

EXHIBIT A

<u>MITIGATION MONITORING PROGRAM</u> <i>Harbor Light Commercial Project</i> August 2008					
<i>Mitigation Measure</i>	<i>Implementation Procedure</i>	<i>Monitoring Responsibility</i>	<i>Monitoring Action & Schedule</i>	<i>Non-Compliance Sanction/Activity</i>	<i>Monitoring Compliance Record (Name/Date)</i>
IV. CULTURAL RESOURCES					
<p><u>CULT-1A:</u> Prior to demolition, the building at the subject property shall be documented. Documentation shall consist of a narrative, which may consist of the Historic Resource Report, and archivally-stable black and white photography documenting the building exterior and interiors as they exist today, and the building’s general setting. It is not necessary to photograph the property to Historic American Buildings Survey (HABS) standards, as the integrity of the property does not warrant this level of documentation.</p> <p>Five copies of the documentation, including five sets of photographic prints, will be produced and submitted to the Marin County Historical Society archives, the Belvedere-Tiburon Landmarks Society archives, the California Room of the Marin County Free Library, and the Northwest Information Center at Sonoma State University, Rohnert Park, California. An additional copy will be retained for display at the project site. Photographic negatives should be retained by the Town of Tiburon. This documentation will have a similar educational value as developing a brochure or exhibit about the building, and will suffice for public information purposes.</p>	<p><i>Require as a condition of approval</i></p> <p><i>Project sponsor submits documentation to Town and respective agencies prior to issuance of building permits</i></p>	<p><i>Planning Division</i></p>	<p><i>Incorporate as condition of project approval</i></p>	<p><i>Deny issuance of building permit</i></p>	

MITIGATION MONITORING PROGRAM

Harbor Light Commercial Project

August 2008

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CULT-1B: A photographic etching, the building name, and a brief description of its history shall be incorporated into a plaque to be affixed to the building exterior on the Main Street façade of the new building. The plaque should be aluminum, bronze, electroplated steel, or other durable material. The plaque shall be located at about eye level so that it is visible to passing pedestrians.	<i>Require as a condition of approval</i> <i>Project sponsor erects plaque prior to issuance of occupancy permit</i>	<i>Planning Division</i>	<i>Incorporate as condition of project approval</i> <i>Inspect building prior to issuance of occupancy permit</i>	<i>Deny issuance of occupancy permit</i>	
CULT-2: The Federated Indians of Graton Rancheria (FIGR) have requested consultation between the project developers and the tribe during the demolition and grading phases of the project. A Native American monitor appointed by the FIGR shall be present during these activities. In addition, a professional archaeologist, selected from a list provided by FIGR, shall also be present during the soil disturbance to identify and catalog prehistoric or historic materials that may be unearthed. If prehistoric remains are found, additional archaeological investigations may be necessary.	<i>Require as a Condition of Approval</i> <i>Project sponsor contracts with FIGR for monitoring activities and submits Agreement with FIGR to Planning Division</i>	<i>Planning Division</i>	<i>Incorporate as condition of project approval</i> <i>Review Agreement prior to issuance of building permit</i>	<i>Deny issuance of building permit</i>	
CULT-3: If, during construction activities, any archaeological artifacts or human remains are encountered, the following measures shall be implemented: a. Construction shall cease and a qualified archaeologist shall visit the site to address the find. The Marin County Medical Examiner’s office shall be notified to provide proper direction on how to proceed. If any Native American resources are encountered during construction, construction shall cease immediately until a Native American descendant, appointed by the Native American	<i>Require as a Condition of Approval</i>	<i>Building Division</i>	<i>Ongoing during project grading and construction activities</i>	<i>Stop Work Order issued</i>	

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<p>Heritage Commission of the State of California, is able to evaluate the site, make further recommendations, and be involved in mitigation planning.</p> <p>b. Any artifacts or samples collected as part of the initial discovery or monitoring must be properly conserved, catalogued, analyzed, evaluated, and curated in a manner consistent with current professional archaeological standards.</p> <p>c. The project sponsor is responsible for notifying the contractor in writing of the possibility of such findings and shall provide proof of this communication to the Town Planning staff prior to the onset of construction.</p>					

Source: Newman Planning Associates, August 2008

RESOLUTION NO. 2008 – 15 (DRAFT)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
TOWN OF TIBURON CERTIFYING THE FINAL ENVIRONMENTAL
IMPACT REPORT (FEIR) FOR THE HARBOR LIGHT COMMERCIAL
PROJECT (FILE NO. 10705)
20 & 22 MAIN STREET
ASSESSOR PARCEL NO. 059-102-22**

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

Section 1. Findings.

WHEREAS, a Draft Environmental Impact Report (DEIR) evaluating the proposed Harbor Light Commercial Project has been prepared and was transmitted by the Town of Tiburon to all concerned parties for review and comment; and

WHEREAS, notice of availability of the DEIR was given as required by law; and

WHEREAS, written comments on the DEIR were solicited from the public from June 4, 2008 through July 18, 2008, and no comments were received; and

WHEREAS, the Planning Commission held a public hearing to accept testimony on the DEIR on July 9, 2008, and no comments were received; and

WHEREAS, on July 23, 2008, the Planning Commission determined that recirculation of the DEIR was not required; and

WHEREAS, a Final Environmental Impact Report, including a Draft Mitigation Monitoring Plan, was released on July 29, 2008; and

WHEREAS, the Planning Commission finds that the FEIR was prepared in accordance with the provisions of the California Environmental Quality Act (CEQA) and the Town's local CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Harbor Light Commercial Project Final Environmental Impact Report:

1. Consists of the Harbor Light Draft Environmental Impact Report, dated June 2008, and the Harbor Light Final Environmental Impact Report, dated August 2008.

2. Is hereby certified by the Planning Commission to have been completed in compliance with the California Environmental Quality Act and local CEQA guidelines.
3. Has been presented to the Planning Commission of the Town of Tiburon, which has reviewed and considered the information contained in the Final EIR.
4. Reflects the independent judgment and analysis of the Planning Commission.
5. Is hereby adopted as the Environmental Impact Report for the Harbor Light Commercial Project.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon on August 13, 2008, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

EMMETT O'DONNELL, CHAIRMAN
TIBURON PLANNING COMMISSION

ATTEST:

SCOTT ANDERSON, SECRETARY

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RESOLUTION 2008-16 (DRAFT)

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON ADOPTING FINDINGS RELATING TO THE APPROVAL OF THE HARBOR LIGHT COMMERCIAL PROJECT LOCATED AT 20 AND 22 MAIN STREET PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

SECTION 1 – INTRODUCTION

On August 13, 2008, the Planning Commission of the Town of Tiburon adopted Resolution No. 2008-15 certifying the Final Environmental Impact Report (FEIR) for the Harbor Light Commercial Project. The Town desires and intends to use the FEIR prepared for the Harbor Light Commercial Project, as well as the FEIR prepared for the Tiburon 2020 General Plan pursuant to Public Resources Code Section 21083.3, as the environmental documentation required by CEQA for the discretionary actions required for this project by the Town.

The Harbor Light FEIR identifies significant environmental impacts caused by the Harbor Light Project and recommends specific mitigation measures to reduce all but one of these impacts to a less-than-significant level. This Resolution sets forth the specific findings made by the Planning Commission for each significant impact, pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15091, based not only on the EIR but on evidence in the entire record, including written and oral testimony to the Planning Commission.

SECTION 2 – LOCATION AND CUSTODIAN OF DOCUMENTS

The Record of Proceedings (“Record”) upon which the Planning Commission bases these findings and its actions and determinations regarding the proposed project includes, but is not limited to:

1. The Final EIR, which consists of the Harbor Light Draft Environmental Impact Report, dated June 2008, and the Harbor Light Final Environmental Impact Report, dated August 2008, in addition to any 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 and/or the proposed project.

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

SECTION 3 -- SIGNIFICANT IMPACTS THAT CAN BE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

The FEIR indicates that certain significant environmental impacts may or will result from approval of the proposed project. The FEIR concludes that with one exception, which is addressed in Section 4 of this Resolution, each of these significant impacts can be mitigated to a less-than-significant level. In response to those significant impacts so identified in the FEIR discussed in this Section 3, alterations have been required to the proposed project or mitigation has been incorporated into or imposed on the project which will avoid or substantially lessen each significant environmental impact identified in this section. The Planning Commission hereby finds that each and every mitigation measure identified in this section is feasible and has been imposed on or incorporated into the proposed project, and the Planning Commission further finds that the significant impacts described in this section have been reduced to a less-than-significant level by incorporation of these mitigation measures. The Planning Commission adopts the findings contained herein.

Cultural Resources

Impact CULT-2: Ground-disturbing activities associated with demolition, grading and excavation for utility trenches, while very limited, could adversely affect archaeological cultural resources.

Finding

Based upon the EIR and the entire record, the Planning Commission hereby finds that potential impacts on subsurface cultural resources will be mitigated to a less-than-significant level by the imposition of Mitigation Measure CULT-2, and the mitigation measure is within the responsibility of the Town to enforce. Accordingly, changes or alterations have been required in, or incorporated into, the proposed project which mitigate or avoid the significant effects on the environment. The impact is mitigated to a less-than-significant level.

Rationale

Mitigation Measure CULT-2 requires that a Native American monitor appointed by the Federated Indians of Graton Rancheria (FIGR) shall be present during these demolition, grading and excavation activities. In addition, a professional archaeologist, selected from a list provided by FIGR, shall also be present during the soil disturbance to identify and catalog prehistoric or historic materials that may be unearthed. If prehistoric remains are found, additional archaeological investigations may be necessary.

Impact CULT-3: Ground-disturbing activities associated with demolition, grading and excavation for utility trenches, while very limited, could disturb human remains, including those interred outside of formal cemeteries.

Finding

Based upon the EIR and the entire record, the Planning Commission hereby finds that potential impacts on subsurface cultural resources will be mitigated to a less-than-significant level by the imposition of Mitigation Measure CULT-3, and the mitigation measure is within the responsibility of the Town to enforce. Accordingly, changes or alterations have been required in, or incorporated into, the proposed project which mitigate or avoid the significant effects on the environment. The impact is mitigated to a less-than-significant level.

Rationale

Mitigation Measure CULT-3 requires that, during construction activities, any archaeological artifacts or human remains are encountered, the following measures shall be implemented:

- a. Construction shall cease and a qualified archaeologist shall visit the site to address the find. The Marin County Medical Examiner’s office shall be notified to provide proper direction on how to proceed. If any Native American resources are encountered during construction, construction shall cease immediately until a Native American descendant, appointed by the Native American Heritage Commission of the State of California, is able to evaluate the site, make further recommendations, and be involved in mitigation planning.
- b. Any artifacts or samples collected as part of the initial discovery or monitoring must be properly conserved, catalogued, analyzed, evaluated, and curated in a manner consistent with current professional archaeological standards.
- c. The project sponsor is responsible for notifying the contractor in writing of the possibility of such findings and shall provide proof of this communication to the Town Planning staff prior to the onset of construction.

SECTION 4 – SIGNIFICANT IMPACTS THAT CANNOT BE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

Impact CULT-1: Implementation of the proposed project would demolish the existing two-story commercial building at 20-22 Main Street, which is listed in the local register of historical resources and has been determined eligible for listing on the California Register of Historical Resources. The FEIR determined that demolition of the structure would constitute a significant impact since the structure is listed on the local inventory of historic buildings and was found to be eligible for listing on the California Register of Historical Resources.

Finding

Mitigation Measures CULT-1A and CULT-1B were identified in the Draft EIR requiring that copies of the historical report and photographs of the existing building be submitted to the Marin County Historical Society, Belvedere-Tiburon Landmarks Society archives, the California Room of the Marin County Library, and the Northwest Information Center at Sonoma State University as well as creating a photographic etching of the Harbor Light building in a plaque to be affixed to the building facade, but these measures would not reduce the level of impact to an insignificant level and the impact would remain significant and unavoidable. Therefore, prior to any approval of the project, the Town must make findings (by separate Resolution) of overriding considerations for this significant and unavoidable impact.

SECTION 5: OVERRIDING FINDINGS AND FINDINGS OF INFEASIBILITY AND REJECTION OF ALTERNATIVES TO THE PROJECT

Overrides

The Town recognizes that implementation of the proposed project would result in a significant adverse environmental impact that cannot be avoided even with the adoption of all feasible mitigation measures. Despite the occurrence of this effect, however, the Town chooses to approve the project because, in its view, the economic, social, and other benefits that the project will produce will render the significant effect acceptable.

The following statement identifies why, in the Town's judgment, the benefits of the project as approved outweigh its unavoidable significant effect. Any one of these reasons is sufficient to justify approval of the project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Town would stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this section, and into the documents found in the Record.

As discussed above, the EIR identified significant and unavoidable impacts to Cultural Resources that would result from the demolition of the commercial structure at 20-22 Main Street. The Town finds that these impacts on Cultural Resources would be acceptable because mitigation measures have been required to reduce these impacts to the extent feasible, and on balancing the benefits to be realized by approval of the project against the remaining environmental risks, the following economic, social, and other considerations outweigh the impacts and support approval of the project:

Elimination of Substandard and Hazardous Conditions

The project would eliminate an existing substandard commercial structure with numerous building, fire, and electrical code violations and replace it with a new commercial building of comparable size and scale that would be constructed to meet current building, fire, and electrical code requirements.

Economically Infeasible to Rehabilitate and/or Relocate the Existing Building

Based on the alternatives analysis contained in the FEIR, the rehabilitation of the project for commercial re-use would likely be financially infeasible due to construction costs, market rental rates, taxes, debt servicing, and estimated rates of return. The applicant has indicated that the project will not proceed if rehabilitation of the existing structure is required. Also based on the alternatives analysis contained in the FEIR, it is unlikely that it would be economically feasible to relocate the structure for renovation at another site due to the addition of potential land acquisition costs and relocation costs; the extremely deteriorated and fragile state of the existing building, which would likely be badly damaged or destroyed during relocation, and other costs and limitations identified above. The FEIR also concludes that relocation of the building would result in the loss of historical context for the structure, thereby undermining its value as a historic resource if relocated.

Provision of Construction Jobs and Economic Investment in Downtown Tiburon Property

Construction of the project would provide work for several individuals in the construction industry, as well as for architects, engineers, and other professionals. In addition, the project would facilitate the elimination of a blighted building in the heart of the Downtown area and constitute a significant financial investment in a prominent location in Downtown Tiburon intended to improve the aesthetics and economic vitality of Downtown Tiburon.

Fulfills Tiburon General Plan 2020 Land Use Policies for Downtown

The existing Harbor Light building was closed in 2006 due to safety violations, leaving a void in the otherwise vibrant commercial Main Street. The proposed construction of a new commercial building would be consistent with General Plan 2020 policies for Downtown that include: DT-1: seek to promote a clean well-maintained Downtown; DT-3: promote the economic vitality of Downtown; DT-6: preserve and enhance the unique character of Downtown Tiburon, Downtown buildings may be rebuilt or reconstructed to the same FAR as exists, provided that the resulting building substantially conforms to the guidelines of the Downtown Tiburon Design Handbook.

Rejection of Alternatives

Specific economic considerations, as set forth above, make infeasible the reuse and rehabilitation of the historic structure at 20-22 Main Street (the Preserve and Renovate Alternative, DEIR p. 36 as well as the Relocate and Renovate Alternative, DEIR p. 37). The anticipated costs for the Preserve and Renovate Alternative, which involves reconstruction costs for the extremely dilapidated building at its current location and associated financing costs, would likely exceed the potential revenues from renting the commercial building making this Alternative infeasible. The anticipated costs for the Relocate and Renovate Alternative, including land purchase, permitting costs, financing costs, and renovation of the structure in a new location, would substantially increase costs above those for the Preserve

and Renovate alternative with no increase in rental income, making the Relocate and Renovate Alternative even less feasible.

The No Project/No Development Alternative (DEIR, p. 35) is not feasible since retention of the extremely dilapidated commercial building at 20-22 Main Street without extensive renovations would be in violation of Chapter 13 of the Tiburon Municipal Code due to the presence of numerous violations of the California Building Code.

SECTION 6 – IMPACTS FOUND NOT TO BE SIGNIFICANT

During the CEQA scoping process applied to the project, numerous environmental impacts were dismissed with a “Less-Than-Significant Impact” or “No Impact” response on the Initial Study, on the ground that there was no fair argument that such impacts would occur. The Planning Commission finds that there is no substantial evidence in the record that the decisions made in the Initial Study (included in the EIR appendix) to dismiss such theoretical impacts were erroneous, nor is there substantial evidence that any impact that might occur has not been adequately examined in the EIR. The Planning Commission hereby finds, based on the EIR and the record, that all such impacts are less-than-significant and do not require mitigation.

SECTION 7--- ADOPTION BY REFERENCE OF MITIGATIONS FROM THE CERTIFIED EIR FOR THE TIBURON GENERAL PLAN (TIBURON 2020)

Mitigation measures contained in the General Plan 2020 EIR that address potentially significant offsite impacts and cumulative impacts of the project have been undertaken by the Town of Tiburon or are required to be implemented as part of this project pursuant to Public Resources Code Section 21083.3, subdivision (c), and are hereby incorporated by reference. Some mitigation measures contained in the General Plan 2020 EIR, however, are not applicable to the project site in that the site is greater than 500 feet from Highway 101 in terms of air quality effects on sensitive receptors, no hazardous materials exist on site requiring soil remediation, no creeks, oak woodlands or landslides are present on site, the proposed facility is not a critical facility requiring post-earthquake inspection, the site does not contain and the project does not propose a septic facility.

SECTION 8 — ADOPTION OF FINDINGS

The Planning Commission hereby adopts the Findings of Fact and Rationales as set forth in this Resolution.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon held on _____, 2008 by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

EMMETT O'DONNELL, CHAIRMAN
TIBURON PLANNING COMMISSION

ATTEST:

SCOTT ANDERSON, SECRETARY

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TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
August 13, 2008
Agenda Item: 1

STAFF REPORT

To: Members of the Planning Commission

From: Community Development Department

Subject: Conditional Use Permit # 10705; Proposal for Demolition of an Existing Commercial Building (the “Harbor Light” building) and Construction of a New Two-Story Commercial Building at 20 & 22 Main Street, and Consideration of Certification of the Final Environmental Impact Report (FEIR) for the Project; Zelinsky Properties, Owner; Hank Bruce Architects, Applicant; Assessor Parcel Number: 059-102-22

Reviewed By: _____

PROJECT DATA

Project Name:	Harbor Light Commercial Project
Address:	20 & 22 Main Street
Assessor’s Parcel Number:	059-102-22
File Number:	10705
Lot Size:	2,514 square feet
General Plan:	VC (Village Commercial)
Zoning:	VC (Village Commercial)
Current Use:	Vacant Building
Owner:	Zelinsky Properties
Applicant:	Hank Bruce Architects
SCH#:	2008022099

BACKGROUND

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.

PROPERTY DESCRIPTION

The subject property is very small, encompassing only 2,514 square feet (roughly 25’ x 100’) fronting Main Street in Downtown Tiburon. The rear of the lot fronts Juanita Lane. The site is currently improved with a dilapidated two-story commercial building, known as the “Harbor

Light” building. The building was named after the “Harbor Light Bar” which was once located on the lower level of the building, which was constructed circa 1922. The Harbor Light building is listed on the Town of Tiburon’s *Local Historic Inventory of Buildings Located in Downtown Tiburon*.

The existing structure has a ground level floor area of 1,462 square feet and a second level floor area of 953 square feet, for a total of 2,415 square feet. At one time, the upper level of the building housed a small apartment; however the most recent use of the building was as a retail carpet/rug specialty store. The existing building occupies nearly all of the property surface except for two parking spaces at the rear.

PROJECT DESCRIPTION

A conditional use permit application has been filed for construction of a new, two-story, approximately 2,941 square foot commercial building. The new building would occupy roughly the same coverage area on the lot as the existing building and would continue to provide two at-grade parking spaces at the rear of the lot, accessed by Juanita Lane. Submitted drawings show the ground level of the structure as having a floor area of 1,496 square feet, and an upper level floor area as having 1,445 square feet. The partial second story would be approximately 500 square feet larger than the existing building’s partial second floor. The current building is 22 feet, 3 inches tall; the proposed building would be 27 feet, 4 inches in height. The proposed uses would be retail on the ground floor and office on the second floor.

A color/materials board will be available at the meeting for review by the Commission. The application forms and supplemental sheets are attached as **Exhibit 6**. The project site plan and other drawings submitted by the applicant are attached as **Exhibit 7**.

Permits required prior to construction of the project include a conditional use permit, site plan and architectural review, encroachment permit, and building permit. A permit may also be required from the Bay Conservation and Development Commission (BCDC). Utilities are already provided to the property, but some may be in need of upgrade or replacement.

ANALYSIS

Staff offers the following analysis of General Plan consistency and Zoning Ordinance conformance.

Consistency with Applicable General Plan Policies

The section that follows is a review of the proposal with directly applicable policies of the Tiburon General Plan. In determining consistency of a proposal with a General Plan, the standard of review is that a project is consistent if, on balance, it promotes or furthers the goals and policies of the General Plan.

Downtown General Land Use Policies

DT-1. The Town shall promote a clean, well-maintained Downtown area that serves the commercial, service, and passive recreation needs of the community and is an aesthetically pleasing, friendly, and desirable destination.

Consistent. The proposed demolition of the vacant, dilapidated, and unsafe building, and its replacement by a new building of compatible style and character to its surroundings, will promote a clean and well-maintained Downtown area. The proposed retail and office uses will serve the community and its visitors.

DT-6. To preserve and enhance the unique character of Downtown Tiburon, Downtown buildings may be rebuilt or reconstructed to the same FAR as exists, provided that the resulting building substantially conforms to the guidelines of the Downtown Tiburon Design Handbook.

Consistent. The proposed project would reconstruct a building closer in size to the existing 2,415 square foot structure than to a 704 square foot building that would otherwise be allowed by VC zone standards. The proposed additional approximately 526 square feet would be accomplished through a transfer of intensity permitted by Policy DT-9 as discussed below.

DT-7. The Town of Tiburon shall encourage preservation of its inventory of significant historic buildings and resources in Downtown, through implementation of the California State Historic Building Code and the Downtown Tiburon Handbook.

Inconsistent. While preservation of historic buildings is greatly desirable, it is not always feasible. The Harbor Light EIR concludes that it is not feasible to rehabilitate and/or relocate this building. While the circa 1922 structure would be lost, adherence to the guidelines contained in the *Downtown Tiburon Design Handbook* would result in a new building that is compatible with remaining historical buildings along Main Street.

DT-9. A transfer of intensity between commercially-designated Downtown properties (NC and VC districts) may be permitted subject to discretionary review (conditional use permit) by the Town, without requiring General Plan or Zoning Ordinance amendments.

Consistent. The General Plan designates the project site as Village Commercial (VC), which allows a floor area ratio of up to 0.28. With a parcel size of 2,514 square feet, this would allow up to 704 square feet of floor area. The proposed project would add approximately 500 square feet of floor area to the new building. The additional square footage would be transferred from the Main Street Parking lot site, which has 867 square feet of remaining development potential pursuant to a recorded agreement between the Town of Tiburon and the property owner. Staff believes that it is possible to increase the square footage on the site provided that the design, scale, mass and height of the building are in character and compatible with its surroundings. A poorly designed building can appear more massive and out of place than a well designed building with more square footage. Staff considers the proposed increase in square footage through a transfer of intensity

minor, and the proposed building to be in character and compatible with its surroundings.

Village Commercial District Policies

DT-15. The Village Commercial land use designation (Main Street/Ark Row) may be comprised of tourist-oriented and resident-oriented uses, as well as residential uses. The maximum allowable intensity for lands designated Village Commercial is an FAR of 0.28, except in accordance with Policy DT-6 or where a Transfer of Intensity is approved consistent with Policy DT-9.

Consistent. The proposed uses for the new commercial building are retail at the street level and office at the upper level. These uses would be compatible and consistent with existing uses on Main Street and Ark Row and could be resident- and/or visitor-serving. The proposed building would be similar in height, bulk, and scale with numerous other buildings on Main Street and Ark Row. Policies DT-6 and DT-9 are being properly invoked to achieve the proposed building square footage.

DT-16. In order to encourage pedestrian use and enjoyment of Main Street, the Town shall discourage commercial office uses from occupying ground floor space suitable for retail and restaurants on Main Street and Ark Row.

Consistent. Although specific businesses are not known at this time, the proposed commercial building would house retail use at the ground level and office use on the second floor.

Design Policies

Several of the design policies within the Downtown Element of the General Plan relate to the proposed design of the new commercial structure. Most notable are policies DT-17, DT-19, and DT-21 and 22. The architectural context of the commercial building will be reviewed by the Design Review Board for consistency with these design policies and those guidelines contained within the *Downtown Tiburon Design Handbook*. At this time, the Planning Commission should focus its review on the use and compatibility aspects of the proposed building, rather than design issues. Recommended conditions of approval require the Design Review Board to review the project within the context of the *Downtown Tiburon Design Handbook*. However, should the Planning Commission desire to emphasize any areas of special concern that it would like the Board to address, either the minutes or the Resolution approving the conditional use permit would be an appropriate place to do so.

Staff concludes that on balance the project furthers the goals and objectives of the Tiburon General Plan.

Zoning Ordinance Conformance

Zone Regulations

The following section comprises an analysis of conformance of the proposal with provisions of the Tiburon Zoning Ordinance. The Commission should note that this use permit is a generalized permit for construction of a new building, and encompasses only general (small item) retail use on the ground floor and general commercial office use on the second floor, as proposed. Different uses, such as a restaurant, would require a separate and subsequent use permit. Therefore, the analysis below is tailored to a general retail/office building as is proposed.

The subject property is located within the Village Commercial (VC) zoning district, which is intended to provide for predominately resident-serving commercial and office uses. The proposed uses for the new commercial building are retail and office uses, which are consistent with the intentions of the VC zone.

New construction in the VC zone typically has a floor area ratio limit and a coverage limit of 0.28, which is well below the size of the current Harbor Light building. However, as discussed above, General Plan Policy DT-6 allows existing buildings to be reconstructed to their pre-existing floor area without need for any zoning amendments or variances in order to preserve the character of the Downtown. In addition, the project includes a transfer of intensity of up to 535 square feet of floor area from a nearby property under the same ownership, pursuant to provisions of General Plan Policy DT-9. The additional square footage would be transferred from the Main Street Parking lot site, which has 867 square feet of remaining development potential, pursuant to a recorded agreement between the Town of Tiburon and the property owner.

Under these circumstances, the floor area and coverage limits expand to reflect the transfer of intensity, making the proposed project consistent with both floor area and lot coverage limits established for the VC zone. The project's proposed height of 27 feet, 3 inches is also within the 30 foot height limit for the VC zone.

Staff considers the proposed increase in square footage through a transfer of intensity to be minor, and the height and scale of the proposed building to be similar in character and compatible with its surroundings. Building design and architectural details will be comprehensively reviewed by the Design Review Board during the Site Plan & Architectural Review process.

Use

The proposed demolition and reconstruction of a retail/office commercial structure in the Village Commercial Zone requires a Conditional Use Permit. In reviewing a conditional use permit, the Planning Commission is directed to consider the following issues under Section 16-4.4.2:

- (a) *Whether the location proposed for the conditional use applied for is properly related to the development of the neighborhood as a whole?*

The location of the proposed reconstructed building is properly located within the context of Downtown Tiburon. The building would be built in the same location as the existing structure, and would mimic the same style of architecture in order to continue the pattern along that side of Main Street. The ground level of the building would be restricted to retail use, which is consistent with the other adjacent commercial retail uses in the Downtown area.

- (b) *Whether the location proposed for the particular conditional use applied for would be reasonably compatible with the types of uses normally permitted in the surrounding area?*

Downtown Tiburon contains a wide range of commercial-type uses within a small area. This includes retail shops, restaurants with indoor and outdoor seating, ferry docks, and offices. While it is not known the exact businesses to be located within the new commercial building, both retail and office uses are proposed, which are compatible with the types of uses found in the downtown area.

- (c) *Whether or not adequate facilities and services required for such use exist or can be provided?*

Adequate facilities and utilities can be provided to serve the proposed uses.

- (d) *Whether appropriate conditions and requirements have been imposed which would reasonably assure that the basic purposes of this ordinance and the objectives of the General Plan are served?*

Staff concludes that a combination of conditions of approval placed on the project approval, and mitigation measures from the EIR, will achieve the purposes of the Zoning Ordinance and the objectives of the General Plan and deal effectively with any construction-related impacts.

- (e) *Whether the Town is adequately served by similar uses presently existing or recently approved by the Town?*

Staff believes that the re-establishment of a successful commercial building at this location is important to the economic health of Downtown Tiburon. The re-establishment of previously-existing commercial uses at the site would not result in an over-concentration of such uses in the Downtown area.

In accordance with Section 16-4.4.3 of the Zoning Ordinance, factors to be considered in determining whether or not any conditional use should be permitted in a specific location are:

- (a) *The relationship of the location proposed to:*
- (1) *The service or market area of the use or facility proposed;*
 - (2) *Transportation, utilities, and other facilities required to serve it; and*
 - (3) *Other uses of land in the vicinity.*

Staff concludes that the proposed retail and office uses are properly related to the service area, and that these uses would serve a valuable purpose in Tiburon. The transportation facilities and utilities needed to serve the use are available.

- (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;*
- (2) *Probable hazard from explosion, contamination, or fire;*
- (3) *Probable inconvenience, economic loss, or hazard occasioned by unusual volume or character of traffic or the congregating of a large number of people; and*
- (4) *The number of such uses presently existing or recently approved within the area.*

Once re-constructed, the new commercial building would house retail and office uses under the proposed use permit, which would have few effects on adjoining properties. Short-term construction-related impacts would be minimized through appropriate enforcement of existing Town regulations on building permits and encroachment permits. These include noise, odor, dust, vibrations, construction parking, access, and materials storage issues. Although the exact businesses to be located within the new commercial building are unknown at this time, the proposed general retail and commercial office uses are highly unlikely to result in unusual volume or character of traffic, or the congregating of a large number of people. Downtown Tiburon is primarily comprised of retail, restaurant and office-type oriented uses, and therefore the proposed retail and office uses will be compatible with the established uses in the vicinity.

- (c) *The need of the community for additional numbers of such uses, paying particular heed to whether the neighborhood is already served by similar uses.*

Additional small retail and office uses would be of benefit to the Downtown area as local residents and visitors to the Town spend a moderate amount of time in this commercial area.

Parking

Parking for the Harbor Light property is contained within the Main Street Parking Lot, also owned by Zelinsky Properties. In addition, the project would maintain the two existing on-site parking spaces. Staff notes that the parcel is not wide enough to accommodate a third parking space while still meeting California accessibility requirements for parking spaces. The project would improve and upgrade the existing parking area at the rear of the building.

The project would result in a minor increase in parking demand as calculated by the provisions of the Zoning Ordinance. The gross square footage of the second floor would increase by approximately 500 square feet. The Zoning Ordinance standard for office is one space per every 300 feet of net occupiable floor area, which would equate to 1 or possibly 2 additional parking spaces over the current required number of spaces. Staff believes that this increase is minor enough that it does not warrant special accommodation in a remote parking lot, and that parking for the new building can be easily accommodated on-site and in the Main Street Parking Lot. The building is too small to trigger Zoning Ordinance requirements for loading areas, bicycle parking, or motorcycle parking, but must (and does) meet state parking requirements for the disabled.

REFERRAL TO ADVISORY BODIES

On January 22, 2008, the Heritage and Arts Commission (HAC) held a review and comment session on the application (**Exhibit 1**). Comments received from the HAC revolved around the desire to preserve the existing architectural style and scale of the structure as much as possible. One suggestion was to have the actual storefront remain more similar to the existing one. The HAC felt that the building should appear less commercial and that the character of the building should be maintained to fit in with the overall character of Main Street.

Other comments included having a sign or plaque indicating that the building was once the “Harbor Light” building; decrease the proposed increased roof height or use a different style of roof; possibly preserve the existing “Harbor Light” sign, and modify the proposed light fixtures at the rear of the building, as they appear too modern on the drawings. The HAC also suggested that this building could begin the process of installing plaques on all historic buildings on Main Street. The plaques would note each building’s historical connection to the Town.

The Belvedere-Tiburon Landmarks Society (Society) also reviewed and commented on the proposed project (**Exhibit 2**). Comments included the desire that the building be as aesthetically similar to the existing structure as possible and in harmony with the surrounding buildings along Main Street. The Society letter also suggested that informational plaques be posted on those historical buildings that remain on Main Street. One noteworthy comment was that the dates of the buildings should accurately reflect the year that the buildings were built, and therefore if any date is placed on the replacement commercial structure, it should not reflect the circa 1922 construction date of the prior structure.

Staff notes that one of the EIR mitigation measures requires the placement of a plaque on the building for historical preservation purposes. This plaque includes a photographic etching of the building, the building name, and a brief description of the history of the property. The plaque would be affixed to the exterior of the front of the new building, visible to passing pedestrians.

ENVIRONMENTAL STATUS

A focused environmental impact report was prepared for the project pursuant to CEQA section 21083.3. The draft environmental impact report (DEIR) was prepared and circulated for public review and comment for 45 days. Public comments on the DEIR were solicited at a public hearing held at the July 9, 2008 Planning Commission meeting. The comment period closed on July 18, 2008.

No comments on the DEIR, written or oral were received during the comment period. The final environmental impact report (FEIR) was released on July 29, 2008, and included a draft Mitigation Monitoring Program. The FEIR concludes that all but one impact identified in the FEIR 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. While mitigation measures proposed would reduce the impact, it is simply not possible to demolish the building and still reduce the impact to a less-than-significant level.

Three alternatives to the proposed project were evaluated in the environmental impact report. These included the “no project/no development” alternative, the “preserve and renovate” alternative, and the “preserve and relocate” alternative. The EIR concluded that neither of the

development alternatives was likely to be economically feasible and that in addition, the “preserve and relocate” alternative would not avoid the impact on historic resources as the building would be removed from its historical context through relocation.

Staff concludes 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.

AGENCY/PUBLIC COMMENTS

As of the date of this report, the Town has not received any letters regarding the subject application.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Following the staff report and a presentation by the applicant, hold a public hearing to receive testimony, and close the public hearing.
2. Adopt the resolution (**Exhibit 3**) certifying the FEIR for the project.
3. Adopt the resolution (**Exhibit 4**) making CEQA Findings of Fact and a Statement of Overriding Considerations for the project.
4. Adopt the resolution (**Exhibit 5**) conditionally approving the project.

Exhibits:

1. Memo of 1/28/2008 summarizing Heritage & Arts Commission comments
2. Letter from Belvedere-Tiburon Landmarks Society dated 12/18/2007
3. Draft Resolution certifying the Harbor Light EIR
4. Draft Resolution making CEQA Findings for the project
5. Draft Resolution conditionally approving the conditional use permit
6. Application Form and Supplemental Materials
7. Submitted drawings from Hank Bruce Architects

Previously Distributed: Harbor Light DEIR
Harbor Light FEIR

Prepared By: Laurie Tyler, Associate Planner/Environmental Coordinator

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RECORDING REQUESTED
WHEN RECORDED, RETURN TO:
Tiburon Planning Division
1505 Tiburon Boulevard
Tiburon, CA 94920
Attn: Laurie Tyler

RESOLUTION NO. 2008 – 17 (DRAFT)

A RESOLUTION OF THE PLANNING COMMISSION OF
THE TOWN OF TIBURON APPROVING A CONDITIONAL USE
PERMIT TO DEMOLISH AND RECONSTRUCT A COMMERCIAL BUILDING
LOCATED AT 20 AND 22 MAIN STREET COMMONLY KNOWN AS THE
“HARBOR LIGHT” BUILDING
ASSESSOR PARCEL NO. 059-102-22

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

Section 1. Findings.

A. The Planning Commission has received and considered an application from Zelinsky Properties to demolish and reconstruct the “Harbor Light” building, located at 20-22 Main Street in Downtown Tiburon (File No. 10705). The application consists of the following:

1. Application form and supplemental materials received November 12, 2007
2. Architectural drawings and color/materials board received November, 2007

The official record for this project is hereby incorporated and made part of this resolution. The record includes the Environmental Impact Report (EIR), Staff Reports, Minutes, Application Materials, and all comments and materials received at the public hearings.

B. The project was determined to be subject to environmental review and a focused EIR was prepared in accordance with state and local CEQA guidelines. The Planning Commission held a duly noticed public hearing to accept comments on the Draft Environmental Impact Report (DEIR) on July 9, 2008, and on July 23, 2008, following the close of the comment period during which no comments were received, determined that recirculation of the DEIR was not required and directed Staff to prepare a Final Environmental Impact Report (FEIR), which was released on July 29, 2008.

C. On August 13, 2008, the Planning Commission held a public hearing on the merits of the project at which it considered the FEIR. The Planning Commission adopted Resolution No. 2008-15 certifying the FEIR for the Harbor Light Project. The Planning Commission also adopted Resolution No. 2008-16 making findings pursuant to the

California Environmental Quality Act (CEQA) for the project, including a Statement of Overriding Considerations for the project.

- D. At the public hearing on August 13, 2008, the Planning Commission heard and considered all public testimony and the written report of the Community Development Department staff.
- E. The Planning Commission finds, based upon the application materials and analysis provided in the August 13, 2008 Staff Report and in the entire record, that the project, as conditioned, is consistent with the Tiburon General Plan and is in compliance with applicable sections of the Tiburon Zoning Ordinance, including but not limited to Sections 16-4.4.2 and 16-4.4.3, and other applicable zoning regulations.
- F. The Planning Commission finds that a transfer of intensity is required for project approval, as described in the Staff Report dated August 13, 2008, and hereby finds that the project qualifies for the transfer of intensity pursuant to General Plan Policy DT-9.

Section 2. Adoption of Mitigation Monitoring Program.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby adopts the Mitigation Monitoring Program (MMP) for the Harbor Light Project, attached hereto as **Exhibit A**, and incorporates the mitigation measures as conditions of project approval. The permit holder shall bear all costs for implementation and monitoring of said Mitigation Monitoring Program.

Section 3. Approval of Transfer of Intensity.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission hereby approves a Transfer of Intensity not to exceed 535 square feet from the property identified as Assessor Parcel No. 059-102-28, which is held by the same owner (Zelinsky Properties) as the subject property. The Planning Commission finds that Assessor Parcel No. 059-102-28 holds development potential of 867 square feet pursuant to a valid recorded agreement with the Town of Tiburon.

Section 4. Approval of Conditional Use Permit.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission hereby approves the conditional use permit application (File #10705), to demolish and the existing commercial building and construct a new commercial building located at 20 & 22 Main Street, subject to the following conditions of approval:

- 1. This use permit approves construction of an up to 2,950 square foot, two-story commercial building. Ground floor use shall be limited to general (small item) retail use, and second floor use shall be limited to general commercial office use. Any other type of use (e.g. restaurant) shall be subject to securing a separate conditional use permit.

2. All mitigation measures set forth in attached **Exhibit A** (Mitigation Monitoring Program) are incorporated as conditions of approval on the project.
3. Two (2) on-site parking spaces shall be maintained at all times. Principal parking for the uses in the building shall continue to be allocated to the Main Street Parking Lot (Assessor Parcel Nos. 059-102-20 & 28) and shall be maintained and be available at all times. Loss of the availability of public parking in this remote lot for purposes of the building approved herein shall be grounds for amendment or revocation of this conditional use permit.
4. Site Plan & Architectural Review approval shall be secured prior to issuance of a building permit for the new building. The building design shall be reviewed for conformance with the guidelines set forth in the *Downtown Tiburon Design Handbook*. During its review, the Design Review Board shall consider the comments of the Tiburon Heritage & Arts Commission, set forth in the memo dated January 28, 2008, and the comments of the Belvedere-Tiburon Landmarks Society in its letter dated December 18, 2008.
5. There shall be no outdoor display of merchandise.
6. No amplified sound shall be audible from the exterior of the building.
7. The Town reserves the right to amend or revoke this Conditional Use Permit for cause, in accordance with adopted regulations of the Town.
8. This Conditional Use Permit approval shall become null and void if not vested within two (2) years of final approval of this conditional use permit.
9. If this permit approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge. The property owner/applicant agrees to defend, indemnify and hold the Town of Tiburon harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge.

PASSED AND ADOPTED at a regular meeting of the Planning Commission on _____, 2008, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

EMMETT O'DONNELL, CHAIRMAN
TIBURON PLANNING COMMISSION

ATTEST:

SCOTT ANDERSON, SECRETARY

Attachments: Exhibit A: Mitigation Monitoring Program

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RECORDING REQUESTED

RETURN TO:

Tiburon Planning Division

1505 Tiburon Boulevard

Tiburon, CA 94920

Attn: Daniel M. Watrous

RESOLUTION NO. 2008-(Draft)

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON
APPROVING A CONDITIONAL USE PERMIT AND ADOPTING A NEGATIVE
DECLARATION FOR THE EXPANSION OF AN EXISTING DAYCARE CENTER
AT 11 SHEPHERD WAY

ASSESSOR PARCEL NO. 034-291-31

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

Section 1. Findings.

A. The Planning Commission has received and considered an application (File #10806) for a conditional use permit to expand an existing daycare center (The Little School) 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 on property located at 11 Shepherd Way. A previously approved conditional use permit (File #16526) was approved in 1966 to operate the daycare center within the church fellowship hall. The application consists of the following materials:

1. Application form and materials received April 2, 2008
2. Site Plan and Parking Plan received May 28, 2008
3. Playground Site Plan and Elevations received April 2, 2008
4. Revised Playground Site Plan, Fence detail drawing and current and proposed enrollment figures, received August 6, 2008

The official record for this project is hereby incorporated and made part of this resolution. The record includes the Staff Reports, minutes, application materials, and all comments and materials received at the public hearing.

B. The Planning Commission held duly-noticed public hearings on July 9, 2008 and August 13, 2008, and heard and considered testimony from interested persons.

C. An initial study of environmental impact was prepared and a draft negative declaration released for public comment on June 13, 2008. The comment period closed on July 8,

2008. The Planning Commission finds that, based on the record, no substantial evidence to support a fair argument that a significant adverse impact would result from the project has been presented.

- D. The Planning Commission has found, based upon the application materials and analysis provided in the July 9, 2008 and August 13, 2008 Staff Reports, that the project, as conditioned, 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 the expanded daycare center and outdoor play area would constitute a reasonable expansion of an established use and would not result in substantial noise or traffic impacts on the surrounding residential neighborhood.
- E. The Planning Commission also finds that the parking provided on the site for the church and expanded daycare center is sufficient for these shared uses, as these uses do not have overlapping hours of operations sufficient to result in a deficiency of parking spaces and the shared parking lot is adjacent to both the church and daycare center.

Section 2. Approval.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the Town of Tiburon does hereby approve the Conditional Use Permit (File #10806), to expand the existing daycare center (File #16526) by converting the existing single-family dwelling to daycare use to a capacity of 77 children with up to 8 daycare providers and to construct an outdoor play area on property located at 11 Shepherd Way, subject to the following conditions of approval:

- 1. The use shall be in substantial conformance with the following documents as approved herein:
 - A. Project description dated April 2, 2008 (attached as Exhibit A)
 - B. Playground Site Plan Fence detail drawing and current and proposed enrollment figures, received August 6, 2008 (on file and available for review at Town Hall)

Any substantive intensification of use, as determined within the reasonable discretion of the Director of Community Development, shall require an amendment to this use permit.

- 2. The use must obtain and maintain all required state licenses so long as operation persists, and must comply with those permit and license requirements at all times.
- 3. The applicant shall obtain Site Plan and Architectural Review approval for all structural exterior improvements, including the outdoor play area.

4. A total of 38 parking spaces shall be provided on the site at all times.
5. The driveway in the vicinity of the outdoor play area shall be widened to the satisfaction of the Tiburon Fire Protection District. Compliance with this requirement shall be demonstrated prior to approval of a Site Plan and Architectural Review application for this project.
6. This use permit shall be reviewed by the Planning Commission within one (1) year of the commencement of the expanded use, or within 24 months, whichever comes first.
7. This Conditional Use Permit approval shall become null and void if the approved use has not commenced within one (1) year of final approval.
8. This permit shall be subject to modification and/or revocation for cause in accordance with adopted regulations of the Town of Tiburon.
9. If this approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge. The property owner/applicant agrees to defend, indemnify and hold the Town of Tiburon harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge.

PASSED AND ADOPTED at a regular meeting of the Planning Commission on August 13, 2008, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

 EMMETT O'DONNELL, CHAIRMAN
 TIBURON PLANNING COMMISSION

 DANIEL M. WATROUS, SECRETARY \shared\Planning\Planning Commission\Resolutions\2008\11 Shepherd
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TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
August 13, 2008
Agenda Item: 2

STAFF REPORT

To: Members of the Planning Commission

From: Community Development Department

Subject: 11 Shepherd Way (The Little School); Conditional Use Permit and Negative Declaration to Expand an Existing Daycare Center; Shepherd of the Hills Lutheran Church, Owner; The Little School, Applicant; File #10806; Assessor's Parcel No. 034-291-31 (Continued from July 9, 2008)

Reviewed By: _____

BACKGROUND

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. It was the consensus of the Commission, however, that the Little School needed to provide additional information to address the neighbors' concerns. The Commission appointed an ad hoc subcommittee to meet with the applicants and the neighbors to discuss these issues. The hearing was continued to the August 13, 2008 meeting. Minutes and the Staff report from the July 9, 2008 meeting are attached as **Exhibits 1 & 2**.

The subcommittee met with the applicants and neighbors on July 14, 2008. The subcommittee encouraged the daycare and church representatives to prepare additional information that would allow the Planning Commission to make an informed decision on the project. Specifically, the subcommittee requested that the applicant prepare:

- An evaluation of the condition of the roadway for Shepherd Way;
- An analysis of possible play area noise impacts;
- Alternative designs and/or locations for the play area; and
- A written policy detailing procedures for parents dropping off and picking up children.

The applicant held an additional meeting with some of the neighboring residents on August 5, 2008 to further discuss these issues.

ANALYSIS

The Little School has submitted the following changes and additional information:

Play Area. The location for the proposed playground equipment has been moved to the south in front of the garage of the residence to be converted for daycare use. The building would serve as a noise and visual buffer between the equipment and the neighboring homes on Turtle Rock Court. The fenced play area would still extend to the north of the garage, but the fence would be pulled back 9 feet and would no longer be aligned with the rear of the dwelling. This would also help minimize the visual impacts of the fencing as seen from the adjacent homes below the site. A detail drawing of the proposed 6 foot tall redwood fencing has also been submitted and is attached as **Exhibit 3**. The location of the revised play area has been marked on the site and is shown on the site plan attached as **Exhibit 11**.

Circulation and Parking. A portion of the center landscaped island in the parking lot closest to the new daycare building would be cut back to create a 20 foot wide aisle for the parking lot, similar to the existing aisle widths in the lot. A memo from the Tiburon Fire Protection District states that the minimum turning radius for the parking lot must be 30 feet; it is unclear whether the Fire District would require additional width for this driveway given the remaining driveway widths in this parking lot. The school and church would continue to provide 38 parking spaces in the lot.

Enrollment Figures. The applicant has submitted more detailed existing and proposed enrollment figures for the daycare center, which are attached as **Exhibit 4**. Currently, there are 32 children at the daycare center on Mondays, Wednesdays and Fridays and 28 children on Tuesdays and Thursdays. A total of 34 families have 44 children enrolled at the daycare center. The applicant estimates that a total of 60 round trips are made to the site to drop off and pick up children on Mondays, Wednesdays and Fridays and 50 round trips are made on Tuesdays and Thursdays.

As proposed, 56 children would attend the center on Mondays, Wednesdays and Fridays and 52 children on Tuesdays and Thursdays, with 65 families bringing 76 children to the center. The applicant estimates that 105 round trips would be made to the site each day to drop off and pick up children on Mondays, Wednesdays and Fridays and 100 round trips would be made on Tuesdays and Thursdays.

Drop-off/Pick-up Policy. The applicant has submitted a written policy for parents dropping off and picking up children at the daycare center, which is attached as **Exhibit 5**. The policy describes procedures for daycare providers to meet parents at their vehicles at specified hours. The policy also encourages carpooling and cites car seat requirements for children.

No additional information has been provided regarding the maintenance of the Shepherd Way roadway. At the subcommittee meeting, both the Little School and Shepherd of the Hills Lutheran Church informally committed to helping to pay for improvements to the roadway. The

neighboring residents indicated that the roadway could require approximately \$150,000 in repairs. The applicant indicated that they would hire a consultant to determine the work and cost necessary to repair the roadway. This evaluation has not been provided to the Town as of the date of this report.

PUBLIC COMMENT

As of the date of this report, three letters have been received regarding the subject application since the July 9 Planning Commission meeting. These letters are attached as **Exhibits 8 through 10**.

CONCLUSION

The consensus of the Planning Commission at the July 9, 2008 meeting was that a decision should not be made on this conditional use permit application until enough information had been presented to address the concerns raised by the neighbors regarding roadway maintenance, traffic, noise and visual issues. Staff believes that the project revisions as submitted would lessen the potential noise and visual impacts of the play area on the closest neighbors on Turtle Rock Court. The applicant has provided additional information regarding the daycare center enrollment and the drop-off/pick-up policy. The widened driveway near the play area would appear to substantially address the circulation concerns of the Fire District.

There have been preliminary discussions and estimates about the work necessary to rehabilitate the Shepherd Way roadway, but no specific details have been presented to address this situation. The Planning Commission has acknowledged that the roadway maintenance issue is a longstanding concern between the Preserve Homeowners Association (holders of the underlying title for Shepherd Way) and the school and church, but the Commission was unsure whether this issue must be resolved prior to a decision on the subject conditional use permit application.

If the Planning Commission concludes that adequate information has been presented to make an informed decision on the application, the Commission should deliberate on the project merits and render a decision on the application. If the Commission feels that additional information is required, Staff recommends that the hearing be continued to the September 24, 2008 meeting to give the applicant adequate time to prepare the necessary information.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Following the staff report and a presentation by the applicant, hold a public hearing to receive testimony, and close the public hearing.
2. Deliberate on the project merits and either:
 - a. Adopt the draft resolution (**Exhibit 7**) conditionally approving the project;
or
 - b. Continue the hearing to the September 24, 2008 meeting.

EXHIBITS

1. Minutes of the July 9, 2008 Planning Commission meeting
2. Planning Commission Staff Report dated July 9, 2008
3. Fence detail drawing
4. Current and proposed enrollment figures
5. Drop-off/pick-up policy
6. Letter from the Little School, dated August 6, 2008
7. Draft resolution
8. Letter from Barry and Rosalind Jekowsky, dated July 21, 2008
9. Letter from Tim and Susan Geraghty, dated July 22, 2008
10. Letter from Michael Herbert, dated August 6, 2008
11. Revised site plan, dated August 6, 2008

Prepared By: Daniel M. Watrous, Planning Manager

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TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
August 13, 2008
Agenda Item: 3

STAFF REPORT

To: **Members of the Planning Commission**

From: **Community Development Department**

Subject: **Green Building Program---Referral from Town Council regarding possible amendments to the draft green building ordinance not previously considered by the Planning Commission**

BACKGROUND

On June 11, 2008, the Planning Commission held a public hearing and recommended Town Council adoption of 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. The Council 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. 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, pursuant to Government Code section 65857. No public hearing is required.

ANALYSIS

The amendment, if adopted, would delete certain sections of the draft ordinance that involve the site plan and architectural review (design review) process. These deletions are shown on attached **Exhibit 1** in strike-through format, and are limited to pp. 3-5 of that document. The affect of the amendments would be that green building rating checklists would not be required with a submittal for design review, but would only be required with the submittal for building permit. Applicants would be advised at the design review stage that any future building permit application must demonstrate compliance with the Town's green rating system, and that would be placed as a condition of approval on the design review permit for projects subject to the green building regulations.

Staff notes that half of the local governments with green programs in Marin County require a checklist at the design review permit stage, and the other half do not. Both systems appear to work successfully. The benefits of the first approach are that it can save costs and speed processing for applicants in that the green rating sheets need be completed only once, at the

building permit stage. A potential drawback to this approach is that if green elements of the project have not been adequately thought through and conceptually incorporated at the design review stage, design changes (and a return trip to the Design Review Board) may be required if the building permit drawings are not in substantial conformance with the approved design review drawings because of changes made to achieve compliance with the green rating system. The Council, at first blush, appeared to conclude that the benefits of a single green rating checklist review outweighed the potential risk of return trips through the design review process.

RECOMMENDATION

Staff recommends that the Planning Commission forward a recommendation to the Town Council supporting the amendments as shown in Exhibit 1.

EXHIBITS

1. Redlined version for green building ordinance showing possible amendments.
2. Government Code section 65857.

Prepared by: Scott Anderson, Director of Community Development

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ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON
AMENDING TITLE IV, CHAPTER 16 (ZONING) OF THE MUNICIPAL CODE TO
ESTABLISH GREEN BUILDING REQUIREMENTS
FOR CERTAIN CONSTRUCTION PROJECTS**

SECTION 1. FINDINGS.

WHEREAS, the design, construction and operation of buildings and structures within the town can have a significant impact on the town's environmental sustainability, resource usage, energy efficiency, waste management and the health and productivity of residents, workers and visitors; and

WHEREAS, the design, construction and operation of buildings and structures also has far-reaching effects on the region and globally through production of greenhouse gases resulting in global climate change and the consumption of resources that impact wildlife habitat; and

WHEREAS, green building benefits are spread throughout the systems and features of the building. Green buildings can include, among other things, the use of certified sustainable wood products, extensive use of high-recycled-content products; recycling of waste that occurs during deconstruction, demolition and construction; orientation and design of a building to reduce the demand on the heating, ventilating, and air conditioning systems; the use of heating, ventilating, and air conditioning systems that provide energy efficiency and improved air quality; enhancement of indoor air quality by selection and use of construction materials that do not emit chemicals that are toxic or irritating to building occupants; the use of water conserving methods and equipment; and installation of alternative energy methods for supplemental energy production; and

WHEREAS, in recent years, green building design, construction and operational techniques have become increasingly widespread. Many homeowners, businesses, and building professionals have voluntarily sought to incorporate green building techniques into their projects. A number of local and national systems have been developed to serve as guides and rating systems for green building practices. The U.S. Green Building Council, developer of the Leadership in Energy and Environmental Design (LEED[®]) Green Building Rating Systems, has become a leader in promoting and guiding green building, particularly for non-residential structures. The Alameda County Waste Management Authority has developed the New Home, Remodeling and Multi-Family Green Building Guidelines and associated GreenPoints Checklists, which have been adopted for use in several Bay Area jurisdictions; and

WHEREAS, according to recent studies published by the United States Green Building Council and the U.S. Environmental Protection Agency, the construction, demolition and operation of buildings in the United States collectively consume up to 37% of the total energy used, 12% of all fresh water supplies, 40% of all raw materials used, and generate 36% of total emissions of anthropogenic carbon dioxide, the primary greenhouse gas associated with global climatic change, and 46% of all sulfur dioxide emissions, 19% of nitrogen oxide emissions and 10% of fire particulate emissions; and

WHEREAS, by requiring buildings within the Town of Tiburon to be constructed in an environmentally responsible manner, the Town of Tiburon is participating in global endeavors to reduce carbon dioxide, sulfur dioxide, nitrogen dioxide, waste generation and habitat change; and

WHEREAS, on July 19, 2007, the Town Council held its annual Council-Staff Retreat and provided specific direction to Staff to review successfully working programs from other Marin County jurisdictions and adapt them to the Town's processes. Staff was directed to bring forth modifications to the Municipal Code to promote green building and energy efficiency; and

WHEREAS, on June 11, 2008, the Town of Tiburon Planning Commission conducted a public hearing and recommended adoption of the Zoning Ordinance amendments, green building rating system, compliance standards, and incentives to the Town Council; and

WHEREAS, the Town Council held duly-noticed public hearings on _____, 2008 and _____, 2008 at which it considered all correspondence and testimony; and

WHEREAS, the amendments to Title IV, Chapter 16 (Zoning) of the Town of Tiburon Municipal Code are based on the following additional findings:

1. The proposed amendments would be consistent with the policies and programs of the General Plan, *Tiburon 2020*, which are pertinent to the Town's zoning regulations, specifically Policies OSC-61, OSC-62, OSC-63 and Program OSC-p.
2. The public health, safety and general welfare would not be adversely impacted by the proposed amendments which reduce impacts on respiratory health and chemical sensitivity of residents and visitors, reduce production of greenhouse gases, reduce impacts on wildlife and vegetative habitats and reduce generation and land filling of waste products; and

WHEREAS, the Town Council finds that these amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines, which exempt changes in land use regulations intended for the protection of the environment, and/or have no potential to result in adverse impacts on the environment, and are exempt from the requirements of CEQA pursuant to Section 15061 (b)(3) of the CEQA Guidelines. The proposed regulations would reduce local, regional and global impacts on air and water quality, resource consumption, waste generation and habitat change.

SECTION 2. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE, TITLE IV, CHAPTER 16 (ZONING).

NOW, THEREFORE IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TIBURON THAT TITLE IV, CHAPTER 16 (ZONING) OF THE MUNICIPAL CODE IS AMENDED AS FOLLOWS:

A. Section 16-1.5 (Definitions) is hereby amended to add the following definitions:

“Certified green building rater” means a person or organization certified or designated by a green building rating organization associated with a specific green building rating system adopted by Town Council resolution for performing inspections and providing documentation to assure compliance with green building requirements.

“Conditioned space” means an enclosed space in a non-residential building that is provided with a mechanical heating system that has a capacity exceeding ten (10) Btu/(hr. x ft.²), or is provided with a mechanical cooling system that has a capacity exceeding five (5) Btu/(hr. x ft.²).

“Green building rating checklist” means a rating system adopted by Town Council resolution and used for determining compliance of new construction and substantial additions with green building requirements.

“Historic building” means any building listed on a national, state, or local register or listing of historic resources.

“LEED[®]” means any one of the U.S. Green Building Council’s Leadership in Energy and Environmental Design green building rating systems or programs.

“LEED[®] accredited professional” means a person who is accredited by the U.S. Green Building Council as having a thorough understanding of green building practices and principles and familiarity with LEED[®] requirements, resources and processes.

“Town-sponsored project” means a building exceeding three thousand (3,000) square feet in floor area primarily funded and sponsored by the Town and located on Town-owned land.

B. ~~Section 16-4.2.3 is hereby amended to read as follows:~~

~~16-4.2.3 Application and information required.~~

~~(a) Application for approval shall be made pursuant to the provisions of Section 16-3.1. Information and materials necessary to adequately describe the proposed project, as appropriate to the proposed size, scale, and nature of the project, and as deemed necessary by the Director or his designee, shall accompany each application. Lists of information and materials which are typically required for a complete application are available in the Planning Division.~~

~~(b) — For any residential covered project, as set forth in section 16-8.2, two sets of a completed applicable green building rating checklist and supporting documentation indicating the measures to be used to achieve the required number of green points. The submitted green building rating checklist shall be prepared or certified as accurate by a certified green building rater.~~

BC. Section 16-4.2.5 is amended to add the following paragraph:

Each approval for a covered project, as set forth in section 16-8.2, shall include a condition of approval that the project shall comply with the applicable green building standard for compliance as set forth by resolution of the Town Council. Failure to explicitly impose the condition on an approval shall not release a project from otherwise meeting applicable requirements of section 16-8 et seq. of this article.

~~D. — Section 16-4.2.7 (k) is added to read as follows:~~

~~(k) — Green building. For residential covered projects, as set forth in section 16-8.2, the project design includes features that foster renewable energy and/or resource conservation, and the overall project appears to meet or exceed the applicable green building standard for compliance as set forth by resolution of the Town Council.~~

CE. Article VIII (Green Building) is hereby added to read as follows:

Article VIII. Green Building

16-8.1 Purpose.

The purpose of this section is to enhance the public health and welfare and assure that residential development is consistent with the Town's desire to create a more sustainable community by incorporating green building measures into the design, construction and maintenance of buildings and appurtenant development. The green building practices referenced in this section are designed to achieve the following objectives:

- (a) Encourage resource conservation;
- (b) Reduce waste generated by construction projects;
- (c) Increase energy and water efficiency; and
- (d) Promote the health of residents.

16-8.2 Covered Projects.

Provisions of this article shall apply to:

- (a) The construction of new dwelling units, including dwelling units deemed “new construction” pursuant to section 16-4.2.10 of this chapter.
- (b) Additions to existing dwelling units that constitute at least five hundred (500) square feet of conditioned space.
- (b) The construction of new non-residential buildings or additions to existing buildings that equal or exceed three thousand (3,000) square feet of conditioned space.
- (c) Town-sponsored projects.

16-8.3 Standards for Compliance.

All covered projects shall demonstrate compliance with the applicable green building rating checklist or system and minimum point requirements set forth in the green building Standards for Compliance, as established by separate resolution of the Town Council, and amended from time to time.

16-8.4 Documentation.

(a) Residential Projects. Applications for ~~site plan and architectural review and applications for building permit~~ for residential covered projects shall submit two (2) completed sets of the applicable green building rating checklist and supporting documentation indicating the measures to be used to achieve the required number of points to achieve conformance with the Town’s Standard for Compliance. The submitted green building rating checklist shall be prepared or certified as accurate by a certified green building rater. Building permit drawings shall indicate in the general notes or individual detail drawings, where appropriate, the green building measures to be used to attain the required number of points.

(b) Non-residential Projects.

(1) Projects from 3,000 to 19,999 square feet of conditioned space: All applicants are required to retain the services of a LEED® Accredited Professional and submit a copy of the LEED® checklist and supporting documentation indicating compliance with the Town’s standards for compliance, signed by the project LEED® Accredited Professional prior to issuance of a building permit. All building documents shall indicate in the general notes and/or individual detail drawings, where feasible, the green building measures employed to attain the applicable LEED® rating.

(2) Projects exceeding 19,999 square feet of conditioned space: Non-residential covered projects shall follow the certifying and procedural requirements of the U.S. Green Building Council for the LEED® rating system. All applicants are required to retain the services of a LEED® Accredited Professional and complete LEED® project registration prior to issuance of a building permit. Applicants shall submit proof of registration of the project with the U.S. Green Building Council and submit a copy of the LEED® checklist and supporting documentation indicating compliance with the Town’s standards for compliance, signed by the project LEED® Accredited Professional, prior to issuance of a building permit. All building documents shall indicate in the general notes and/or individual detail drawings, where feasible, the green building measures employed

to attain the applicable LEED® rating. The applicant shall also provide to the Building Official with online access to the U.S. Green Building Council website in order for the Building Official to monitor the submission of documents by the applicant to the U.S. Green Building Council. If the Building Official determines the project is no longer in compliance with the approved plans or that the applicant is not diligently pursuing LEED® certification by the U.S. Green Building Council, the Building Official may issue a stop work order.

(3) The Town Council may, by resolution, adopt an alternative green building rating system other than LEED®.

16-8.5 Review of Documentation.

If the Building Official determines that the Green Building documentation fails to indicate that the project will conform to the Standards for Compliance, the documentation shall be returned to the applicant as incomplete, with an indication of additional information or project modifications that may be required for approval. A building permit, including a grading permit, shall not be issued until the submittal documentation has been approved.

16-8.6 Verification.

(a) Residential projects. A Certified Green Building Rater or Town building inspector shall verify that the green building measures indicated in the approved green building documentation have been implemented through inspections during the construction of the project or through review of purchase receipts or photographic documentation. At the completion of project construction, the Certified Green Building Rater or Town building inspector shall verify compliance with the approved green building documentation and the Standards for Compliance. During the verification process for the project, flexibility may be exercised by substituting other allowable compliance measures. Substitution of measures must be approved by the Building Official by submittal and approval of a revised Green Building Rating Checklist by the Certified Green Building Rater. An occupancy permit or final inspection approval for the construction project shall not be granted until the Building Official has determined that all required green building measures have been implemented.

(b) Non-residential projects.

(1) Projects from 3,000 to 19,999 square feet of conditioned space: A LEED® Accredited Professional shall verify that the green building measures indicated in the approved green building documentation have been implemented through inspections during the construction of the project or through review of purchase receipts or photographic documentation. At the completion of project construction, the LEED® Accredited Professional shall verify compliance with the approved green building documentation and the Standards for Compliance. During the verification process for the project, flexibility may be exercised by substituting other allowable compliance measures. Substitution of measures must be approved by the Building Official by submittal and approval of a revised LEED® checklist by the LEED® Accredited Professional. An occupancy permit or final inspection approval for the construction

project shall not be granted until the Building Official has determined that all required green building measures have been implemented. Certification through the U.S. Green Building Council is not required.

(2) Projects exceeding 19,999 square feet of conditioned space: Prior to approval of a final inspection for any covered non-residential project, the applicant shall demonstrate substantial completion of the LEED® documentation for the project as evidenced by accessing the online information of the project on the U.S. Green Building Council's website, following which the Building Official shall grant a conditional occupancy permit if all other requirements have been satisfied. Within one year of granting such conditional occupancy permit, the applicant (or current owner) shall submit satisfactory evidence of LEED® certification to the Building Official. Failure of the applicant to submit such evidence shall be a violation of this Code, entitling the Building Official to revoke the conditional occupancy permit, require the vacancy of the building, and/or impose a civil penalty of \$250 per day against the applicant (or current owner) until such evidence of certification has been submitted.

16-8.7 Costs of Verification.

The costs for verification of compliance with green building requirements, including the hiring of a Certified Green Building Rater or a LEED® Accredited Professional, shall be borne by the applicant.

16-8.8 Exemptions.

(a) This section shall not apply to:

- (1) Secondary dwelling units,
- (2) Civic facilities that are located within leased buildings,
- (3) Historic buildings, or

(4) Any project that received and maintains a valid site plan and architectural review approval or a building permit, or which has submitted a complete site plan and architectural review application or a completed building permit application prior to **[insert effective date of this Ordinance]**.

(5) Hardship or Infeasibility Exemption. An exemption from the Standards for Compliance based on hardship or infeasibility may be granted by the Building Official under special circumstances. Such circumstances may include, but are not limited to: availability of green building materials and technology, conflict between green building requirements with other building or zoning standards, or provision of alternate methods that provide greater resource conservation, energy conservation or resident health than adopted green building measures. The determination by the Building Official shall be provided in writing to the applicant. The decision of the Building Official may be appealed to the Town Council pursuant to Section 16-3.8.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The Town Council declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect and be in force thirty (30) days after the date of passage, and before the expiration of fifteen (15) days after passage by the Town Council, a copy of the ordinance shall be published with the names of the members voting for and against it at least once in a newspaper of general circulation in the Town of Tiburon.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on _____, 2008, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on _____, 2008, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

JEFF SLAVITZ, MAYOR
TOWN OF TIBURON

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK

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