of the 24-hour period. The Final EIR acknowledges that arrival and departure noise levels will reach 65 decibels, and that background nighttime noise levels in the neighborhood are only 40-41 dBA. FEIR, p. 43. Thus, the short-term noise impact at these evening events might reach 25 decibels above background levels at 11:00 p.m., a very substantial increase. Neither the Draft EIR nor the Final EIR proposes any mitigation measure that would assure that the significant spikes in late night week-end noise would be mitigated to achieve a level of insignificance. The Planning Commission therefore finds mitigation measures for Impact 3.4-B (Noise Impacts in Areas Surrounding the Project Site) inadequate to mitigate the increased noise. In addition, the Planning Commission finds that the mitigation measures specified for Impact 3.5-C (Headlights on Vehicles Using the Driveway) are inadequate to reduce to insignificant late-night week-end headlight intrusion into homes in the immediate vicinity of the driveway and parking lot, as more fully set forth in Section 4 below. The Planning Commission also finds that Mitigation Measure 3.3-C.3 (the parking receipt program) proposed for Impact 3.3-C (Insufficient On-Site Parking Resulting in Unsafe Turnarounds) is unwieldy, unduly difficult to monitor and enforce, unlikely to be successfully implemented, and therefore infeasible. The Planning Commission finds that the alternative mitigations put forth in Alternative 7 to address the Project's deficient on-site parking are insufficient to off-set the basic problem of inadequate on-site parking, and simply spread or relocate impacts into surrounding neighborhood streets. The first of these alternate mitigations, that "Kol Shofar shall place signs along its frontage on Via Los Altos, Blackfield Drive and Reedland Woods Way stating that people attending events at Kol Shofar need to park on-site and not on residential streets," may or will cause unsafe turn-arounds by the attendees who had intended to park along these streets until they observed these unexpected signs. Furthermore, visitors arriving at night or in the rain may not see these unexpected signs at all. Others may choose to disregard the signs, since there is no proposed effective enforcement mechanism to dissuade attendees from doing so. The second alternate mitigation, that "Kol Shofar shall require that all invitations and notifications of these new weekend events include a note informing people there to park on the site and not to park on residential streets," rests on three unproven assumptions: (1) that all drivers will receive, remember and comply with this request; (2) that there will be adequate room to accommodate them within the on-site parking lots (a premise that would not be true where individual vehicular occupancy by guests is at lower rates than the Applicant's projections, and certainly during the High Holy Days and other events where attendees greatly exceed on-site parking capacity); and (3) that attendees will not attempt to park elsewhere if traffic backs up at the Via Los Altos ingress point to the parking lot. The third alternate mitigation, the

institution of a monitoring program covering “up to four events the first year after project completion” to assess the efficacy of the foregoing mitigation measures, would not itself prevent significant unsafe turn-around impacts. Rather, it would document such impacts for the purpose of developing additional mitigation measures. As such, this measure would not itself prevent adverse traffic and parking impacts. The Planning Commission finds that sufficiently increasing the on-site parking capacity would bring the Project into Zoning Ordinance parking regulation compliance and is the most logical mitigation, yet this approach was strenuously argued against by the Applicant at the May 10, 2006 hearing.

- K. The Planning Commission concludes that substantial modifications to the Project above and beyond those put forth by the Applicant in Alternative 7 would be necessary to secure Planning Commission approval, as discussed herein.
- L. The Planning Commission hereby denies the Project and makes the following findings in support of its decision, based on the Draft and Final EIRs, the written and oral testimony to the Planning Commission, and the evidence in the Entire Record before the Planning Commission.

Section 2. Entire Record; Document Description and Location.

The Record of Proceeding (“Entire Record”) upon which the Planning Commission bases its disapproval of the Project and its findings, actions and determinations regarding the Project includes, but is not limited to:

1. The Final EIR which consists of the *Congregation Kol Shofar Conditional Use Permit Application Draft Environmental Impact Report* (June 2005) and the *Congregation Kol Shofar Conditional Use Permit Application Final Environmental Impact Report Response to Comments Document* (February 2006) plus the appendices and technical reports cited in and/or relied on in preparing the Final EIR.
2. All Staff reports, Town files and records and other documents, prepared for and/or submitted to the Planning Commission and/or Town staff relating to the Final EIR, addendums, and/or the proposed Project.
3. All written and oral testimony presented to the Planning Commission on the Project.

The location and custodian of the Entire Record is the Town of Tiburon Community Development Director, 1505 Tiburon Boulevard, Tiburon, California 94920.

Section 3. Material Elements of the Project.

The Planning Commission finds that the material elements of the Project that it finds not approvable as proposed include, but are not limited to, the following:

- (1) The number (in excess of 27 total) and timing of new nighttime activities and events on Friday, Saturday and Sunday nights, including cleanup activities until 10:00 PM, 12:00 PM and 11:00 PM, respectively (as documented in Table 1 as revised through Alternative 7), with resultant noise in the vicinity, and a lighted parking lot until at least the foregoing times;
- (2) Potential or actual overlapping of activities utilizing the proposed 9,733 square foot Multi-purpose Room addition and the remodeled sanctuary, with a resulting very large capacity far exceeding the capacity of the parking on the site in violation of Tiburon Zoning Ordinance parking regulations;
- (3) Increase in actual daytime and nighttime vehicular traffic, including increases in unsafe U-turns, turnarounds by unauthorized use of private driveways creating pedestrian safety hazards and unnecessary and unwanted headlight intrusion at night into private homes in the neighborhood;
- (4) Actual increases in noise levels from: existing uses utilizing the Multi-purpose Room, new uses, traffic entering, parking in and exiting the Project's expanded on-site parking lot in close proximity to homes, drivers and passengers exiting and entering vehicles to go to and from existing and new daytime and nighttime activities and events;
- (5) Increased parking of vehicles on the neighborhood streets for various reasons, including insufficient on-site parking capacity, the awkward and inefficient design and circulation pattern of the proposed main parking lot, which, in addition to the nuisance and inconvenience effects upon neighboring uses, will violate Tiburon Zoning Ordinance parking requirements.

Section 4. General Plan Inconsistency

The Planning Commission finds the scope and elements of the Project, taken as a whole, incompatible with surrounding residential development, based on noise, traffic, traffic safety, light and glare, neighborhood character, and parking impacts and the neighborhood disruption attendant thereto. Evidence in support of this conclusion is provided in the Entire Record, both from experts and residents, which the Commission finds both credible and convincing. The Planning Commission further adopts the findings set forth herein.

1. Noise

The Project will generate substantial noise from events, particularly on Saturday and Sunday evenings. The Project proposes twelve Saturday evening events with significant attendance (four with 250 attendees, four at 200 and four at 150) and fifteen new Sunday evening events (three with 250 attendees, five at 200, four at 150 and three at 100). The proposed Saturday evening events would continue “until 11:00 p.m. plus cleanup,” and the Sunday events would continue “until 9:00 p.m. plus cleanup.” Clean up times are proposed to last until midnight on Saturdays, and clean up on Sundays would last until 10:00 p.m. This means that noise and lights from departing guests, vendors, and others; people taking out supplies and/or removing tables and chairs; caterers carrying out equipment and food; people talking outside; car and truck engines starting up; car doors slamming; and related headlight glare and parking lot illumination would thus continue until midnight on Saturdays and until 10:00 p.m. on Sundays. The Final EIR acknowledges that arrival and departure noise spikes will reach 65 decibels, and that background nighttime noise levels in the neighborhood are only 40-41 dBA. FEIR, p. 43. Thus, the short-term noise spikes during these evening events might reach 25 decibels above background levels as late as 11:00 p.m., a very substantial increase. These represent serious noise incompatibilities with surrounding residences. For example, many neighbors have school-age children. These children, who need to be in bed Sunday evening for school the next morning, would be subject to sleep-disturbing noise and lights after they have retired for the night. Also, residents in the Bel Aire neighborhood will be disturbed as cars exiting the facility travel down Blackfield Drive at the end of an event between 11:00 and 12:00 p.m. on Saturday and between 9:00 and 10:00 p.m. on Sunday. The residents of Blackfield Drive have written letters and spoken publicly about the fact that many bedrooms face Blackfield Drive. These neighbors will be disturbed at night by the increased noise, light and traffic of cars traveling on Blackfield Drive to these new nighttime events.

This significant noise generation during normally very quiet times conflicts with Goals N-A, N-B and N-C of the Tiburon General Plan Noise Element, which are set forth below:

- N-A:** To ensure that residential areas are quiet and that noise levels in public and commercial areas remain within acceptable limits.
- N-B:** To eliminate or reduce unnecessary, excessive and offensive noises from all sources.
- N-C:** To minimize the exposure of community residents to noise through the careful placement of land uses that may cause noise impacts.

The Project would allow weekend evening events to occur on twenty-seven (twelve on Saturdays and fifteen on Sundays) of the 104 weekend evenings each year, representing 26% of annual weekend evening, clearly a substantial proportion. Allowing such an increase in nighttime noise and activity on more than one-fourth of annual weekend evenings conflicts with the Tiburon General Plan Noise Element’s Goals as noted above.

2. Traffic and Traffic Safety

The Draft EIR identified unsafe turnarounds in neighborhoods and using private driveways for that purpose as an existing safety hazard that would increase as a result of the Project. "Increased numbers of turnarounds in driveways or in front of homes and increased frequency of event-related turnarounds on those residential streets is considered by the EIR traffic engineer to be a potentially significant safety concern." DEIR, p. 67. The Planning Commission has received substantial evidence from the public confirming that existing events and activities at the existing Kol Shofar facility have resulted in unsafe turn-arounds by guests driving vehicles to such events who seek additional parking sites off-site or to avoid traffic congestion in the vicinity of the Property. The Planning Commission also finds that the Project will bring substantial additional traffic into the quiet surrounding neighborhoods at precisely the week-end times when quietude is most desired and valued by residents.

The proposed substantial increase in the square footage on the Property, and proposed increase in use of the Property, will result in substantial additional traffic generation, particularly for large-scale events drawing hundreds of attendees. As the number of facility users increases, so will the number of cars delivering them, and the number of consequential unsafe turn-arounds in local driveways and streets. These turn-arounds pose significant traffic hazards to vehicular and pedestrian safety, in conflict with the Tiburon General Plan's Circulation Element, Circulation Goals C-C and C-F, Circulation Policy C-1, and Safety Element Goal SE-A, which are set forth below:

- C-C:** To maintain all existing, as well as to design all future, residential streets with consideration of a combination of residents' safety, cost of maintenance, and protection of residential quality of life.
- C-F:** To minimize traffic congestion.
- C-1:** Land use decisions shall take into consideration potential traffic and circulation impacts.
- SE-A:** To maintain a safe and healthy community.

3. Light and Glare

The extent of evening and nighttime activity proposed by the Project will result in unwanted and unnecessary light and glare impacts on surrounding homes. The Draft EIR states that "[h]eadlights on vehicles traveling west (uphill) on the new driveway, around the drop off/turnaround, and into the new upper parking area could intrude off the site and possibly shine into three residences on Reedland Woods Way and one residence on Paseo Mirasol Vehicles using the turnaround would have headlights pointed at 20 and possibly 30 and 35 Reedland Woods Way Headlights on vehicles using the new parking area could intrude into windows of homes at 20 and 30 Reedland Woods Way and one home to

the east on Paseo Mirasol. Headlight intrusion is a visual invasion of privacy and is considered a *potentially significant impact*.” DEIR, p. 106, emphasis in original. The subsequent headlight intrusion study concluded that lights from vehicles on the site would intrude into the sleeping quarters of the home at 220 Blackfield Drive and the home at 20 Reedland Woods Way.

The Final EIR included a “Headlight Beam Intrusion” report from the Project’s architect which concluded that, although headlight intrusion would occur at 220 Blackfield Drive, that residence had been impacted by similar headlight intrusions in the past without complaint. FEIR, p. 49. This report also concluded that “[h]eadlight intrusion at 20 Reedland Woods Way may result at a distance of 100 feet from the light source to the home, concluding that the diminished light intensity at that distance “will not result in a nuisance and/or a significant adverse impact on the environment.” *Id.* This report concluded further that although “the potential for light intrusion exists at the ground level of #35 Reedland Woods Way, . . . an existing wood slat fence at the residence’s rear yard will provide screening.” *Id.* Landscaping has been proposed as Mitigation Measure 10 for Impact 3.5-D to reduce the headlight impact on 220 Blackfield Drive. Finally, Mitigation Measure 3.5-C.1 requires the Applicant to construct a berm and/or fence between the parking lot and 20 Reedland Woods Way to block headlight intrusion.

The Planning Commission finds the foregoing mitigation measures insufficient to reduce the impact of late-night vehicular headlight intrusion into the affected homes to a level of insignificance. The fact that the home at 220 Blackfield Drive is already affected by existing headlight intrusion does not mitigate the impact of the additional headlight intrusion that this Project would cause due to the number and lateness of nighttime events. Instead, it makes it worse. The proposal to plant landscaping between the parking lot and this residence may reduce headlight spill into this residence, but the efficacy of landscaping to reduce this impact to insignificance is uncertain both temporally and with regard to the extent of the anticipated blockage. The Applicant’s proposal to construct a berm and/or fence between the parking lot and the residence at 20 Reedland Woods Way would not prevent headlight intrusion into the second story (i.e., the sleeping quarters) of this residence. The proposed mitigation of the headlight intrusion into 35 Reedland Woods Way – an existing fence – would not shield the second story (i.e., the sleeping quarters) of this residence from direct headlight intrusion. Since modern headlights are designed to reach several hundred feet, the fact that the headlights intruding into 20 Reedland Woods Way would be 100 feet distant does not reduce their impact to insignificance.

These unnecessary nighttime headlight impacts on existing residences conflict with the Tiburon General Plan’s Land Use Element, Land Use Goals LU-B, LU-D, and LU-H, and Land Use Policy LU-2, which are set forth below.

LU-B: To protect the health, safety, and welfare of the community.

LU-D: To ensure that all land uses, by type, amount, design, and arrangement, serve to preserve, protect and enhance the small-town residential image of the community and the village-like character of its Downtown commercial

area.

LU-H: To protect and preserve existing neighborhood character and identity.

LU-2: The Town shall limit the type and amount of uses within the Town to those that are compatible with the nature, character and image of the Town as a quiet, small-town residential community with a village-like commercial area.

Based on the Draft and Final EIR's, the subsequent light impact assessment, the written and oral testimony and the Entire Record, the Planning Commission hereby finds that the Project's nighttime weekend headlight impacts on nearby residences will be significant and will materially intrude into the enjoyment of residents of neighboring homes. The Project would permit substantial nighttime traffic in a quiet, secluded and darkened residential neighborhood. The Project would allow scores of cars to enter and exit onsite twenty-seven weekend evenings as late as 11:00 to 12:00 p.m. (including clean-up crews) on Saturdays and 9:00 to 10:00 p.m. (including clean-up) on Sundays. Additionally, lot lights, which are to be on timers, would not be turned off until the clean-up crews leave. These lights would be visible from neighboring homes. Several nearby residences would be affected by late-night headlight glare into their sleeping quarters. The mitigation measures proposed to reduce these impacts to insignificance would not provide immediate nor complete blockage of anticipated headlight glare into these homes. Subjecting these residents to potentially sleep-disturbing headlight glare, particularly when coupled with the parking lot noise discussed above, cannot be dismissed as immaterial or insignificant to the surrounding neighborhood. These headlight impacts would conflict with several General Plan Land Use Goals and Policies as cited above.

4. Neighborhood Compatibility

The Project proposes construction of two large buildings comprising a total of 13,395 gross square feet. As described in the Draft EIR at Figure 5 and on page 132, most of this additional space would be occupied by the Multi-purpose Room comprising 9,733 gross square feet. This building would be substantially larger than any existing residence within the neighborhood, and, when coupled with the existing and other proposed facilities, would total 57,140 gross square feet, or over 1.31 acres of floor space. A total of 139 on-site parking spaces are proposed to accommodate this square footage.

The Planning Commission, based on the Entire Record, finds that the Project poses significant impacts on the surrounding neighborhood from increased noise levels, additional light and glare, additional traffic, increased parking demand, and reduced vehicular and pedestrian safety. Taken as a whole, these deleterious impacts are inconsistent with the Tiburon General Plan goals and policies as set forth below, which are intended to protect the character and quality of life of neighborhoods:

LU-A: To provide an orderly balance of public and private land uses within

convenient and compatible locations throughout the community.

- LU-C:** To preserve the character of the Tiburon peninsula through control of the type and location of development.
- LU-D:** To ensure that all land uses, by type, amount, design, and arrangement, serve to preserve, protect and enhance the small-town residential image of the community and the village-like character of its Downtown commercial area.
- LU-H:** To protect and preserve existing neighborhood character and identity.
- LU-I:** To encourage intensity of development, density, and house sizes/architectural styles that are consistent and compatible with surrounding neighborhoods.
- LU-2:** The Town shall limit the type and amount of uses within the Town to those that are compatible with the nature, character and image of the Town as a quiet, small-town residential community with a village-like commercial area.
- LU-6:** The Town shall closely consider the environmental constraints of land and Prime Open Space preservation and other General Plan policies through the development review process in determining the location, type, and density and/or intensity of development.
- LU-13** Neighborhood character, which is defined by the predominant architectural styles, type of buildings, building heights, mass, setbacks, landscaping, and natural characteristics, shall be of material consideration and preserved in all construction projects, including remodels and additions, to the maximum extent feasible.
- C-C:** To maintain all existing, as well as to design all future, residential streets with consideration of a combination of residents' safety, cost of maintenance, and protection of residential quality of life.
- C-D:** To provide an adequate means of circulation for emergency vehicles.
- C-F:** To minimize traffic congestion.
- C-I:** To provide adequate parking throughout the Planning Area.
- C-1:** Land use decisions shall take into consideration potential traffic and circulation impacts.

- N-A:** To ensure that residential areas are quiet and that noise levels in public and commercial areas remain within acceptable limits.
- N-B:** To eliminate or reduce unnecessary, excessive and offensive noises from all sources.
- N-C:** To minimize the exposure of community residents to noise through the careful placement of land uses that may cause noise impacts.
- SE-A:** To maintain a safe and healthy community.

Based on the Draft and Final EIRs, the written and oral testimony and the Entire Record, the Planning Commission hereby finds that the Project’s deleterious effects on neighborhood character are significant.

The Tiburon General Plan directs the Planning Commission to “protect the health, safety and welfare of the community,” and to “[t]o protect and preserve existing neighborhood character and identity.” Land Use Element, Land Use Goals LU-B and LU-H. To this end, the Planning Commission is obligated to “ensure that all land uses, by type, amount, design and arrangement, serve to preserve, protect and enhance the small-town residential image of the community” *Id.* at LU-D and LU-2.

The Project conflicts with these Land Use Goals and Policies, and those of the General Plan’s Noise, Circulation and Safety Elements, in numerous, fundamental respects. Siting a facility with the capacity to accommodate over 1,500 people, and with plans for large evening events, in a quiet residential neighborhood, while providing only 139 on-site parking spaces, clearly conflicts with the neighborhood character. Adjacent homes would be subjected to nighttime increases in noise by as much as 25 decibels. Nearby residences would be subject to headlight glare from scores of cars arriving and leaving the facility on weekend nights. Neighbors would be subjected to worsening traffic, parking congestion, and significant traffic hazards.

Taken in the aggregate, these adverse impacts on the surrounding neighborhood pose unacceptable deleterious effects on the “existing neighborhood character and identity,” creating conflict, rather than the required compatibility with surrounding neighborhoods, and are inconsistent with the Tiburon General Plan. *Id.* at LU-I and LU-2.

Section 5: Zoning Ordinance Non-conformance

The Planning Commission, based on evidence in the Entire Record, finds that the Project is inconsistent and does not conform to the findings necessary to approve the Application, as set forth within Section 4.04.02 of the Tiburon Zoning Ordinance, as follows:

- a. Determine whether the location proposed for the Conditional Use applied*

for is properly related to the development of the neighborhood as a whole.

The proximity of homes surrounding the site, the bowl-like topography in which the site rests, the relatively narrow residential streets nearby, and the relative quietude of the area surrounding the site create heightened potential for impacts on the surrounding homes and streets during otherwise quiet times for this neighborhood, especially on week-end evenings and nights. The noise, lights, and traffic generated by the Project would be incompatible with the quiet of the neighborhood during the weekend evenings and night times during which the proposed new events and activities would occur.

- b. Determine whether the location proposed for the particular Conditional Use applied for would be reasonably compatible with the types and uses normally permitted in the surrounding area.*

The Project is not compatible with the surrounding low-density residential neighborhoods. The proposed nighttime events would have clearly audible noise impacts on surrounding residences on Saturday and Sunday nights when neighborhood quietude is most desired by residents for their reasonable enjoyment and have a right to rely on peace and quiet. While neighborhoods often bear a burden of noise and traffic when a religious institution and/or school is in the vicinity, the frequency, time of night, and scale and number of attendees of new activities and events proposed for the site would unnecessarily intrude on the usual hours of respite from that noise and traffic currently enjoyed by the surrounding residential neighborhoods, and make the proposed project incompatible with the types of activity and uses normally permitted in the surrounding residential area.

- c. Evaluate whether or not adequate facilities and services required for such use exist or can be provided.*

The area surrounding the Property currently experiences street parking overflow on a regular basis as the total on-site parking capacity is currently approximately 100 unrestricted spaces, according to the EIR Appendix D, with approximately 120 spaces total, including restricted spaces. Events, or combinations of events, or any time at which more than 250-275 people are on the site are likely to result in street parking overflow onto surrounding residential streets. The Project would create an additional net total of 22 parking spaces, far less than required by the Tiburon Zoning Ordinance. The proposed Multi-purpose Room, at 642 seats capacity, would require 161 additional parking spaces in accordance with Sections 5.08.11 and 5.08.04(d) of the Tiburon Zoning Ordinance.

- d. Stipulate such conditions and requirements as would reasonably assure*

that the basic purposes of this Ordinance and the objectives of the General Plan would be served.

Based on its review of the draft resolution of conditional approval (Exhibit 6 in the April 24, 2006 staff report), the Planning Commission concludes that the Project as proposed is not approvable as explained above and the Applicant has requested an “up or down” vote on the Project. The Planning Commission is therefore proceeding with a denial and stipulation of conditions of approval is inappropriate.

- e. *Determine whether the Town is adequately served by similar uses presently existing or recently approved by the Town.*

The Planning Commission concludes that the existing physical plant, comprised of approximately 43,000 square feet of floor area on the Property, does not need to be expanded by 13,395 square feet of new floor area additions in order to achieve the stated goals of adequately serving the current needs of the membership. The Planning Commission finds that other construction options exist that keep the scale of the proposed improvements in better harmony with surrounding development.

The Planning Commission further finds that the Project is inconsistent with Section 4.04.03(a) (2) and (3) and Section 4.04.03(b) (1) and (3) of the Tiburon Zoning Ordinance, which state that the following factors shall be considered in determining whether or not any conditional use should be permitted in a specific location:

- a. *The relationship of the location proposed to:*

- 2. *Transportation, utilities, and other facilities required to serve it.*

The proposed weekend nighttime events would increase traffic levels on Blackfield Drive, Via Los Altos, and Reedland Woods Way during traditionally off-peak hours in this low density residential neighborhood. The 22-car increase in parking capacity of the lot is not nearly sufficient to serve the increased parking demand of the Project. Spillover parking on adjacent residential streets would cause unsafe turnarounds, congestion and inconvenience for local residents.

- 3. *Other uses of land in the vicinity.*

The Property is surrounded by low-density single family residential neighborhoods, which would be negatively affected by the increased noise, traffic, and activity levels caused by the proposed additions and expanded use.

b. *Probable effects on persons, land uses, adjoining properties, and the general vicinity, including:*

1. *Probable inconvenience, damage, or nuisance from noise, smoke, odor, dust, vibration, radiation, or similar causes.*

The surrounding residential neighborhoods would be exposed to increased noise levels from new activities within and outside the proposed Multi-Purpose Room, including sounds from cars arriving and departing from the new parking lot, parking lot conversation and commotion, including loading and unloading of equipment and items that celebratory events of substantial scale typically generate. The 24-hour weighted noise averages calculated by the noise studies for the Project do not address the peaks of noise to which immediately surrounding homes will be exposed from the activities and events proposed, but the EIR did acknowledge that noise spike increases of up to 25 decibels could occur. The Planning Commission finds that such noise spikes would result in audible, noticeable, and inconvenient noise for the residents of several surrounding homes, particularly during the weekend evening and nighttime hours during which the new events would occur.

3. *Probable inconveniences, economic loss, or hazard occasioned by unusual volume or character of traffic or the congregating of a large number of people.*

The Planning Commission finds evidence in the Entire Record supports a conclusion that as proposed, additional noise, traffic, traffic safety, light and glare, and neighborhood incompatibility and disruption caused by the Project would result in inconveniences during previously quiet hours for the surrounding low density residential neighborhoods.

The Planning Commission further finds that the Project is not in conformance with Sections 5.08.04 (d) & (k), 5.08.10 and 5.08.11 of the Tiburon Zoning Ordinance, which contain the following provisions:

- a. Section 5.08.04(d). *Place of assembly: one parking space for each 4 seats of maximum seating capacity; or one for each 40 square feet of assembly area, whichever is more; and Section 5.08.04(k)(1). Child Care: 3 minimum, plus one for each 10 children over the first 15.*

As indicated in DEIR Appendix D: Table 9, the Tiburon Zoning Ordinance parking requirement is comprised of the following elements: 1) for the 4,500 square foot portion of the Multi-purpose Room that would provide up to 642 seats: 161 parking spaces; for the 5,336 square foot remodeled

Sanctuary that would provide up to 550 fixed seats: 138 parking spaces; for the remodeled 1,842 square foot Chapel: 46 spaces; and for the 150-student Pre-School: 18 spaces. The combination of uses yields a total parking requirement of 363 spaces, far more than the 139 spaces proposed for the existing lower and proposed new upper parking lots.

- b. Section 5.08.10. Multiple Uses. *Parking required for multiple uses shall be the sum of the requirements for each individual use; provided that parking spaces required for one use or time may utilize the same spaces required for another use or time upon Commission approval, by means of appropriate conditions, of said dual parking. The Commission shall not grant such approval unless it is able to, and does, make the following findings:*

- (a) *That the uses or times for which overlapping parking is being requested do not have overlapping hours of operations sufficient to result in a deficiency of parking spaces.*
- (b) *That the parking lot in question is within a reasonable distance from the uses for which parking requirements are to be overlapped.*

Failure to abide by the conditions of the approval shall be cause for revocation of such approval for all uses involved, regardless of previous approvals.

The Planning Commission would have reasonable discretion to reduce the combined parking requirement as described in subsections (a) and (b), above. However, subsection (a) indicates that the reduction must be based on overlapping uses not having overlapping times. The DEIR provides an analysis of the overlapping uses on page 65 and concludes that existing and proposed uses would utilize the Chapel, Multi-purpose Room, and Classrooms at various times, as follows: 1) Saturday morning services, an existing all year event, would involve the Sanctuary and Multi-purpose Room for which the Tiburon Zoning Ordinance requirement is 299 spaces; 2) Saturday and Sunday evening new events would use the Multi-purpose Room for which the Tiburon Zoning Ordinance requirement is 161 spaces; and 3) Sunday morning Religious school, an existing all year event, would use Classrooms, Sanctuary, Multi-purpose Room and the Annex for which the Tiburon Zoning Ordinance parking requirement would be 299 or more parking spaces. In summary, for these overlapping uses, Tiburon Zoning Ordinance requirements range from 161-299 parking spaces where only 139 spaces have been proposed. The Planning Commission finds this discrepancy too large to approve the Project.

- c. 5.08.11. Change In Use: Additions and Enlargement. *Whenever on any property there is a change in use, or increase in floor area or in the number of employees, or other unit of measurement specified above to calculate the*

number of required off-street parking spaces, then additional off-street parking spaces shall be provided on the basis of the increase in floor area or number of employees, or in such other applicable unit of measurement. The effects of additions, enlargements and changes in use shall be cumulative in regard to off-street parking requirements.

The Project would be inconsistent with this requirement to provide additional off-street parking spaces on the basis of the increase in floor area. As calculated above, the combined parking requirement for the remodeled and expanded facilities is 363 parking spaces and based upon the overlapping uses proposed, it could be reduced to 299 spaces. The proposed 139 parking spaces would not fulfill this requirement. Alternatively, the proposed expansion represents an increase of 31% of the existing floor area, thus existing parking could be required to increase by a comparable percentage or to a total of 153 spaces. The proposed 39 spaces would fall short of this reduced parking requirement by 14 spaces. The Planning Commission finds that although it would be supportive of some degree of reduction from the standards due to overlapping parking, the discrepancy is too large to warrant Project approval.

Section 6. Denial of Application.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby denies the application of Congregation Kol Shofar for approval of its proposed Conditional Use Permit Project (File #10404) for the reasons set forth above.

PASSED AND ADOPTED at a _____ meeting of the Planning Commission of the Town of Tiburon on _____, 2006, by the following vote:

AYES:
NOES:
ABSENT:

JOHN KUNZWEILER, CHAIRMAN
Tiburon Planning Commission

ATTEST:

SCOTT ANDERSON, SECRETARY