

**TOWN COUNCIL  
MINUTES**

**CALL TO ORDER**

Mayor Slavitz called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday January 19, 2011, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

PRESENT: COUNCILMEMBERS: Collins, Fraser, Fredericks, O'Donnell, Slavitz

PRESENT: EX OFFICIO: Town Manager Curran, Town Attorney Danforth, Director of Administrative Services Bigall, Director of Community Development Anderson, Planning Manager Watrous, Police Captain Hutton, IT Coordinator Monterichard, Town Clerk Crane Iacopi

Prior to the regular meeting, the Council met in closed session, beginning at 6:15 p.m., to discuss the following:

**CLOSED SESSION** – (6:15 p.m.)

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Subdivision (a) of Government Code Section 54956.9)

Case No. TIB0900003

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Subdivision (a) of Government Code Section 54956.9)

*Menzel v. Town of Tiburon*

**CLOSED SESSION ANNOUNCEMENT, IF ANY**

Mayor Slavitz said that no action was taken in closed session.

**ORAL COMMUNICATIONS**

Mayor Slavitz welcomes and acknowledged the members of Boy Scout Troop 48 who were in attendance to earn their Community Citizenship merit badges.

Jerome Bernal, Spanish Trail, asked whether it would be possible to have some steps installed down to the beach in front of the Donohue Building on Innisfree [Shoreline] Park. He said this would assist kayakers and others from having to climb down the rocks to access the water. Mayor Slavitz referred Mr. Bernal to Town Staff for further discussion of his suggestion.

### **CONSENT CALENDAR**

1. **Town Council Minutes** – Adopt minutes of January 5, 2011 regular meeting (Town Clerk Crane Iacopi)
2. **Amendments to Building Code** – Adopt ordinance amending Title IV, Chapter 13 (Building Regulations) of the Tiburon Municipal Code (Director of Community Development Anderson)
3. **Town Monthly Investment Summary** – Accept December 2010 report (Director of Administrative Services Bigall)

MOTION: To approve Consent Calendar Item Nos. 1 through 3, as written.

Moved: Fredericks, seconded by Fraser

Vote: AYES: Unanimous

### **ACTION ITEM**

1. **Tiburon Tourism Business Improvement District (BID)** – Consider adoption of resolution to increase assessment to lodging establishments within the Tiburon BID and set public hearing date (Town Attorney Danforth)

Town Attorney Danforth gave the report. She said that the Town had formed a Tiburon Tourism Business Improvement District (TTBID) in 2007 in response to a request from the Town's two hotels, the Lodge at Tiburon and the Water's Edge Hotel. She said that the TTBID imposes assessments on lodging establishments within the Town, equal to one percent of their gross revenues. Danforth said the Town uses the proceeds to participate in the County's tourism-promotion program, which is funded by the Marin County Tourism Business Improvement District (MCTBID) and is operated by the Marin County Visitors bureau ("Visitor's Bureau").

The Town Attorney said that the Board of Supervisors modified the MCTIB last Fall to increase its assessments to two percent of gross revenues. Subsequently, the Lodge at Tiburon and the Water's Edge Hotel asked the Town to also modify the TTBID, to fund an expanded program to promote their business establishments, according to Danforth.

Danforth said the Council was being asked to adopt a resolution declaring its intention to similarly modify the TTBID and set a time and place for a public meeting and subsequent public hearing to adopt the ordinance. She said that a representative from MCVB would be at the

public meeting, scheduled for February 16, 2011, to answer any questions. Danforth noted that adoption of the resolution did not obligate the Council in any way to adopt or move forward with the proposed assessment.

In response to questions from the Council, Danforth said that the two lodging establishments in town were strongly in favor of the proposed assessment increase. She said that the assessment was in addition to the 10 percent hotel occupancy tax, so that the total tax paid by visitors staying at either of the lodging establishments would total 12% instead of the previous 11%.

MOTION: To approve the resolution, as written.

Moved: Collins, seconded by Fredericks

Vote: AYES: Unanimous

### **PUBLIC HEARINGS**

1. **2312 Spanish Trail** – Appeal of Site Plan and Architectural Review Approval for construction of a new, detached, two-family dwelling with a detached two-family dwelling exception and variance for reduced front yard setback – (Planning Manager Watrous)

Assessor Parcel No. 059-201-23  
Owners: William and Joy Norris  
Applicant: Roger Hartley  
Appellants: Jerome Bernal, Shelley Brown, Celia and Ann DeMartini, Robert Harrison, Wallace Quinn, Dennis and Terry Schwakopf, Sue Zimmerman

Planning Manager Watrous reviewed the history of the project and grounds of the appeal as detailed in the staff report. He said that this was the first time an application had been filed which tested the Town's ordinance, adopted in 2003, concerning detached two-family dwellings in the R-2 zone.

Mayor Slavitz opened the public hearing.

Sue Zimmerman, Terry Schwakopf, and Shelley Brown made the report on behalf of the appellants (a copy of appeal is included in the staff report). Ms. Schwakopf detailed "who we are and why we care" as neighbors of the project and neighborhood representatives. Ms. Zimmerman provided a powerpoint presentation (copies are available at Town Hall) and also presented a detailed model (dubbed "strawman") of a possible one-unit solution. Ms. Brown said that her view would be greatly impacted by the approved, two-unit project.

Jerome Bernal spoke about inconsistency of Town regulations as applied to parking structures; complained about the process he had been required to go through to create a parking structure on his Spanish Trail property; asked that consistency be applied to this application.

Attorney Paul Smith and architect Roger Hartley spoke on behalf of the property owners. Smith said the DRB “got it right” and had interpreted the Town’s ordinance correctly. (A copy of his letter is included in the file as “Late Mail”.)

Mr. Hartley detailed all the changes and concessions that had been made to the project over the course of four Design Review meetings. He said he had considered a one-unit solution but that it resulted in more negative impacts to the neighbors’ views, and parking, and created more bulk and mass than the two-dwelling solution. He also said the detached-dwelling plan was preferred by his client.

Mayor Slavitz opened the hearing to members of the public:

1. Design Review Boardmember Lou Weller explained how the DRB had reasoned its way through the Town’s ordinance that allows detached unit duplexes in R-2 zones and how it reached its unanimous (5-0) decision to approve the project;
2. JJ Wintersteen, Paradise Drive, spoke in favor of his neighbors’ appeal but said it sounded to him like another DRB hearing [Councilmembers Fredericks and Collins said that it was, indeed, a de novo hearing on the application];
3. Richard Wodehouse, current resident of the Whittingham property, noted that while he would be inconvenienced by the construction, said he strongly favored the two-dwelling project approval and that a single unit would obstruct his view, the primary reason for his living there;
4. Gene Aureguy said that his two-dwelling duplex had been approved under the Town’s ordinance; said that one of the appellants (Wally Quinn) had complimented him on the outcome of the project; said that he had offered not to condominiumize the project to avoid de facto substandard lot splits that were of concern to the neighborhood; said he supported the Norris project, as approved by the DRB;
5. Jeff Brown, Spanish Trail, 40 years, said he has watched the neighborhood develop over the years; said that he was in favor of the Norris project and that it would enhance and increase the value of homes in the neighborhood;
6. Scott von Stein, neighborhood resident and Southern Marin Fire District Director, spoke in favor of the Norris project; he said he liked the carport design because it would facilitate movement of emergency vehicles on the Town’s and County roadways;
7. Gary Glover, Spanish Trail, 18 years, also supported the Norris project, as approved, for all the reasons stated above.

Sue Zimmerman spoke during rebuttal. She disputed Mr. Hartley’s remarks about the “appearance” of creating a four-story house in the ‘strawman’ model and said she based her elevations on his elevations. She said that staff had done a fabulous job of educating the DRB in how to make findings, but that findings should be “facts”, not assertions.

Ms. Zimmerman said that she hoped the Council did not approve the project, as approved by the DRB, but if it did, she would like certain design features to be included, such as extending the hedge down the entire length of the property line.

Mr. Norris spoke during his rebuttal. He thanked the Council for walking the property. He said that the Whittingham property was the only one with a primary view adjacent to his project, and that the current resident supported the project. He said that DRB had deliberated long and hard and that one member said that he had put more effort into deciding this application than any other one that had come before the board. He said that he took pride in restoring old homes and listed some examples; he said that second unit was modest, under 1,000 square feet, and that the project would improve the property, while a single unit would detract from it.

Mayor Slavitz closed the public hearing.

Council deliberated and concluded, in summary:

- Councilmember Fredericks said that the DRB failed to make adequate findings to meet criteria Nos. 2 and 3 of the ordinance and said she would vote to uphold the appeal.
- Councilmember O'Donnell thought the DRB had done good job interpreting the ordinance and had made a reasonable decision.
- Councilmember Collins, too, expressed concern about inadequate findings in Section 2.
- Jim Fraser was concerned about the findings for No. 2 but thought the Council might remand the application to DRB.
- Jeff Slavitz was concerned that the DRB did not make the findings in Nos. 2 and 3.

Councilmember Fredericks said that she had considered the issue for a long time, having served on the Council when the amendment to the zoning ordinance allowing a two-dwelling exception in the R-2 zone was adopted. Fredericks reviewed the criteria and said why she could not support the DRB findings to Nos. 2 and 3.

[Section 16-40.020 (F) establishes the following criteria to be used in reviewing a detached two-family dwelling exception:]

- 1. The lot area is adequate to reasonably accommodate two detached units in a functional site layout that substantially meets the land and structure regulations of the R-2 zone.***

Councilmember Fredericks said that the Norris lot met the size criteria under this section. However, she noted that nearly half of the lots in the neighborhood met this 7500 square foot threshold and that many were larger. She also said that many other lots in the R-2 zone were "street to street" lots. She said that while the two-dwelling proposal was an attractive one, it was an incorrect interpretation of the ordinance to allow the two-dwelling exception to become a pattern of development in the neighborhood when other options existed.

2. ***Physical conditions exist on the lot that render impractical or difficult the construction of attached units; or the site planning superiority and land use compatibility benefits of detached units are clearly demonstrated for the lot.***

Fredericks said that with a preponderance of long, narrow lots in the area, and lots that go street to street, the DRB needed more specific examples of what made the one-unit approach impractical and difficult; she said, at best, the impediments were disputed.

Fredericks also said that she was confident that the architect could find a way to address the issue of placing an attached two-unit dwelling on the lot.

3. ***Two dwelling units in two detached buildings would likely reduce visual, environmental, privacy or other impacts as compared to a probable attached two-family dwelling on the lot.***

Fredericks said that she could agree or disagree with the findings of the DRB in this instance; she said that it was a question of land use compatibility and whether the detached unit would reduce the impacts; she said that the DRB had decided that the impacts of the one-unit or two unit-dwelling were about equal in the application.

4. ***The permit history of the lot has been researched and provides no evidence of self-created hardship, self-created nonconformity, or other pattern of activity that would act to circumvent the purpose of this Section.***

Fredericks said that this information could be viewed in different ways.

5. ***All vehicular access shall be convenient, shall comply with industry standards for ingress and egress, and shall not result in adverse impacts on neighboring properties and/or streets.***

Fredericks said that vehicular access seemed adequate in both designs.

Fredericks said that the burden was on the applicant to convince the deciding body that all of the above criteria had been met; she said that they had not all been met, in this application.

Councilmember O'Donnell presented an opposing view. He said that he had served on the Design Review Board and that in its deliberations, the board sought to apply a "reasonable" standard to achieve the best possible outcome and design. He said in this instance, the DRB did a superlative job in reducing the impacts to the neighborhood and that the detached unit design was a better design with fewer impacts overall.

O'Donnell said the small, detached cottage was a better solution than a single, attached unit, and the way it was sited, and the fact that the applicant had lowered the roof and made other

concessions, made sense and complied with the Town's guidelines. He commended the DRB for the idea of creating a parking deck on Spanish Trail as a solution to alleviate congestion in an already congested neighborhood.

O'Donnell said that it was not fair to characterize the application as a de facto lot split. He noted that the "Old Tiburon" neighborhood had development challenges and that the Town's ordinances had been "dropped on" the neighborhood after much of it had been built out. Nevertheless, O'Donnell said that he respected the viewpoint of the appellants, but that the project would vastly enhance the neighborhood and improve the property without creating a precedent.

Councilmember Collins thanked the parties and the Design Review Board. However, he said that it was not an issue of property value or attractiveness because the Town had an ordinance that controlled land use, and that in this instance, the purpose of the ordinance was to discourage detached units in the R-2 zone.

He said that in some of its meetings, the DRB said the site didn't meet the "impractical" findings and even a so-called "superior" design did not meet the land use compatibility findings of the ordinance.

Collins wondered if there might not be a way to make the building "cascade" down the hill. He said that while he was sympathetic to the applicant, he could not make the findings required by the Town's ordinance based on what information was provided in the record.

Vice Mayor Fraser also acknowledged the DRB and everyone involved for their time. He said it was easy to understand why the DRB and the neighbors had struggled with the issues. Fraser said that he, too, struggled with exception criteria No. 2. He said that the appellant's model and the Hartley diagrams were examples of how a single building with two units could be created on the lot; he said that he was puzzled by the approved design which looked, to him, like two separate houses on the lot.

Fraser said that while he respected Mr. Norris' desire to restore his home (and create a second, separate unit). However, he said he was not convinced that an attached unit could not be created, possibly excavated, and be in symmetry with the main building.

Mayor Slavitz agreed; he said the second unit in the approved DRB application was lovely, but the Town's zoning ordinance prohibits detached second units in the R-2 zone unless all the criteria could be met. He said that the findings for criteria #2 and #3 could not be made; that an attached second unit would be possible and that the detached unit would impact views and appear more massive. He said the view from the Whittingham residence would not be harmed by a single building because that residence would look over the new building.

Slavitz noted that there were good examples of attached units around town; he said that this application did not demonstrate the superiority of a detached unit. He said that he would vote to

uphold the appeal but he was uncertain whether the action would include remanding the application to the DRB.

Town Attorney Danforth said that in the past, the Town Council had, in some instances, chosen to uphold an appeal, deny an application without prejudice, and/or waive re-application fees for one year.

Vice Mayor Fraser said that it was important to help the applicant in this instance.

Councilmember O'Donnell agreed, and stated that it was not cheap to prepare for and attend these hearings, and that the applicant had gone through four different DRB hearings, in addition to this meeting.

Planning Manager Watrous said that it would be important to provide direction to the applicant if the Council denied the application without prejudice. In other words, was the direction from Council that the applicant not re-apply with another detached two-unit design, and to re-apply only with a attached two-unit design. Council concurred that its direction was for an attached two-unit design.

MOTION: To uphold the appeal and direct staff to return to Council with a resolution of findings, and to waive further reapplication fees by the property owners if they submit an application for an attached dwelling for consideration by the Design Review Board.

Moved: Fredericks, seconded by Collins

Vote: AYES: Fraser, Fredericks, Collins, Slavitz  
NOES: O'Donnell

**2. Draft Housing Element** – Introduction and review of preliminary draft Housing Element of the Tiburon General Plan (Director of Community Development Anderson)

Director of Community Development Anderson gave a brief report and turned the meeting over to the Town's consultant, who reviewed the draft in more detail. He said that the new element built strongly on the adopted General Plan Housing Element.

Council discussed the issue of affordable housing and asked how it would be possible to provide incentives to landowners to reach the state-mandated goals. Councilmember O'Donnell also said that it would be important to clarify language in the draft element pertaining to second units, in light of the discussion at the appeal hearing.

Direction was given to staff to proceed with the draft, as written, with possible additional written comments in the next couple of days from Councilmember Fredericks, and possible input on the second unit discussion at the upcoming Town Council/staff retreat.

3. **Ned's Way Recreation Facility** –Review site plan and architectural drawings for the Ned's Way Joint Recreation Project at 600 Ned's Way, AP No. 058-151-27; consider adoption of Mitigated Negative Declaration – (Director of Community Development Anderson) – *item has been continued without hearing to the February 16, 2011 meeting*

### **TOWN COUNCIL REPORTS**

Councilmember Fredericks said she had participated in one-way conference call with other cities (through the League of California Cities) which consisted of an analysis of the Governor's proposed budget program.

Councilmember Collins said that the Marin Energy Authority had reached a milestone in retiring public debt (for its start-up costs) and obtaining private financing. He said that Supervisor McGlashan had handed a check for \$650,000 to the Board of Supervisors last month to repay its debt to the County of Marin.

### **TOWN MANAGER'S REPORT**

Town Manager confirmed the cancellation of the February 2 meeting; however, she noted that the Town Council/Staff retreat would take place at the Lodge at Tiburon on February 8.

### **WEEKLY DIGESTS**

- Town Council Weekly Digest – January 7, 2011
- Town Council Weekly Digest – January 14, 2011

### **ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Collins adjourned the meeting at 11:15 p.m., in memory of Fran Mayberry, Tiburon Town Council, 1986-1990.

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JEFF SLAVITZ, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Town Council Meeting  
February 16, 2011  
Agenda Item:

**CC-2**

## STAFF REPORT

To: **Mayor and Members of the Town Council**

From: **Town Manager and Town Attorney**

Subject: **Recommendation to Adopt Resolution Approving a Cooperation and Reimbursement Agreement between the Town and the Tiburon Redevelopment Agency for the Lyford Drive Parking Project**

Reviewed By:

## BACKGROUND AND ANALYSIS

The Tiburon Redevelopment Agency's 1983 Redevelopment Plan describes general objectives and specific projects to eliminate physical and economic blight in the Town. These include improvements to Tiburon Boulevard and parking facilities. The Agency's outstanding legal obligation consists of creating new affordable housing units and the Agency has restricted funds for that purpose. The Agency also has a reserve of \$290,000, which is the unexpended remainder of funds set aside to reimburse the Town for administrative expenses associated with the Agency. The Town's Implementation Plan does not allocate these funds.

The Town is currently considering a project to improve the right of way area on the south side of Tiburon Boulevard near the intersection with Lyford Drive. This area is currently unsightly, consisting of dirt shoulders on either side of the Boulevard, generally used for informal parking. The current state is particularly unfortunate because almost all visitors to Tiburon by car pass the site immediately before entering the downtown area. The project would both beautify this gateway location and improve the parking area, thereby making the site more attractive to visitors, useful for commuters and safer for all users.<sup>1</sup> The project is consistent with the objectives of the Tiburon Redevelopment Plan and may be funded by the Agency's \$290,000 reserve.

The agreement does not obligate the Council to construct the project. If the Council ultimately decides not to approve the project, the funds would remain with the Agency.

<sup>1</sup> The project is expected to reduce turning motions across Tiburon Boulevard, improving traffic safety.

**RECOMMENDATION**

Staff recommends that the Town Council:

Move to Approve a Resolution authorizing the Town Manager to Execute the Cooperation and Reimbursement Agreement with the Tiburon Redevelopment Agency

Exhibit:       Draft Resolution  
                  Draft Cooperation and Reimbursement Agreement with the Town of Tiburon

Prepared By: Ann R. Danforth, Town Attorney

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE  
TOWN OF TIBURON APPROVING A COOPERATION  
AND REIMBURSEMENT AGREEMENT WITH THE  
TIBURON REDEVELOPMENT AGENCY TO FUND A  
STREET AND PARKING IMPROVEMENT PROJECT**

**Recitals**

1. The right of way area on the south side of Tiburon Boulevard near the intersection with Lyford Drive (“Project Site”) is unsightly and is commonly used for informal head-in parking on the dirt shoulder, which results in potentially hazardous turning motions across the boulevard.
2. The Project Site serves as a gateway to the downtown shopping area of the Town.
3. In 1983, the Town formed the Tiburon Redevelopment Agency (“Agency”) to eliminate blight and formulate and carry out redevelopment projects to permit orderly residential, commercial and open space development in the planning area.
4. On September 2 1983, the Agency adopted the Redevelopment Plan for the Tiburon Redevelopment Project (“Redevelopment Plan”) to eliminate and reduce aspects of physical and economic blight within the Tiburon Redevelopment Project Area (the "Project Area") by, among other things, improving Tiburon Boulevard and providing public parking.
5. The Agency currently is in possession of unallocated funds in the amount of \$290,000.
6. The Town is currently in the planning stages of a project (“Lyford Drive Project”) located on the south side of Tiburon Boulevard near the intersection with Lyford Drive (“Project Site”), which site lies primarily within the Project Area and is the gateway to the Tiburon downtown.
7. The Town Council of the Town has found that (1) the construction of the Project is of benefit to the Project Area by helping to eliminate blight within the Project Area; (2) no other reasonable means of financing the Project are available to the community; and (3) the payment of funds for the Project is consistent with the implementation plan adopted pursuant to Section 33490.
8. The Lyford Drive Project will enhance the aesthetic appeal of the Project Site, improve the parking available in that location and improve the safety of motorists using the

parking area.

9. In light of prevailing and anticipated revenue shortfalls, the Town's available funding for the project is less than anticipated costs.
10. The Parties desire to formally provide for reimbursement by the Agency to the Town of a portion of the costs and expenses incurred by the Town prior to and following execution of this Agreement in connection with the portion of the Lyford Drive Project that lies within the Project Area, including, without limitation, Project planning, engineering and design, environmental review of the Project, the preparation of the Redevelopment Plan and reports related thereto, including consultant contract and administrative costs, and related planning matters, all as set forth in the Cooperation and Reimbursement Agreement for Improvement of Tiburon Boulevard Right of Way Near the Lyford Drive Intersection ("Cooperation Agreement") attached to this resolution as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Tiburon:

1. The facts set forth in this Resolution are true and correct.
2. The Council finds as follows:
  - (a) That the acquisition of land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned are of benefit to the project area by helping to eliminate blight within the project area or providing housing for low- or moderate-income persons.
  - (b) That no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned, are available to the community.
  - (c) That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements that are publicly owned is consistent with the implementation plan adopted pursuant to Section 33490.
3. The Town Manager of the Town of Tiburon is authorized to execute said the Cooperation Agreement and any other documents that may be necessary or appropriate to complete the transaction described herein.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon on \_\_\_\_\_, 2010 by the following vote:

AYES:                      COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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JEFF SLAVITZ, MAYOR  
Town of Tiburon

ATTEST:

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DIANE CRANE, TOWN CLERK

**COOPERATION AND REIMBURSEMENT  
AGREEMENT FOR IMPROVEMENT OF TIBURON  
BOULEVARD RIGHT OF WAY NEAR THE LYFORD  
DRIVE INTERSECTION**

This Agreement, dated February \_\_\_, 2011, is by and between the Redevelopment Agency of the Town of Tiburon ("Agency") and the Town of Tiburon (the "Town") (collectively, the "Parties").

**W I T N E S S E T H**

**WHEREAS**, the Agency is vested with the responsibility for formulating and carrying out necessary redevelopment projects within the Town; and

**WHEREAS**, on September 2 1983, the Agency adopted the Redevelopment Plan for the Tiburon Redevelopment Project ("Redevelopment Plan") to eliminate and reduce aspects of physical and economic blight within the Tiburon Redevelopment Project Area (the "Project Area") by, among other things, improving Tiburon Boulevard and providing public parking; and

**WHEREAS**, the Agency currently is in possession of unallocated funds in the amount of \$260,000; and

**WHEREAS**, the Town is currently in the planning stages of a project ("Lyford Drive Project") located on the south side of Tiburon Boulevard near the intersection with Lyford Drive ("Project Site"), which site lies primarily within the Project Area and is the gateway to the Tiburon downtown and;

**WHEREAS**, the Town Council of the Town has found that (1) the construction of the Project is of benefit to the Project Area by helping to eliminate blight within the Project Area; (2) no other reasonable means of financing the Project are available to the community; and (3) the payment of funds for the Project is consistent with the implementation plan adopted pursuant to Section 33490.

**WHEREAS**, the purpose of the Lyford Drive Project is to enhance the aesthetic appeal of the Project Site and improve the parking available in that location;

**WHEREAS**, the Parties desire to formally provide for reimbursement by the Agency to the Town of costs and expenses incurred by the Town prior to and following execution of this Agreement in connection with the portion of the Lyford Drive Project that lies within the Project Area, including, without limitation, Project planning, engineering and design, environmental review of the Project, the preparation of the Redevelopment Plan and reports related thereto, including consultant contract and administrative costs, and related planning matters; and

**WHEREAS**, the Town and the Agency are each ready and willing to assume the relationship described herein.

**NOW, THEREFORE**, the Agency and the Town, for and in consideration of the mutual promises and agreements herein contained do agree as follows:

1. **PURPOSES**

The purpose of this Agreement is to provide for reimbursement by the Agency to the Town of costs and expenses incurred by the Town prior to and following the execution of this Agreement in connection with the portion of the Lyford Drive Project that lies within the Project Area, including, without limitation, Project planning, engineering and design, environmental review of the Project, the preparation of the Redevelopment Plan and reports related thereto, including consultant contract and administrative costs, and related planning matters; and

2. **TERM OF AGREEMENT**

This Agreement shall be in full force and effect for a period beginning as of the date first above written and continuing until all repayment and reimbursement obligations of the Agency to the Town are satisfied in full in accordance with the terms of this Agreement. Notwithstanding the foregoing, if the Town decides at any time to abandon the project, this agreement shall terminate and be of no further force and effect.

3. **REIMBURSEMENT OF PROJECT EXPENSES**

The Town has advanced, and agrees to advance in the future, funds necessary to develop the Project. Within 30 days of the Town's accepting the Project as complete, the Agency shall reimburse the Town's Project expenditures up to a maximum of two hundred ninety thousand dollars (\$290,000).

4. **SUBORDINATION**

It is agreed by the parties that all repayments and reimbursements to the Town pursuant to this Agreement are hereby subordinated to any and all payments necessary to satisfy the Agency's obligations in connection with any existing or future bonded indebtedness or obligation which may be incurred by the Agency for the benefit of the redevelopment program or to the extent necessary for any bonded indebtedness for which the Agency has pledged as a security or source of repayment tax increment generated within the Project Area.

5. **VALIDITY OF AGREEMENT**

If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions or circumstances, shall not be affected thereby.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date written above.

APPROVED AS TO FORM:

AGENCY:

REDEVELOPMENT AGENCY OF THE TOWN OF TIBURON, a public body, corporate and politic

By: \_\_\_\_\_  
Agency Counsel

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

TOWN:

THE TOWN OF TIBURON, a political subdivision of the State of California

By: \_\_\_\_\_  
Town Attorney

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Town Clerk



**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920

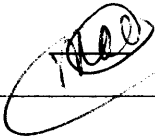
Town Council Meeting  
February 16, 2011  
Agenda Item: **CC-3**

### STAFF REPORT

**To: Mayor and Members of the Town Council**

**From: Department of Public Works  
Police Department**

**Subject: Recommendation to Accept the Automated License Plate Reader  
Installation Project and Authorize the Filing of the Notice of  
Completion for the Work**

**Reviewed By:** 

### BACKGROUND

On November 18, 2009, the Council authorized staff to advertise and seek bids for the construction of the Tiburon License Plate Reader Installation Project. The project was posted and advertised as required by the State of California's Public Contract Code.

The contract was awarded to Republic ITS on June 9, 2010 in the amount of \$35,450. Work consisted of the installation of communication and electrical conduits and poles, Police Department furnished cameras, and appurtenant work.

The work was substantially completed on December 17<sup>th</sup>, 2010. The completed work included two change orders for unforeseen items of work in the total amount of \$1,605. Based on the work performed, material installed, and total change orders, the final construction project cost was \$37,055. The total project cost is approximately \$155,000, consisting of camera and computer equipment, consultant support and construction.

Funding for the overall project was provided for by various sources including the Town, ABAG grants, the City of Belvedere, and Marin County Sheriff's department. The City of Belvedere has already submitted their contribution towards the project.

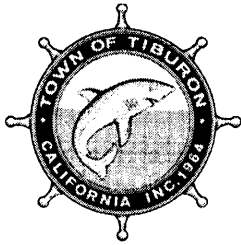
**RECOMMENDATION**

Staff recommends that the Town Council:

Move to adopt a resolution accepting this project as complete and authorizing the Director of Public Works / Town Engineer to execute the Notice of Completion on behalf of the Town Council, and upon completion of the 35 day period, release the retention funds to the contractor.

Exhibits: Resolution Accepting the Tiburon License Plate Reader Installation Project and Authorizing the Filing of the Notice of Completion for the Work.

Prepared By: Nicholas T. Nguyen, Director of Public Works/Town Engineer



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

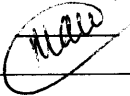
Town Council Meeting  
February 16, 2011  
Agenda Item: CC-4

## STAFF REPORT

**To:** Mayor and Members of the Town Council

**From:** Community Development Department

**Subject:** 2312 Spanish Trail: Resolution Granting an Appeal of Site Plan and Architectural Review Approval for Construction of a New Detached Two-Family Dwelling, with a Detached Two-Family Dwelling Exception and a Variance for Reduced Front Yard Setback; William and Joy Norris, Owners; Roger Hartley, Applicant; Jerome Bernal, Shelley Brown, Celia and Ann DeMartini, Robert Harrison, Wallace Quinn, Dennis and Terry Schwakopf, and Sue Zimmerman, Appellants; File #21017; Assessor's Parcel No. 059-201-32

**Reviewed By:** 

## BACKGROUND

At its meeting of January 19, 2011, the Town Council held a hearing on this item and directed Staff to return with a resolution granting the appeal and denying the Site Plan and Architectural Review application for construction of a new detached two-family dwelling, with a detached two-family-dwelling exception and a variance for reduced front yard setback, at 2312 Spanish Trail. The Council agreed to waive zoning permit fees if an application for an attached two-family dwelling unit was made within one year.

A draft resolution to that effect is attached as **Exhibit 1**.

## RECOMMENDATION

Adopt the Resolution.

## EXHIBITS

A. Draft Resolution.

Prepared By: Daniel M. Watrous, Planning Manager

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**RESOLUTION NO. (Draft)-2011**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
TIBURON GRANTING AN APPEAL BY JEROME BERNAL, SHELLEY  
BROWN, CELIA AND ANN DEMARTINI, ROBERT HARRISON,  
WALLACE QUINN, DENNIS AND TERRY SCHWAKOPF, AND SUE  
ZIMMERMAN TO OVERTURN THE DESIGN REVIEW BOARD'S  
APPROVAL OF SITE PLAN AND ARCHITECTURAL REVIEW  
APPROVAL FOR CONSTRUCTION OF A NEW DETACHED TWO-  
FAMILY DWELLING, WITH A DETACHED TWO-FAMILY  
DWELLING EXCEPTION AND A VARIANCE  
FOR REDUCED FRONT YARD SETBACK,  
ON PROPERTY LOCATED AT 2312 SPANISH TRAIL**

**(ASSESSOR PARCEL NO. 059-201-32)**

WHEREAS, on July 15, October 7, November 4, and December 2, 2010, the Design Review Board held public hearings on a Site Plan and Architectural Review application (File #21017) filed by William and Joy Norris to construct a new detached two-family dwelling, with a Detached Two-Family Dwelling Exception and a Variance for reduced front yard setback, on property located at 2312 Spanish Trail; and

WHEREAS, on December 2, 2010 the Design Review Board adopted Resolution No. 2010-03 conditionally approving the project; and

WHEREAS, the Design Review Board's decision was appealed in a timely manner by Jerome Bernal, Shelley Brown, Celia and Ann Demartini, Robert Harrison, Wallace Quinn, Dennis and Terry Schwakopf, and Sue Zimmerman (collectively referred to as "appellants"); and

WHEREAS, the project consists of File #21017, on file with the Town of Tiburon Community Development Department. 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 hearings, and

WHEREAS, the Council established the detached two-family dwelling exception process to effectively prohibit new detached two-family dwellings in the R-2 zone unless the applicant presented clear and convincing evidence to support and justify said detachment in accordance with the criteria established for approval; and

WHEREAS, Section 16-40.020(B) of the Zoning Ordinance states that "The purpose of the two-family dwelling exception process is to limit approval of such uses where the applicant has successfully addressed land use compatibility issues and neighborhood impacts, and where the detached units will result in a demonstrably

superior site planning solution as compared to a probable attached two-family dwelling”; and

WHEREAS, the Town Council finds that the application fails to demonstrate that it addresses the land use compatibility issues of the project, as a detached second dwelling unit would be inconsistent with the development pattern of attached two-family dwellings and single-family dwellings on individual lots that prevails in the vicinity. The Town Council concludes that the project as proposed would clearly appear as two separate dwelling units, but would be located on a single parcel, and would thus contribute to the appearance of a de facto single family residential land use pattern on significantly smaller lots than is allowed in any single family zone, as described in Section 16-40.020(A) of the Zoning Ordinance. The Town Council finds this contrary to the intent of the Detached Two-family Dwelling Exception process.

WHEREAS, Section 16-40.020(I) of the Zoning Ordinance states that “The burden rests with the applicant to convince the [review authority] that the project has met the criteria necessary for approval”; and

WHEREAS, the Town Council held a public hearing on January 19, 2011, and after receiving testimony and reviewing all evidence in the record, determined that the subject application had not convincingly demonstrated that it had met Criterion #2 or Criterion #3 for approval of a Detached Two-Family Dwelling Exception, as set forth in Section 16-40.020(F) of the Zoning Ordinance. The Town Council specifically finds as follows with respect to these criteria:

*Criterion #2. Physical conditions exist on the lot that render impractical or difficult the construction of attached units; or the site planning superiority and land use compatibility benefits of detached units are clearly demonstrated for the lot.*

- A. The Town Council finds that the applicant has not demonstrated that physical conditions on the lot render impractical or difficult the construction of attached units. The Town Council finds that the physical characteristics of the subject property are similar to those of numerous other lots in the R-2 zone of the Old Tiburon neighborhood and in the immediate vicinity with respect to lot area, lot width, and in terms of being “through” lots with dual frontages. The applicant has not identified any obvious physical conditions that could warrant a detachment exception (e.g., rock outcropping, midden site, steep vertical drop in elevation). Further, the Town Council finds that the evidence in the record indicates that the physical impediments claimed in the application do not preclude an attached unit.
- B. The Town Council finds that the application has failed to clearly demonstrate the site planning superiority of a detached two-family dwelling for the lot, as a probable attached second dwelling unit could be excavated into the site and attached to the rear of the existing

building that would not result in substantial view blockage, privacy, or visual impacts on the neighboring residence at 2356 Spanish Trail. Furthermore, the Town Council finds that vehicular access for attached dwellings would be demonstrably similar to such access for detached dwellings.

*Criterion #3. Two dwelling units in two detached buildings would likely reduce visual, environmental, privacy or other impacts as compared to a probable attached two-family dwelling on the lot.*

- A. The Town Council finds that based on site visits, review of the drawings, model, and other evidence presented at the appeal hearing and in the record, two dwelling units in two detached buildings would not necessarily reduce visual, privacy or and view blockage impacts as compared to a probable attached two-family dwelling on the lot.
  
- B. The Town Council finds that the applicant has not met his burden of demonstrating the detached plan would likely reduce visual, privacy or other impacts. For example, the project as proposed would have the appearance of two single-family dwellings on individual lots, and the visual appearance of two detached dwelling units on this lot would likely be equal to or greater than that of two attached dwellings, especially when viewed from properties on Vista Del Mar Lane. The potential visual and view blockage impacts from a detached second dwelling unit on the site would be roughly equal to and not clearly reduced in magnitude from those created by an attached project design.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Tiburon hereby grants the appeal of Jerome Bernal, Shelley Brown, Celia and Ann Demartini, Robert Harrison, Wallace Quinn, Dennis and Terry Schwakopf, and Sue Zimmerman and denies the applications (File #21017) for Site Plan and Architectural Review to construct a new detached two-family dwelling, with a Detached Two-Family Dwelling Exception, and a Variance for reduced front yard setback, on property located at 2312 Spanish Trail. The denial is made without prejudice in that the Town will waive zoning application fees if the applicant submits an application for construction of an attached two-family dwelling unit on the property within one (1) year following the adoption of this resolution.

PASSED AND ADOPTED at a regular meeting of the Town Council on February 16, 2011, 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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**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Town Council Meeting  
February 16, 2011  
Agenda Item:

*PH-1*

## **STAFF REPORT**

To: **Mayor and Members of the Town Council**

From: **Town Manager and Town Attorney**

Subject: **Tiburon Tourism Business Improvement District – Assessment Increase**

Reviewed By: *[Signature]*

### **BACKGROUND AND ANALYSIS**

This is the second in a series of meetings required to increase the Tiburon Tourism Business Improvement District (TTBID) assessments on hotels in the Town. On January 19, 2011, the Town Council adopted a resolution of intention to amend the district to increase the assessment. Tonight is the second step in the process, a public information meeting to hear public testimony. The matter will return to the Council on March 2<sup>nd</sup>, for a public hearing to consider any protests regarding the proceedings. At the conclusion of the public hearing, assuming no majority protest, the Council could hold first reading of the ordinance that would modify the TTBID to increase the assessments.

At present, only the Lodge at Tiburon and the Water's Edge Hotel are eligible to file protests because they are the only businesses currently subject to the TTBID assessments. Both hotels have expressed their support for the proposed increase, to expand the funds available for the County's tourism-promotion program, which is operated by the Marin County Visitors Bureau ("Visitors Bureau").

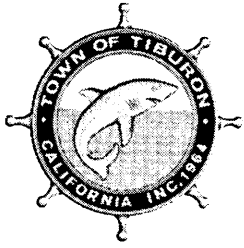
The Director of the Visitors Bureau, Mark Essman, will be present at tonight's meeting to answer questions about the programs funded by the assessments.

### **RECOMMENDATION**

Staff recommends that the Town Council:

Hear public testimony regarding the proposed increase and close the meeting without taking action.

Prepared By: Ann R. Danforth, Town Attorney



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
February 16, 2011  
Agenda Item:


PH-2

## STAFF REPORT

**To:** Mayor and Members of the Town Council

**From:** Community Development Department

**Subject:** 600 Ned's Way: Review and Consider for Land Use and Zoning Permit Approval the Site Plan and Architectural Drawings for the Ned's Way Recreation Facility Project and Adoption of a Mitigated Negative Declaration; File #S2010-04; Town of Tiburon, Owner/Applicant; Assessor's Parcel No. 058-151-27

**Reviewed By:** 

## PROJECT DATA

Address: 600 Ned's Way  
Assessor Parcel Number: 058-151-27  
Lot Size: 2.0 acres  
General Plan: P (Public/Quasi-Public)  
Zoning: P (Public/Quasi-Public)  
Current Use: Vacant land  
Flood Zone: X (outside 500-year storm event)  
Owner: Town of Tiburon  
Applicant: Same

## SUMMARY

The Town of Tiburon is considering the construction and installation of a single story, 4,800 square foot modular building on Town-owned property at 600 Ned's Way to house the relocated Belvedere-Tiburon Joint Recreation (BTJR) after-school children's program and other BTJR and Town of Tiburon-sponsored recreational activities, and to provide permanent office space for BTJR staff.

On July 21, 2010, the Town Council adopted Ordinance No. 522 N.S. (**Exhibit 3**) establishing review and decision-making procedures for this project. The ordinance exempts the project from provisions of the Zoning Ordinance but requires the Town Council to review the site plan and architectural drawings for the project at a public meeting prior to any approval. Approval of the site plan and architectural drawings for the project in no way obligates the Town Council to proceed with the project, but would satisfy the land use permit approval and environmental review obligations associated with doing so.

## PROJECT DESCRIPTION

The Town-owned site at 600 Ned's Way consists of a compacted fill slope atop a moderately-sloping, south facing hillside along the south side of Ned's Way. The site is bordered to the west by the Hilarita Apartments, to the south by the Chandler's Gate senior housing complex, to the east by the Town Public Works Corporation Yard and an AT&T equipment facility, and on the north by public open space.

The project would involve the installation of a single story, 4,800 square foot modular building to house the relocated Belvedere-Tiburon Joint Recreation (BTJR) after-school children's program (currently operated at Reed Elementary School). The building would also be utilized for other BTJR and Town of Tiburon-sponsored recreational events, programs and activities. The building would also provide permanent office space for six regular and four roving BTJR staff members.

Recreation programs would be scheduled such that they would not begin or end within at least 15 minutes of Reed School opening times (between 8:00 a.m. and 8:30 a.m. on school days) and dismissal times (between 12:45 p.m. and 2:45 p.m. on school days) in order to avoid creation of any new traffic conflicts with the nearby school use. Recreation programs would be designed and implemented to generate no more parking than could be accommodated in the project parking lot.

The building would consist of ten (10) 12 foot x 40 foot prefabricated modules. The building exterior would be architecturally modified with stucco siding and wood trim. The interior portions of the building are summarized below:

<u>Building Program</u>	<u>(square feet)</u>
Office Space	1,100
Administrative Storage	100
Kitchenette	110
3 Bathrooms	300
Classroom: (4) 20' x 30'	2,400
<u>Program Storage:</u>	<u>800</u>
TOTAL: 10 (12'x 40') modular units	4,800

The project would also include the following improvements:

- Construction of a 22-car parking lot with entry and circular turnaround accessed from Ned's Way. The turnaround would provide curbside drop-off space at the front of the facility for program participants. The turnaround would also discourage vehicles from continuing up Ned's Way onto the private section of the road where a formal turnaround does not exist.
- Creation of a potentially impervious surface children's play area to allow for outdoor children's activities.
- Establishment of a pedestrian access path from Kleinert Way to allow children to walk from Reed School to the facility. The path would lead up from Kleinert Way

by way of the driveway on Town property used to access the AT&T equipment building.

- Landscaping on the site would include improved areas around the proposed facility and parking area, and un-irrigated grassland on the sloping hillside portions of the property.
- Installation of new exterior lighting fixtures for safety purposes. Three pole-mounted light fixtures would be installed in the parking lot and two bollard light fixtures would be installed around the parking lot and building. All light fixtures would be shielded downlights.
- The “milking shed” that is currently located within the Town corporation yard would be moved to a location behind the proposed building to be utilized as a storage shed.

The site consists of a compacted fill slope atop a moderately-sloping, south-facing hillside along the south side of Ned’s Way. Some site grading would be required to accommodate the modular facility and associated parking. Up to approximately 2,000 cubic yards of fill may need to be imported to the site as part of the project, although this amount is expected to be reduced through continued refinement of site planning and construction needs.

The project would involve the removal of five (5) Coast Live Oak trees and nineteen (19) Acacia and Eucalyptus trees on the site. The Coast Live Oak trees to be removed would be replaced at a 3:1 ratio with 15 new Oak trees. The Acacia and Eucalyptus trees would not be replaced.

## ANALYSIS

### Zoning and General Plan Consistency

The most closely-related General Plan goals and policies are as follows:

- Goal PR-B of the Parks & Recreation Element of the Tiburon General Plan states that “to anticipate population growth and to plan for and provide funds for the acquisition of adequate lands or installation of adequate facilities to address future parks and recreation needs of the community.”
- Policy PR-12 states that “recreation programming should be responsive to and serve the needs, interests, and desires of the entire community.” The development of the proposed recreation facility would help provide adequate facilities to address the future parks and recreation needs of the community and provide space to promote responsive recreation programming for the entire community.

A 2010 public opinion survey of Tiburon Peninsula residents, conducted as part of the Recreation Needs Assessment study, indicated that the availability of after-school programs for children, and the availability of local public recreation facilities for such programs were high priorities for a broad segment of local residents, and that, at a minimum, current programs should be retained.

The streamlining ordinance that establishes the Town Council's review procedures for this project states that the Council "shall utilize those standards and criteria that the Planning Commission and Design Review Board would have normally applied absent the adoption of this streamlined processing procedure." The Planning Commission would have applied the standards contained in Section 16-52.040 (D) of the zoning ordinance (special considerations for Conditional Use Permits). The Design Review Board would have utilized the criteria contained in Section 16-52.020 (H) (guiding principles in the review of Site Plan and Architectural Review applications). A summary of the project's relationship to these standards and criteria is as follows:

Section 16-52.040 (D)

*Factors to be considered in determining whether or not any conditional use should be permitted in a specific location are:*

*The relationship of the location proposed to:*

*The service or market area of the use or facility proposed,*

The subject location is well situated to provide space for after-school recreation programs because of its location near Reed School. A pedestrian path would be created that would allow children to walk directly from Reed School to the facility. The site is also centrally located in Tiburon, with convenient access from Tiburon Boulevard.

*Transportation, utilities, and other facilities required to serve it, and*

As noted above, the site is situated close to Tiburon Boulevard and Reed School. All utilities needed to serve the project would be installed within the Ned's Way roadway, or connected from adjacent existing utility lines.

*Other uses of land in the vicinity;*

Other public uses are located in the immediate vicinity, including Reed School, Tom Price Park, the Tiburon Police Station, and the Town Corporation Yard. The proposed building and parking lot would be uphill from the homes at Chandler's Gate and separated by Ned's Way from the Hilarita Apartments. Dense woodlands create a buffer between the site and homes on Round Hill Road, Lyford Drive and Spring Lane.

*The compatibility of the design, location, size, and operating characteristics with the existing and future land uses in the vicinity.*

The proposed building location would be shielded from neighboring residential uses by existing mature trees on the northern and northeastern portions of the site. The building pad would be situated below the level of Ned's Way, with the embankment to the west providing screening between the building and the Hilarita Apartments. The size of the parking lot and the operational limits on recreation programs and use of the facility would

ensure that the project does not result in substantial traffic or parking impacts on Ned's Way. The noise assessment prepared for the project includes recommended mitigation measures that would ensure that noise from the project would have a less-than-significant impact on surrounding uses.

*The probability of impairment to the architectural integrity and character of the zoning district in which it is to be located.*

The design of the proposed modular building would be consistent with that of other public and quasi-public buildings (such as modular building for the Belvedere-Tiburon Child Care Center on Kleinert Way) in the vicinity and would therefore not impair the architectural integrity and character of the P zone. The visible portions of the building would receive attractive architectural treatments.

*The protection of the public interest, health, safety, convenience, or welfare of the Town, or any probability of injury to property or improvements in the vicinity and zoning district in which the real property is located.*

The project would benefit the public interest and welfare of the Town by providing a permanent facility for the BTJR, its after-school programs and other recreation activities. The Initial Study/Draft Mitigated Negative Declaration prepared for this project concluded that the mitigation measures that would be imposed on the project would reduce all potential impacts of the project to less-than-significant levels. As a result, the project would not result in substantial noise, privacy, traffic or other impacts that would injure any property or improvements in the vicinity.

*The need of the community for additional numbers of such uses, paying particular heed to whether the neighborhood or vicinity is already adequately served by similar uses.*

There is a demonstrated need for space for the recreation programs offered by the BTJR. Since the space at Reed School for the after-school program will no longer be available due to enrollment increases at the school, the subject location is well situated to accommodate this program and allow children to readily access the proposed facility from Reed School.

#### Section 16-52.020 (H)

*In reviewing applications for Site Plan and Architectural Review, the Review Authority shall consider the following principles as they may apply:*

***Site plan adequacy.*** *Proper relation of a project to its site, including that it promotes orderly development of the community, provides safe and reasonable access, and will not be detrimental to the public health, safety, and general welfare.*

The development of this P (Public/Quasi-Public) zoned property for a recreation facility would promote the orderly development of this portion of the Tiburon community by establishing another public use close to the other existing public uses in the vicinity. The

proposed parking lot would provide safe and reasonable access to the site via Ned's Way and Tiburon Boulevard. As detailed in the Initial Study/Draft Mitigated Negative Declaration, the mitigation measures that would be imposed on the project would reduce all potential impacts of the project to less-than-significant levels. Therefore the project would not be detrimental to the public health, safety, and general welfare.

***Site layout in relation to adjoining sites.*** *The location of proposed improvements on the site in relation to the location of improvements on adjoining sites, with particular attention to view considerations, privacy, location of noise-generating exterior mechanical equipment, adequacy of light and air, and topographic or other constraints on development imposed by particular site conditions.*

The proposed building would be situated toward the northern end of the site, with the building on a relatively level portion of the property. The project would utilize existing the slope leading down from Ned's Way to shield the building and play areas from the nearby Hilarita Apartments, while the existing oak woodlands and replacement trees to be planted around the northern and northeastern sides of the site would help shield these uses from the homes on Round Hill Road, Lyford Drive and Spring Lane as well.

The mechanical equipment proposed by the project (e.g. HVAC units) would either be located within the building or would be screened by the earthen embankment to the west of the building to block the line of sight from the equipment to the Hilarita Apartments.

***Neighborhood character.*** *The height, size, and/or bulk of the proposed project bears a reasonable relationship to the character of existing buildings in the vicinity. A good relationship of a building to its surroundings is important. For example, in neighborhoods consisting primarily of one-story homes, second-story additions shall be discouraged, or permitted with increased setbacks or other design features to minimize the intrusion on the neighborhood.*

The proposed one-story building would be shorter in height than the multi-story buildings that surround the site. The 4,800 square foot size of the facility would be smaller than most other buildings in the vicinity.

***Floor area ratio.*** *The relationship between the size and scale of improvements and the size of the property on which the improvements are proposed.*

The maximum floor area ratio for property located in the P zone is 1.0, which would conceivably allow up to 87,120 square feet of floor area on this 2.0 acre lot. The size of the proposed 4,800 square foot building would be only 5.5% of the floor area ratio maximum for this lot.

***Grading and tree removal.*** *The extent to which the site plan reasonably minimizes grading and/or removal of trees, significant vegetation, or other natural features of the site such as rock outcroppings or watercourses.*

The proposed building would be situated on a relatively level portion at the northern end of the site between stands of mature trees to minimize tree removal. The proposed parking

lot has been designed to minimize the amount of grading and tree removal on the site. Although some grading is necessary for the building pad and parking lot, the project intends to balance cut and fill on the site, minimize the use of retaining walls and would retain the natural features of most of the property.

***Compatibility of architectural style and exterior finish.*** *The architectural style and exterior finish are harmonious with existing development in the vicinity and will not be in stark contrast with its surroundings.*

The exterior design of the proposed modular building would be compatible with the design of other public buildings in the vicinity.

***Landscaping.*** *Proposed landscaping, insofar as it is used appropriately to prevent erosion; to protect the privacy of adjoining sites; and to mitigate the visual and noise impacts of the proposed project. Applicants are encouraged to use native and drought-resistant landscaping. Proposed landscaping shall be used which will, at maturity, minimize primary view obstruction from other buildings. A cash deposit or other monetary security may be required to ensure the installation and/or maintenance for a one-year period of any and all landscaping. Projects that are subject to provisions of Title IV, Chapter 13E (Water Efficient Landscape) of the Tiburon Municipal Code shall comply with the Marin Municipal Water District regulations regarding water-efficient landscaping adopted by reference therein.*

The proposed building and parking lot would be situated to minimize the removal of existing trees on the site. An estimated 24 trees (including five Coast Live Oak trees) would be removed to accommodate grading and development of the site; the Coast Live Oak trees would be replaced by the planting of 15 new Coast Live Oak trees. Preserving the remaining trees would minimize erosion and provide screening between the facility and its play areas and the Hilarita Apartments and other homes in the vicinity. New project landscaping around the building and parking lot would incorporate water-efficient vegetation. A broom eradication program will be developed for the site and implemented as part of the landscape plans for the project. Graded slopes and areas disturbed as part of the project will be monitored to prevent establishment and spread of French and Scotch broom.

***Lighting.*** *Proposed lighting, insofar as it should not invade the privacy of other properties, or produce glare or light pollution; yet provide adequate illumination for safety and security purposes. All proposed exterior lighting shall be shielded downlighting.*

Exterior lighting on the building will be shielded downlighting. Parking lot lighting will be designed to provide adequate safety while minimizing any light and glare for nearby residents.

***Overall property improvement.*** *In order to allow the gradual upgrading of existing improvements, upgrades may be required to be made to existing buildings and the site as a whole. The review of applications for additions or modifications to existing development may include conditions requiring changes and/or modifications to existing buildings and site*

*improvements for the entire property to the extent that there is a reasonable relationship between the requested project and the changes and/or modifications required.*

There are currently no improvements on the subject property. Existing fill on the site will need to be recompacted as part of the grading and property improvements for the project.

***Appropriate use of building envelope.*** *In planned residential (RPD and RMP) zones, building envelopes are generally intended to provide a larger-than-needed area for flexibility in the appropriate siting of a main structure and its accessory structures. The building envelope should not generally be interpreted as an area intended to be filled by a main structure and its accessory structures.*

The subject property is not in a planned residential zone and therefore does not have a building envelope.

***Green building.*** *For residential covered projects, as set forth in Section 16-90.020 (Covered Projects), 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.*

This section of the Municipal Code is currently being repealed. The project will comply with the Town's modified CALGreen Building Code.

***Conformance with zoning requirements.*** *All modifications and site improvements shall conform with the setback, parking, and height requirements established for each zone by Article II (Zones and Allowable Land Uses), and with any special requirements including recycling (see Municipal Code Chapter 16C [Recyclables Collection Area]) and screening guidelines established for specific uses by this Zoning Ordinance.*

The proposed project would comply with the 50.0% maximum lot coverage, 30 foot maximum height and 1.0 FAR required for this lot by the P zone. The 22-space parking lot would provide more than the minimum 17 spaces required by the zoning ordinance for a project of this size. A trash enclosure will be constructed to the east of the proposed building to provide an area for collection of trash and recyclables in compliance with the requirements of Municipal Code Chapter 16C.

## **ENVIRONMENTAL STATUS**

An Initial Study/Draft Mitigated Negative Declaration was prepared for this project, released for public comment on December 1, 2010 and is attached to this report as **Exhibit 1**. The public review period ended on December 22, 2010. As of the date of this report no letters have been received regarding the draft mitigated negative declaration.

The initial study focused on the following issues:

- Aesthetics. The single story design of the proposed building and the presence of mature trees on the site, most of which would remain, limit the visual prominence

of the facility. The initial study includes a mitigation measure to ensure that exterior lighting associated with the project would not result in significant light and glare for nearby residents.

- Biological resources. A biological resource assessment was prepared for the project which examined vegetation and wildlife habitat on the site. The assessment did not find any active raptor nests or other bird nests protected under the Migratory Bird Treaty Act but recommended adoption of mitigation measures in case such nests are found prior to project construction. The assessment also included recommendations for replacement of any trees removed as part of the project and for broom eradication on the site.
- Geology and soils. A geologic and geotechnical feasibility study was prepared for the project which examined soils conditions on the site. The study recommended adoption of several mitigation measures to avoid drainage runoff impacts and ensure compliance with appropriate seismic safety building requirements.
- Hydrology and water quality. A hydrology and water quality study was prepared for the project which analyzed potential stormwater and water quality effects of the project. The study recommended adoption of several mitigation measures, including compliance with local stormwater regulations, which would reduce any potential impacts to less-than-significant levels.
- Noise. A noise assessment was prepared for the project which analyzed potential construction and operational noise generated by the project. The assessment recommended adoption of mitigation measures related to construction activities and location of noise-generating equipment (such as HVAC units) that would reduce any potential noise impacts to less-than-significant levels.

The initial study recommended mitigation measures for potential impacts on aesthetics; biological resources; cultural resources; geology and soils; hydrology and water quality; and noise that would reduce these impacts to less than significant levels. As of the writing of this report, no substantial evidence has been received to support a fair argument that the project could result in a significant impact on the environment.

## **PUBLIC COMMENT**

As of the date of this report, no comment letters have been received regarding the project.

## **ADDITIONAL ACTIONS REQUIRED**

Following approval of the site plan and architectural drawings (i.e. the land use and zoning approvals) for the project, and adoption of the mitigated negative declaration, the Town Council would be poised (at a future meeting) to authorize bidding of the project and eventually award a contract for the work. Issuance of the building permit would be a ministerial action performed by Town Staff.

## RECOMMENDATION

Staff recommends that the Town Council:

1. Hear and consider any public comment on this item;
2. Deliberate upon the draft negative declaration and the project merits; and
3. If prepared to do so, adopt the draft resolution (**Exhibit 2**) adopting the mitigated negative declaration, approving the site plan and architectural drawings for the project, and adopting a Mitigation Monitoring Program.

## EXHIBITS

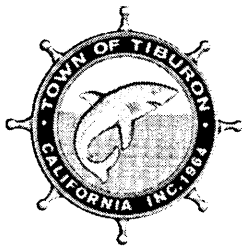
1. Initial Study & Draft Mitigated Negative Declaration
2. Draft resolution with Mitigation Monitoring Program attached
3. Town Ordinance No. 522 N. S. (streamlining ordinance for the project)
4. Project Drawings: Site Plan (one sheet dated 12/23/2010), Architectural Elevation Drawings (two sheets dated 1/26/2011) and Floor Plan (one sheet dated 1/10/2011)

Prepared By: Daniel M. Watrous, Planning Manager  
Scott Anderson, Director of Community Development

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Contact Town  
Clerk  
for exhibits

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ca.us



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Town Council Meeting  
February 16, 2011  
Agenda Item:

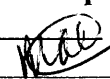
PH-3

## STAFF REPORT

**To:** Mayor and Members of the Town Council

**From:** Community Development Department

**Subject:** 1599 Tiburon Boulevard; Appeals of Conditional Use Permit Approval to Operate a Drug Store and Pharmacy; Zelinsky Properties, LLC, Owner; CVS/pharmacy & Armstrong Development Properties, Inc., Applicants/Appellants; Cres Van Keulen, Neal Toft, Terry Hennessy and Patricia Goss, Appellants; File #11005; Assessor's Parcel Nos. 058-171-89 and a portion of 058-171-88

**Reviewed By:** 

## PROJECT DATA

Address: 1599 Tiburon Boulevard  
Assessor's Parcel Numbers: 058-171-89 and a portion of 058-171-88  
File Number: 11005  
Lot Size: 1.63 acres  
General Plan: Neighborhood Commercial/Affordable Housing Overlay  
Zoning: NC/AHO (Neighborhood Commercial/Affordable Housing Overlay)  
Current Use: Vacant commercial building  
Property Owner: Zelinsky Properties, LLC  
Applicants/Appellants: CVS/pharmacy & Armstrong Development Properties, Inc.  
Appellants: Cres Van Keulen, Neal Toft, Terry Hennessy & Patricia Goss  
Flood Zone: X (Building; outside 500-year flood event); AE (parking lot; subject to 100-year flood)

## BACKGROUND

On January 12, 2011, the Planning Commission adopted Resolution No. 2011-02 approving a conditional use permit application to operate a drug store and pharmacy (CVS/pharmacy) in a building previously occupied by a grocery store (most recently IGA/Delano's Market) on property located at 1599 Tiburon Boulevard. The applicants, CVS/pharmacy & Armstrong Development Properties, Inc., (hereinafter referred to as "applicants") and the neighboring residents at 7, 8, 15 & 27 Marsh Road (hereinafter referred to as "appellants") have filed separate timely appeals of the Commission's decision to the Town Council.

## **HISTORY**

The origins of the commercial building on this property predate the incorporation of the Town of Tiburon. In 1963, the Marin County Board of Supervisors approved a conditional use permit and a building permit for a supermarket on the site. Since that time, the building has been occupied by various different grocery store/markets, including Safeway, Bon Appetit (a division of Safeway), Bell Market and, most recently, Delano/IGA Market.

The Delano/IGA Market closed in 2009. Since then, the building has been vacant and the parking spaces on the site have been used as part of a public pay parking lot under the same ownership as the parking lot on the adjacent property to the northwest.

## **PROJECT DESCRIPTION (AS SUBMITTED BY THE APPLICANT)**

The proposed drug store and pharmacy would occupy 18,182 square feet of the approximately 20,000 square foot existing building. The store would sell a full range of convenience consumer products, including limited food items, as well as alcoholic beverages (off-sale only). The proposed store hours would be from 7:00 a.m. to 10:00 p.m., seven days a week, although the applicants requested the flexibility to operate around-the-clock and not be limited to specific hours of operation. The applicants intend to sublease a 1,800 square foot space in the southwest corner of the building to an unspecified future retail tenant.

The primary drug store use would include an ancillary two-lane drive-through pharmacy window facility located at the eastern side of the building. A small addition to the building would connect the interior of the pharmacy to an exterior window facing the drive-through lanes. A porte cochere would be constructed above the drive-through lanes to shield users from the elements. The drive-through pharmacy window would operate during the regular store hours. No other substantial physical changes are proposed for the exterior of the building at this time, although the future retail tenant space would require exterior alterations to that portion of the building.

The business would have the use of 72 parking spaces on the site through a lease with the property owners, said lease covering the entire lot on which the building is located and a small portion of the adjacent parcel to the west. The remainder of the parking lot on the adjacent parcel is not part of the applicant's lease. The applicants propose to create eight additional parallel on-street public parking spaces in the Tiburon Boulevard right-of-way in front of the adjacent parcel to the west. The existing landscaping on the site and in the Tiburon Boulevard and Beach Road landscape frontages would be replaced with new trees, shrubs and groundcovers. Public sidewalks along Tiburon Boulevard and Beach Road would be widened.

## **REVIEW BY THE PLANNING COMMISSION**

This application was reviewed at the January 12, 2011 Planning Commission meeting (see minutes and staff report packet attached as **Exhibits 1 and 2**).

The staff report had recommended, among other things, that hours of operation for both the drug store and pharmacy be limited to 7 a.m. to 10 p.m. seven days a week; that truck deliveries be limited to 7 a.m. to 10 p.m. on week days and from 8 a.m. to 10 p.m. on week-ends and holidays;

and that a tall block wall be constructed along the rear property line to separate the commercial use from the residential area.

At that meeting, several neighboring residents expressed concerns about potential noise, traffic, light and glare from certain aspects of the proposed use. The neighbors primary objection was that the drive-through pharmacy component of the project was unnecessary and inappropriate and would result in unwanted impacts on their dwelling units, including 1) noise from the speaker system and from pharmacist/driver conversations and idling engines; 2) unwanted glare from headlights and the exterior lighting of the drive-through window area and the building; 3) unwanted exhaust from cars at the drive-through; and 4) an increase in the number of vehicles turning onto Beach Road when exiting the drive-through window, which the speakers described as a hazardous location. Other neighbor objections included 1) an undesirable increase in building mass from the additions; 2) noisy compressor units used for heating, cooling and refrigeration; 3) the sale of alcohol from the store; and 4) noise from truck deliveries.

At that meeting, the applicant stated that although this facility was slated for standard operating hours, he requested the flexibility to remain open 24 hours a day and requested that the Planning Commission not establish limitations on the hours of operation for the store. The applicant also explained that the drive-through pharmacy window element was an important aspect of the CVS/pharmacy business model.

The Planning Commission expressed support for the drug store and pharmacy use overall, but several Commissioners expressed concerns about the potential impact-generating characteristics of the drive-through pharmacy element of the project and the proposed hours of operation and of deliveries. The Commission voted to limit the drive-through operation to the hours between 8:00 a.m. and 8:00 p.m., seven days a week; eliminated the outer drive-through lane; and limit truck deliveries to the hours of 8:00 a.m. to 6:00 p.m., seven days a week. The Commission supported Staff's recommendation to limit the overall store operating hours to between 7:00 a.m. and 10:00 p.m., seven days a week.

The Commission voted 4-1 to adopt Resolution No. 2011-02 (**Exhibit 3**) conditionally approving the project. On January 24, 2011, the applicants and appellants filed separate timely appeals of this decision (**Exhibits 4 and 5**).

## **BASIS FOR THE APPLICANT'S APPEAL**

There are three (3) grounds upon which the applicant's appeal is based:

Ground #1: **The applicant asserts that the operating hours for the drive-through pharmacy should be the same as the store hours (7 a.m. to 10 p.m.), as later hours would not create noise or light impacts on neighboring residents and would be more convenient for store customers. The applicant requests that the second sentence of Condition #2 of the Planning Commission resolution be deleted.**

*Staff Response:* As noted above, the applicants initially requested the ability to remain open 24 hours a day. The Planning Commission supported Staff's recommendations to limit the overall

store hours of operation to 7:00 a.m. to 10:00 p.m., seven days a week. The Commission further limited the hours of operation for the drive-through pharmacy to the hours of 8:00 a.m. and 8:00 p.m., seven days a week. The Commission determined that limiting the drive-through hours to no later than 8:00 p.m. would alleviate some of the neighbors' concerns about noise and light impacts during nighttime hours. In addition, the Planning Commission required that the applicants replace or augment the dilapidated fencing along the rear property line with a solid (block-type) wall to provide a better noise buffer for the adjacent Point Tiburon Marsh residents. This wall could also help shield these residents from some potential headlights, but would primarily help with noise reduction from, and reduced visibility of, the loading area.

The applicants have submitted photographs indicating that the existing fencing and landscaping bordering the subject property and the Point Tiburon Marsh property would effectively block any headlights from being seen in these neighboring residences.

Planning Division staff conducted its own headlight test at 8 p.m. one evening from the proposed drive-through location. The car headlights (at both high-beam and low-beam settings) could be seen from both drive-through lanes by a person standing outside the second floor windows of the four Point Tiburon Marsh condominium units nearest Beach Road. The headlights, sometimes one and sometimes both, were distant and not intensely bright, were filtered by intervening vegetation, and were among numerous light sources (including on-site parking lot lights) visible from the Point Tiburon Marsh units. A resident looking out their second floor window could see light from the headlights; however, staff concluded that the limited intensity of the headlights reaching the units would be unlikely to be noticeable from inside the units by a person of ordinary sensibility, and would not be likely to create a noticeable "brightening" of the room or "dancing light effect" on walls or windows, even with window shades open. Staff notes that all the second floor rooms in use at the time of the headlight test had their shades drawn, most likely for privacy.

The applicants also contend that the 200 foot distance between the drive-through pharmacy and the nearby homes, combined with the intervening vegetation and future wall, would limit any potential noise heard by neighboring residents. The applicants have previously indicated that the speakers used for drive-through service are equipped with volume controls and could be lowered if noise is an issue.

The Planning Commission recognized that noise from the drive-through pharmacy could be noticeable for nearby residents during quieter late nighttime hours. The Commission also expressed its doubts that there would be sufficient demand for late night use of the drive-through pharmacy. The Commission believed that the additional restrictions it imposed on drive-through hours were a reasonable limitation that would address legitimate potential noise concerns without substantially hampering the operation of the drug store and pharmacy. The Commission noted that the applicants could request an amendment to the hours of operation at a later date if demand for such hours was apparent after the store has been in operation for some time.

In filing its appeal, the applicant indicated that a revised site plan drawing would be submitted showing an additional wall proposed to extend outward from the rear building wall in front of the inner drive-through lane to further block light and noise from the drive-through operation from reaching dwelling units. That drawing was submitted on February 4, 2011 and is attached as

**(Exhibit 6).** Staff concludes that this second wall would effectively prevent headlights from reaching the Point Tiburon Marsh units from the inner drive-through lane, but would be less effective from an outer drive-through lane. The applicants appeal letter also indicated they would submit a noise analysis and a light analysis as further evidence that the drive-through would not have materially adverse impacts on nearby residents. These items have not been received by the Town as of the writing of this staff report and if received are considered “late mail” items.

Ground #2: **The applicant asserts that two lanes for the drive-through pharmacy would more efficiently serve store customers, reduce vehicle congestion and idling times and provide better on-site pedestrian circulation. The applicant requests that Condition #4 of the Planning Commission resolution be eliminated.**

*Staff Response:* The applicants contend that the requested two-lane drive-through pharmacy would reduce vehicle congestion by avoiding any stacking of cars into the adjacent parking lot, which would also prevent any impacts on pedestrians walking up to the store entrance. This additional stacking capacity would also limit vehicle idling times at the drive-through.

At the Planning Commission hearing, the applicants estimated that the usage of the drive-through pharmacy would only be 5 to 7 cars per hour during the peak use hours of 5:00 to 6:00 p.m. or 6:00 to 7:00 p.m. This relatively low demand would decrease the likelihood that a long queue of vehicles would stack up at any one time and create the stacking problems described by the applicants.

Ground #3: **The applicant states that there is no reason to establish limits on truck delivery hours that are different than those for other businesses in Downtown Tiburon. The applicant requests that Condition #3 of the Planning Commission resolution be revised to limit delivery hours consistent with Section 23-19A of the Municipal Code (in which deliveries are prohibited between 10 p.m. and 8 a.m. on weekends and holidays, and prohibited between 10 p.m. and 7 a.m. on all other days.**

*Staff Response:* Section 23-19A (a) of the Tiburon Municipal Code prohibits commercial trucks in portions of Downtown Tiburon (including Tiburon Boulevard east of Beach Road, but does not apply to the subject site or other properties west of Beach Road) outside the hours of 7:00 a.m. to 10:00 p.m. on weekdays and 8:00 a.m. to 10:00 p.m. on weekends and holidays. Staff recommended that the Planning Commission require that truck deliveries for the drug store and pharmacy comply with these regulations.

At the Planning Commission hearing, the applicant indicated that the typical CVS receives 3 large truck deliveries per week and approximately 8 to 10 smaller box truck deliveries per week. The applicant also noted that CVS has some control over the schedule of its larger trucks and said that those deliveries typically occur in the morning hours.

The Planning Commission voted to limit truck deliveries to the hours of 8:00 a.m. to 6:00 p.m., seven days a week. Nighttime and early morning truck deliveries to the previous supermarket uses on this site have generated noise complaints from Point Tiburon Marsh residents. The more

limited hours established by the Commission would help alleviate any potential reoccurrences of these early morning and late night noise impacts on neighboring residents.

### **BASIS FOR THE APPELLANTS' APPEAL**

There are three (3) grounds upon which the appeal is based:

Ground #1: **The appellants claim that the hearing process for the conditional use permit was fatally flawed, as residents did not receive the mailed hearing notices 10 days prior to the meeting.**

*Staff Response:* The constitutional right of due process requires that, before holding a public hearing affecting property rights, the Town must provide notice that is reasonably calculated to inform affected parties of the action pending and their right to present their objections. More specifically, the California Government Code requires the Town to mail *or* deliver notices of conditional use permit public hearings to all property owners within 300 feet of a subject property at least ten (10) days before the hearing date. Town Staff prepared a mailing list for the subject application that included all such property owners, as well as residents of all Point Tiburon Marsh units that are not owner-occupied according to the latest County assessment rolls. On December 20, 2010, Staff hand-carried the required notices to the Belvedere-Tiburon Post Office. Staff has followed this procedure many times and such notices are generally received within two business days. In January, Staff began receiving complaints from Point Tiburon Marsh residents that they had not received the notice in the mail. On January 24, 2011, the post office delivered the mailed notices to residents and property owners. In Staff's experience, this delay is unprecedented.

The Government Code explicitly gives the Town the option to mail public hearing notices. No law guarantees actual receipt of the notices prior to the hearing. The Town submitted the notices to the post office with several weeks to spare and had every reason to expect that they would be delivered well before the required ten-day period. The Town cannot be responsible for subsequent delivery problems. Postal delivery problems of this unfortunate nature are very rare in Tiburon and may have been related to a volume surge immediately prior to the holidays. Meeting notices for unrelated items were also delivered to the Post Office that day and suffered the same delivery delay. Town Staff spoke with the local postmaster, who was unable to provide any explanation for the delay in delivery.

Staff and neighboring residents informed the Planning Commission of the apparent mail delivery problem at the January 12, 2011 meeting. The Commission determined that the residents had received constructive notice of the meeting through various sources and that the viewpoints of the neighbors were well represented at the hearing; seven (7) residents spoke and another three (3) residents had submitted letters to the Commission. Almost all of the neighbors who spoke expressed concerns about the proposed drive-through pharmacy and potential noise, light and traffic impacts – the same substantive issues raised in the appeal. The Commission believed that any additional comments that might be received after a continuance would raise similar objections. Moreover, the current appeal itself provides a cure for any substantive omission. The Town's appeal process allows the Council to consider the submit application *de novo*, i.e., as if for the first time. The Council accordingly has the discretion to consider any objections that were not previously raised at the Commission hearing because of the postal delivery delay.

Ground #2: **The appellants assert that the project plans and application details are vague and incomplete.**

*Staff Response:* The neighbors' appeal stated that the project application should have included the following information prior to a decision by the Planning Commission:

- More detailed drawings and specifications for the drive-through pharmacy, a more detailed site plan and location of disabled access.

Response: The Government Code requires that the Town determine whether a development application is complete within 30 days of receipt. This requirement is part of the Permit Streamlining Act, which the Legislature adopted in 1977 to expedite decisions on development applications. Consistent with this intention, Section 65943 only provides for appeal by the applicant and only if the Town has determined that the application is incomplete. Further, the site plan clearly showed the precise location of the small building addition that would house the drive-through and its window. Other details mentioned are not typically required as part of a conditional use permit application, but are more typical of a subsequent Site Plan and Architectural Review application. Disabled access requirements are the purview of the Building Official and are addressed in detail at the building permit application stage of review. As part of the use permit application review, the Building Official visited the site and on a preliminary basis concluded that achieving conformance with disabled access requirements was feasible. The Planning Commission did not indicate that the application was vague or otherwise lacked the detail necessary to approve the conditional use permit.

- Documentation of market demand for a drive-through pharmacy.

Response: At the Planning Commission meeting, the applicants explained their rationale for requesting a drive-through pharmacy and indicated that it was an important part of the CVS business model. The Commission adequately understood the information and noted demographic statistics that indicated a projected increase in the elderly population in Tiburon that would have the benefit of the drive-through. The Commission did not find it necessary to require additional information on the demand for this use.

- Information on operational procedures for the drive-through pharmacy, including pharmacist consultations and potential window usage per hour and window wait times.

Response: The Planning Commission concluded that this level of detail was not necessary to understand the proposed drive-through pharmacy operations and make an informed decision on the application.

- Analysis of vehicle movements and traffic and pedestrian safety.

Response: Planning Commission members acknowledged the comments regarding potential safety concerns and had visited the site and understood the vehicular movements associated with the pharmacy drive-through. As the peak hour usage of the drive-through pharmacy was estimated by the applicant at only 5 to 7 cars during the peak hour, additional traffic analysis was not deemed necessary for this application. The Planning Commission used its knowledge and familiarity with the Town and its populace in concluding that use of the drive-through could be accommodated by a single lane.

The Beach Road/Marsh Road intersection, which occurs on a roughly 90 degree curve in Beach Road, has been the subject of discussions over perceived safety in the past. Vehicles turning left onto Marsh Road from Beach Road have limited visibility to the right (east) arising from trees, shrubs, and sometimes from parked cars in the parking lot located north of the Bank of America building. These obstacles are not located on the CVS site or along its frontage, but are off-site. Pedestrians using the crosswalk at the Beach Road/Marsh Road intersection have also complained about vehicles moving too quickly along Beach Road headed toward Tiburon Boulevard such that they feel unsafe in the crosswalk. The Town Engineer and Planning staff visited the site during initial review of the application and concluded that the location of the driveway exit from the proposed drive-through was sufficiently removed from the Beach Road/Marsh Road intersection so as to not materially worsen the safety of that intersection. The vast majority of vehicles leaving the drive-through will make a simple right turn onto Beach Road, in the same direction as vehicles headed to Tiburon Boulevard. This would be a safe turning movement. There is also adequate sight distance for a safe left-hand turning movement onto Beach Road after leaving the drive-through pharmacy, although this would be a rare turning movement. Given the low vehicular volume anticipated for the drive-through window, Town staff did not envision any material safety issue as a result of the proposed drive-through exit location.

That said, there is the potential for improved visibility at the Beach Road/Marsh Road intersection from shrub removal in the private parking lot north of the Bank of America and from tree trimming and/or removal of redwood trees and an oak tree in the Beach Road right-of-way controlled by the Town. In addition, the placement of a bright yellow "pedestrian in crosswalk" sign immediately east of the 90 degree curve in Beach Road, alerting traffic bound for Tiburon Boulevard to the upcoming crosswalk near Marsh Road, would be efficacious. The Town Engineer has reviewed the crosswalk situation and devised a signage scheme consistent with applicable standards and regulations. Enhanced curb cuts and other disability-related improvements would likely be needed along with the crosswalk upgrades. The applicant has expressed a willingness to assist the Town in making or funding these off-site vegetation removal and signage improvements.

- A requirement to maintain all mechanical equipment in good working order.

Response: The general practice of the Planning Commission for conditional use permit applications does not include such a requirement. However, such a condition could be added to any approval of the use. The mechanical HVAC equipment will be required to comply with the Community Development Department's noise policy as part of the Site Plan & Architectural Review application, but that would be a one-time-only determination of compliance.

Ground #3: **The appellants assert that the drive-through window element of the project would be inconsistent with the Tiburon General Plan, Circulation Element, and findings for a conditional use permit approval set forth in the Municipal Code.**

### General Plan Goals and Policies

*Staff Response:* General Plan goals and policies are generally applied to projects in their entirety without segmenting projects into their various component parts and applying individual goals and policies to those parts. The court-mandated rule in determining consistency with a general plan is whether "a project, on balance, furthers the goals and objectives of the General Plan". That said, Staff offers the following responses to the points raised in the appeal regarding inconsistency of the drive-through window with general plan goals and policies:

- Goal DT-C: To encourage greater pedestrian activity and enjoyment of life in Downtown while respecting surrounding residential uses.

Response: Staff believes that this broad goal was intended to promote and enhance the overall vibrancy and attractiveness of Downtown Tiburon for the benefit of citizens and visitors, without creating such a raucous Downtown environment that nearby residents would suffer undesirable effects. The applicability of this broad general goal to the drive-through window element of the CVS project is tangential, at best. The approval of an ancillary drive-through prescription window as part of a large pharmacy use would not be incompatible with the overall goal of encouraging greater pedestrian activity in Downtown Tiburon. The Town has not applied this goal in a manner that would discourage approval of uses that are generally automobile-oriented in a suburban community, such as grocery stores, pharmacies, and retail sales uses.

- Policy DT-5: The quality of residential neighborhoods within and adjacent to Downtown shall be preserved with regard to unreasonable noise, traffic, visual and other impacts, with the understanding that such impacts are generated to a greater extent in Downtown commercial areas than in exclusively residential areas.

Response: The Planning Commission examined the noise, traffic, visual and other potential impacts of the proposed use, modified the application to address neighborhood concerns, and concluded that the project (as modified)

would not result in unreasonable impacts of neighbors. This policy tacitly acknowledges that it is not unreasonable for residential areas in close proximity to Downtown to experience more noise, traffic and visual impacts than neighborhoods further removed from the Town's primary commercial area.

- Policy DT-10: Drive-through restaurants shall not be permitted and restaurants that primarily offer fast food and/or take-out service shall be discouraged in Downtown Tiburon. This policy does not prohibit beverage or specialty food providers, including, but not limited to, coffee and tea-houses, juice bars, and ice cream/frozen yogurt shops.

Response: This policy is plainly directed at drive-through restaurants and does not pertain to other drive-through commercial facilities. Its intent was to keep traditional fast-food restaurants out of Downtown Tiburon.

- Implementing Program DT-e: Facilitate the long-term future improvement of the four corner properties at the intersection of Tiburon Boulevard and Beach Road and adjacent sites.

Response: The proposed pharmacy use constitutes a change in use and a re-use of the site as opposed to a comprehensive redevelopment of the property, as would perhaps be the ideal end result envisioned by this long-term policy. Nevertheless, the project proposes a number of substantial improvements to the existing site, including building and parking lot upgrades, sidewalk replacement and widening, and a complete re-landscaping. These improvements constitute a substantial investment in the property by the owner and prospective tenant, and are consistent with this policy as written.

- Policy C-1: Land use decisions shall take into consideration potential traffic and circulation impacts.

Response: The Planning Commission considered potential traffic and circulation impacts of the project in making its decision on the subject application, and concluded that such impacts would not be unreasonable given the nature of previous supermarket uses on the site since the 1960's.

### Conditional Use Permit Special Considerations

*Staff Response:* Staff's responses to the appellant's assertions regarding conformance with the general purposes of conditional use permit review are as follows:

- Section 16-52.040 (B): The purposes of review of a conditional use permit application are to:
  1. Determine whether the location proposed for the conditional use is

properly related to the development of the neighborhood or vicinity as a whole;

Response: The Planning Commission considered the relationship of the proposed use and its ancillary drive-through pharmacy window to the neighboring Point Tiburon Marsh residential project and other surrounding uses, and concluded that as modified by the conditions of approval, the use would be properly related to and compatible with surrounding uses.

2. Determine whether the location proposed for the particular conditional use would be reasonably compatible with the types of uses normally permitted in the surrounding area;

Response: The location proposed for the drug store and pharmacy is a commercial property that has previously been used as a grocery store. A drive-through facility is located at Bank America directly across Beach Road from the site. The Planning Commission concluded that as modified by the conditions of approval, the use would be reasonably compatible with the types of uses normally permitted in the surrounding area, including residential dwellings. See the response regarding Policy DT-5 above.

4. Stipulate such conditions and requirements as would reasonably assure that the basic purposes of this Zoning Ordinance and the objectives of the General Plan would be served.

Response: The Planning Commission adopted conditions of approval in Resolution No. 2011-02 that were responsive to neighbor concerns regarding the potential noise, traffic and light impacts of the project. These conditions/project modifications include:

1. Requirement to construct an 8 foot high block wall to reduce the potential for sound and head light intrusion from the drive-through element of the project.
2. Restricted hours of operation for the pharmacy, more stringent hours of operation for the drive-through, and more stringent limits of delivery hours than are found elsewhere in Downtown Tiburon.
3. Elimination of the second (outer) drive-through lane.

The Commission concluded that these substantial project changes would reasonably assure the basic purposes of the General Plan and Zoning Ordinance.

- Section 16-50-040 (D): Factors to be considered in determining whether or not any conditional use should be permitted in a specific location are:

1. The relationship of the location proposed to:

a. The service or market area of the use or facility proposed;

Response: The Planning Commission received and evaluated information regarding the potential demand for the proposed drive-through pharmacy. A drug store/pharmacy has long been identified as a highly desired use in Downtown Tiburon and one that has been lacking since the 1990's.

b. Transportation, utilities, and other facilities required to serve it;

Response: The site has frontage and entry/exits from both Tiburon Boulevard and Beach Road, and is supported by adequate transportation, utilities, and other facilities required to serve it.

c. Other uses of land in the vicinity.

Response: The Planning Commission clearly considered the relationship of the proposed use to the neighboring Point Tiburon Marsh residential project and to other commercial properties in Downtown Tiburon, as noted above, and concluded that the location was appropriate.

2. The compatibility of the design, location, size, and operating characteristics with the existing and future land uses in the vicinity.

Response: The Planning Commission carefully considered the details and operating characteristics of the proposed use in its evaluation of the subject application and adopted conditions of approval in Resolution No. 2011-02 that were responsive to concerns raised about the potential noise, traffic and light impacts of the project. The Commission concluded that these substantial project changes would reasonably assure the basic purposes of the General Plan and Zoning Ordinance.

3. The probability of impairment to the architectural integrity and character of the zoning district in which it is to be located.

Response: The architectural characteristics of the proposed addition and drive-through facility would be reviewed to ensure architectural integrity with the existing building through the Site Plan and Architectural Review process, which review is required by Condition No. 7 of the Planning Commission resolution. It is difficult for staff to envision how this porte cochere addition could, in itself, impair the character of the Neighborhood Commercial zoning district.

4. The protection of the public interest, health, safety, convenience, or welfare of the Town, or any probability of injury to property or

improvements in the vicinity and zoning district in which the real property is located.

Response: The Planning Commission considered the probable impacts of the proposed project on neighboring residents and the potential noise, traffic and light impacts of the project before making its decision on the application. The Commission concluded that the project and its drive-through component were favorable to the public interest, health, safety and convenience of the Town, and would not have unreasonable or materially injurious impacts on property or improvements in the vicinity.

## CONCLUSION

In reaching its decision on this project, the Planning Commission found the application to be consistent with the goals and policies of the Tiburon General Plan and the requirements of the Tiburon Zoning Ordinance for conditional use permits. The Commission considered the potential noise, traffic and light impacts of the drug store and the drive-through pharmacy component of the project and imposed appropriate conditions of approval on the application to address these concerns and limit them to reasonable levels. The Commission determined that the proposed use would be an asset to the community and an overall improvement for neighboring residents over the previous grocery stores at this location.

In addition, subsequent to the Commission's action, the applicant has indicated its willingness to work with the Town on the following additional measures to address neighbor concerns:

- Construction of an additional wall in front of the inner lane of the drive-through (as shown on the revised site plan drawing)
- Customize the drive-through window to allow voice communication between a driver and the pharmacy staff without the amplified speaker for inside lane (may not be applicable to certain transactions)
- Orient the speakers at least 135 degrees away from the Point Tiburon Marsh condominium units (essentially angled to face the Bank of America building), with shrouding, coning, or shielding of the speaker to focus sound toward the driver
- Post a sign at the drive-through indicating that the outside lane is to be used only in the event the inside lane is occupied
- Removal of sight-distance obstacles east of the Beach Road/Marsh Road intersection (shrubs, trees, and sign posts)
- Installation of pedestrian crosswalk signs and associated improvements (such as curb cuts) in association with the Beach Road/Marsh Road crosswalk
- Limit drive-through window transactions to pharmacy-related items only
- Ongoing compliance with noise limits on HVAC-type mechanical equipment

These items could be incorporated into conditions of approval and refined at the Site Plan & Architectural stage of review.

## STAFF OBSERVATIONS

Regarding the appellant's appeal, Staff offers the following observations:

Neighbor concerns about noise and light impacts and sight distance limitations for certain turning movements at the Beach Road/Marsh Road intersection are legitimate concerns and ones that can be adequately addressed through the project approval and ongoing review process. Specifically:

- Concerns about headlight visibility from the upper floor of certain Marsh dwelling units from the drive-through lanes are substantiated by field tests conducted by staff, although the low intensity of such light reaching the units makes the unreasonable intrusion of light into units unlikely. Staff believes the additional wall proposed in front of the inner drive-through lane would effectively eliminate headlight visibility issues from this lane.
- Concerns about mechanical equipment, the drive-through speakers and engine idle noise can be adequately addressed through measures identified in this report.
- Sight distance/traffic hazard claims are not materially affected by this project. Existing conditions at the Beach Road/Marsh Road intersection can be improved by measures identified in this report.
- Claims of drive-through pharmacy inconsistency with General Plan goals and policies and Municipal Code provisions are not supported.

Regarding the applicant's appeal, Staff offers the following observations:

- Hours for deliveries should be the same as for other uses in Downtown regulated by Municipal Code Chapter 23-19A, for purposes of consistency, fairness, and ease of enforcement.
- It is difficult to envision sufficient demand to warrant dual drive-through lanes for this use in Downtown Tiburon. Staff believes a second drive-through lane would rarely be used and would not therefore be a major factor in the compatibility of the use with nearby uses.
- Based on the conclusion that noise, light and intersection safety issues can be adequately addressed as set forth in this report, drive-through hours of operation could be the same as for the drug store use without unreasonably increasing impacts on other properties.
- Staff recommends review of the CUP approximately ninety days following commencement of the use, and again at one year following commencement.

## RECOMMENDATION

It is recommended that the Town Council:

- 1) Hold a public hearing and take testimony on the appeals in accordance with the Town's adopted procedure (see attached **Exhibit 7**), and close the public hearing.
- 2) Deliberate using a "hearing de novo" approach and, if prepared to do so, indicate its intentions regarding the appeals.
- 3) Direct Staff to return with an appropriate resolution for consideration at the next meeting.

## EXHIBITS

1. Minutes of Planning Commission meeting of January 12, 2011
2. Planning Commission staff report & packet (including late mail) from 1/12/2011 meeting
3. Planning Commission Resolution No. 2011-02
4. Notice of appeal from applicants
5. Notice of appeal from neighboring residents
6. Revised site plan drawing received February 4, 2011
7. Appeal procedures
8. Photographs of drive-through area submitted by property owner representative received January 25, 2011
9. Approved CUP drawings

Prepared By:                Scott Anderson, Director of Community Development  
                                     Daniel M. Watrous, Planning Manager

*S:\Administration\Town Council\Staff Reports\2011\Feb 16 drafts\1599 Tiburon Boulevard appeal report.doc*

Contact  
TOWN CLERK  
for exhibits  
@ dcrane@ci.tiburon.  
ca.us



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Town Council Meeting  
February 16, 2011  
Agenda Item:

PH-4

## STAFF REPORT

**To:** Mayor & Members of the Town Council

**From:** Community Development Department

**Subject:** Repeal of Zoning Ordinance-Based Green Building Regulations: Introduce and Consider First Reading of an Ordinance Repealing Article IX (Green Building) and Related Sections of Chapter 16 (Zoning) of the Tiburon Municipal Code; Adoption of a Resolution Rescinding Green Building Standards from the Current Zoning-Based System

**Reviewed By:**

## BACKGROUND

The Town adopted its current “green building” regulations in 2008 as part of its Zoning Ordinance. The green building standards were based on the LEED methodology for non-residential buildings and on the GreenPoint rating system for residential projects.

Effective January 1, 2011, the State of California’s new CALGreen construction code went into effect, and the Town Council adopted local amendments to CALGreen on January 19, 2011. CALGreen applies to both new residential and non-residential projects, and implements green building from a mandatory state-wide building code perspective that is considerably different than existing systems (GreenPoints) used by the Town. CALGreen is more rigorous than the Town’s GreenPoints system. Since any local amendments made to the California building codes must be more restrictive (as opposed to more lenient), the Town’s current green building regulations (**Exhibit 4**) are no longer enforceable. Repeal of the Town’s current zoning-based green regulations, and the Resolution (**Exhibit 5**) establishing standards for that system, is appropriate at this time.

Over the coming months, Town staff will evaluate the range of options available with respect to further strengthening the Town’s green building regulations and report back to the Council. Options include but are not limited to maintaining the status quo, adopting the Green BERST systems already adopted by certain other Marin County jurisdictions, or adopting the more stringent Tier 1 standards set forth in CALGreen.

## PLANNING COMMISSION REVIEW

The Planning Commission held a public hearing on the repeal of the zoning-based green building regulations on January 12, 2011 and unanimously recommended repeal of these provisions. The Commission's resolution to that effect is attached as **Exhibit 3**.


## RECOMMENDATION

Following a public hearing, staff recommends that the Town Council:

1. Hold a public hearing and consider any testimony.
2. Move to read by title only and introduce the ordinance (**Exhibit 1**) amending Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code to repeal the zoning-based green standards and waiving any additional readings.
3. Adopt the Resolution rescinding the zoning-based Green Standards (**Exhibit 2**).

## EXHIBITS

1. Ordinance No. 524 N. S. (Draft) repealing zoning-based green building regulations
2. Draft Resolution rescinding the zoning-based green standards
3. Planning Commission Resolution recommending repeal
4. Green Building excerpt from Zoning Ordinance
5. Resolution 44-2008 establishing Green Building Standards

Prepared by: Scott Anderson, Director of Community Development 

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**ORDINANCE NO. 524 N.S. (DRAFT)**

**AN ORDINANCE OF THE TOWN COUNCIL  
OF THE TOWN OF TIBURON  
REPEALING THE ZONING ORDINANCE-BASED GREEN BUILDING  
REGULATIONS CONTAINED IN TITLE IV, CHAPTER 16 (ZONING) OF THE  
TIBURON MUNICIPAL CODE**

**WHEREAS**, Article IX of Chapter 16 (Zoning) of the Tiburon Municipal Code sets forth green building regulations for the Town of Tiburon; and

**WHEREAS**, the Town of Tiburon is obligated under state law to adopt a new construction code, known as CALGreen, that provides more stringent green building standards than are set forth in the Town's green building regulations in Article IX; and

**WHEREAS**, state law requires that local amendments to building code may not be less stringent than those contained within the state-adopted code, thereby necessitating the repeal of the Town's Green Building provisions contained in Article IX and referenced in other sections of the Zoning Ordinance; and

**WHEREAS**, the Town Council finds that adoption of the ordinance is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, the Town Council hereby adopts this ordinance in order to promote and protect the public health, safety, and general welfare and achieve compliance with state-mandated construction codes.

**NOW, THEREFORE**, the Town Council of the Town of Tiburon does ordain as follows:

**Section 1.    Repeal.**

The following portions of Title IV, Chapter 16 of the Tiburon Municipal Code are hereby repealed:

- A.     Article IX (Green Building) of Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code is repealed in its entirety, including from the Table of Contents.

- B. Article V, Section 16-52.020 (E) (5) is repealed.
- C. Article VI, Section 16-66.020 (C) (4) is repealed.
- D. Article X, Section 16-100-020 (C), the definition of “Certified green building rater” is repealed.
- E. Article X, Section 16-100-020 (G), the definition of “Green building rating checklist” is repealed.

**Section 2. Publication and 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 \_\_\_\_\_, 2011, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on \_\_\_\_\_, 2011 by the following vote:

AYES: COUNCILMEMBERS:  
 NOES: COUNCILMEMBERS:  
 ABSENT: COUNCILMEMBERS:

\_\_\_\_\_  
 JEFF SLAVITZ, MAYOR  
 TOWN OF TIBURON

ATTEST:

\_\_\_\_\_  
 DIANE L. CRANE IACOPI, TOWN CLERK

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**RESOLUTION NO. DRAFT-2011**

**A RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF TIBURON  
RESCINDING RESOLUTION NO. 44-2008 ESTABLISHING STANDARDS FOR  
GREEN BUILDING**

**WHEREAS**, in October 2008, the Town Council adopted Resolution No. 44-2008 establishing standards for green building applicable to both residential and non-residential projects. The standards implemented provisions set forth in Article IX of Chapter 16 (Zoning) of the Tiburon Municipal Code regarding Green Building; and

**WHEREAS**, the Town of Tiburon is obligated under state law to adopt, and has adopted, a new construction code known as CALGreen that provides more stringent green building standards than are set forth in Resolution No. 44-2008; and

**WHEREAS**, state law requires that local amendments to building code may not be less stringent than those contained within the state-adopted code, thereby necessitating the repeal of the Town's Green Building provisions contained in Article IX and the rescission of green building standards set forth in Resolution No. 44-2008; and

**WHEREAS**, the Town Council finds that adoption of this resolution is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, the Town Council hereby adopts this resolution in order to promote and protect the public health, safety, and general welfare and achieve compliance with state-mandated construction codes.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Tiburon does hereby rescind Resolution 44-2008, adopted October 15, 2008, effective immediately.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon held on \_\_\_\_\_, 2011, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

\_\_\_\_\_  
JEFF SLAVITZ, MAYOR  
TOWN OF TIBURON

ATTEST:

\_\_\_\_\_  
DIANE L. CRANE IACOPI, TOWN CLERK

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**RESOLUTION NO. 2011-01**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE TOWN OF TIBURON RECOMMENDING TO THE TOWN COUNCIL ADOPTION  
OF AN ORDINANCE REPEALING THE GREEN BUILDING REGULATIONS CONTAINED  
WITHIN THE ZONING ORDINANCE CHAPTER OF THE TIBURON MUNICIPAL CODE**

WHEREAS, the Town of Tiburon has initiated the repeal of its zoning ordinance-based green building regulations due to the fact that more stringent building code-based green building regulations have been adopted by the State of California and went into effect on January 1, 2011; and

WHEREAS, notice of the Planning Commission's public hearing on the matter was published in the Ark newspaper on December 22, 2010 and was publicly posted; and

WHEREAS, the Planning Commission did hold a duly noticed and advertised public hearing on January 12, 2011 and considered any testimony received during the public hearing; and

WHEREAS, the Planning Commission finds that adoption of the ordinance is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines; and

WHEREAS, the Planning Commission finds that adoption of the proposed ordinance is consistent with the goals, policies, and programs of the Tiburon General Plan, and is consistent with the objectives of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Town Council adopt the ordinance repealing Article IX (Green Building) of Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code, as set forth in the attached Exhibit "A", incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon held on January 12, 2011, by the following vote:

AYES: COMMISSIONERS: Corcoran, Doyle, Frymier, Kunzweiler & Tollini

NOES: COMMISSIONERS: None

ABSENT: COMMISSIONERS: None

/s/ Cathy Frymier

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CATHY FRYMIER, CHAIR  
Tiburon Planning Commission

ATTEST:

  
SCOTT ANDERSON, SECRETARY

Attachment: Exhibit "A", Draft Ordinance

*S:\Planning\Planning Commission\Resolutions\2011\2011-01, Green Building Zoning Repeal.doc*

EXHIBIT "A"  
to Planning Commission Resolution 2011-01  
ORDINANCE NO. XXX N.S.

**AN ORDINANCE OF THE TOWN COUNCIL  
OF THE TOWN OF TIBURON  
REPEALING THE ZONING ORDINANCE-BASED GREEN BUILDING  
REGULATIONS CONTAINED IN TITLE IV, CHAPTER 16 (ZONING) OF THE  
TIBURON MUNICIPAL CODE**

**WHEREAS**, Article IX of Chapter 16 (Zoning) of the Tiburon Municipal Code sets forth green building regulations for the Town of Tiburon; and

**WHEREAS**, the Town of Tiburon is obligated under state law to adopt a new construction code, known as CALGreen, that provides more stringent green building standards than are set forth in the Town's green building regulations in Article IX; and

**WHEREAS**, state law requires that local amendments to building code may not be less stringent than those contained within the state-adopted code, thereby necessitating the repeal of the Town's Green Building provisions contained in Article IX and referenced in other sections of the Zoning Ordinance; and

**WHEREAS**, the Town Council finds that adoption of the ordinance is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, the Town Council hereby adopts this ordinance in order to promote and protect the public health, safety, and general welfare and achieve compliance with state-mandated construction codes.

**NOW, THEREFORE**, the Town Council of the Town of Tiburon does ordain as follows:

**Section 1. Repeal.**

The following portions of Title IV, Chapter 16 of the Tiburon Municipal Code are hereby repealed:

- A. Article IX (Green Building) of Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code is repealed in its entirety, including from the Table of Contents.

- B. Article V, Section 16-52.020 (E) (5) is repealed.
- C. Article VI, Section 16-66.020 (C) (4) is repealed.
- D. Article X, Section 16-100-020 (C), the definition of “Certified green building rater” is repealed.
- E. Article X, Section 16-100-020 (G), the definition of “Green building rating checklist” is repealed.

**Section 2. Publication and 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 \_\_\_\_\_, 2011, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on \_\_\_\_\_, 2011 by the following vote:

AYES:           COUNCILMEMBERS:  
 NOES:           COUNCILMEMBERS:  
 ABSENT:        COUNCILMEMBERS:

\_\_\_\_\_  
 JEFF SLAVITZ, MAYOR  
 TOWN OF TIBURON

ATTEST:

\_\_\_\_\_  
 DIANE L. CRANE IACOPI, TOWN CLERK

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# ARTICLE IX

## Green Building

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<b>16-90 GREEN BUILDING</b> .....	<b>IX-3</b>
16-90.010 - Purpose.....	IX-3
16-90.020 - Covered Projects.....	IX-3
16-90.030 - Standards for Compliance .....	IX-4
16-90.040 - Documentation .....	IX-4
16-90.050 - Review of Documentation.....	IX-5
16-90.060 - Verification.....	IX-5
16-90.070 - Cost of Verification.....	IX-6
16-90.060 - Exemptions.....	IX-6

## **16-90 Green Building**

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### **Section:**

- 16-90.010 - Purpose
- 16-90.020 - Covered Projects
- 16-90.030 - Standards for Compliance
- 16-90.040 - Documentation
- 16-90.050 - Review of Documentation
- 16-90.060 - Verification
- 16-90.070 - Cost of Verification
- 16-90.080 - Exemptions

### **16-90.010 - Purpose**

The purpose of Section 16-90 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 16-90 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.

### **16-90.020 - Covered Projects**

Provisions of Section 16-90 shall apply to:

- A. The construction of new dwelling units, including dwelling units deemed "new construction" in compliance with Subsection 16-52.020.K. (New construction projects versus remodel projects).
- B. Additions to existing dwelling units that constitute at least five hundred square feet of conditioned floor area.
- C. The construction of new non-residential buildings or additions to existing buildings that equal or exceed 3,000 square feet of conditioned space.
- D. Town-sponsored projects.

## 16-90.030 - 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 Council, as amended from time to time.

## 16-90.040 - Documentation

- A. **Residential Projects.** Application for building permits for residential covered projects shall submit two 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 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. **Alternative rating system.** The Council may, by resolution, adopt an alternative green building rating system other than LEED®.

### 16-90.050 - 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.

### 16-90.060 - 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 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 Municipal 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.

### **16-90.070 - Cost 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.

### **16-90.080 - Exemptions**

**A. Exemptions.** 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 October 31, 2008.

**B. 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 and 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 Council in compliance with Section 16-66 (Appeals).

**RESOLUTION NO. 44-2008**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIBURON  
ESTABLISHING GREEN BUILDING STANDARDS FOR COMPLIANCE, GREEN  
RATING SYSTEMS, AND INCENTIVES FOR HIGHER GREEN RATINGS**

**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 green house 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 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 Green Points Checklists, published by Build It Green, which have been adopted for use in several Bay Area jurisdictions including the County of Marin, City of San Rafael, and City of Larkspur; 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 building 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 June 11, 2008, the 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 has held public hearings on July 16, September 17, and October 1, 2008 and has adopted a series of green building regulations through amendments to the Tiburon Municipal Code, which regulations reference and rely upon the standards of compliance set forth herein; and

**WHEREAS**, the Town Council finds that adoption of this Resolution is 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.

**NOW THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Tiburon adopts the following Standards for Compliance for administration of Green Building regulations contained in Title IV, Chapter 16 (Zoning), Article VIII, of the Tiburon Municipal Code.

### **Standards for Compliance and Rating Checklists or Systems**

All “covered projects”, as set forth in Title IV, Chapter 16, Article VIII, Section 16-8.2 of the Tiburon Municipal Code, shall be constructed using the following green building Standards for Compliance and green building rating checklists or systems:

- a) New single-family dwellings, and additions to existing single-family dwellings that constitute at least a fifty percent (50%) increase in conditioned space, shall achieve at least sixty (60) green points using the most recently published edition of the *New Home Construction Green Building Guidelines* and the associated Single Family GreenPoint Checklist published by Build It Green. Secondary dwelling unit additions are exempt.
- b) New two-family dwellings, and additions to existing two-family dwellings that constitute at least a fifty percent (50%) increase in conditioned space, shall achieve at least sixty (60) green points using the most recently published edition of the *New Home Construction Green Building Guidelines* and the associated Single Family GreenPoint Checklist published by Build It Green.

- c) Single family dwelling additions that are greater than five hundred (500) square feet, but that constitute less than a fifty percent (50%) increase in conditioned space of an existing dwelling, shall achieve at least six (6) green points using the most recently published edition of the *New Home Construction Green Building Guidelines* and the associated Single Family GreenPoint Checklist published by Build It Green, with a minimum of two (2) points from at least three (3) categories.
- d) Two-family dwelling additions that are greater than five hundred (500) square feet, but that constitute less than a fifty percent (50%) increase in conditioned space of an existing two-family dwelling, shall achieve at least six (6) green points using the most recently published edition of the *New Home Construction Green Building Guidelines* and the associated Single Family GreenPoint Checklist published by Build It Green, with a minimum of two (2) points from at least three (3) categories.
- e) New multiple dwellings (3 or more units), and additions to existing multiple dwellings that constitute at least a fifty percent (50%) increase in conditioned space, shall achieve at least sixty (60) points using the most recently published edition of the *Multifamily Green Building Guidelines* and the associated Multifamily GreenPoint Checklist published by Build It Green.
- f) Multiple family dwelling additions that are greater than five hundred (500) square feet, but that constitute less than a fifty percent (50%) increase in conditioned space of an existing two-family dwelling, shall achieve at least six (6) green points using the most recently published edition of the *New Home Construction Green Building Guidelines* and the associated Single Family GreenPoint Checklist published by Build It Green, with a minimum of two (2) points from at least three (3) categories.
- g) New non-residential construction of 3,000 to 19,999 square feet of conditioned space shall achieve at least a LEED® “Silver” rating (33-38 points ) using the most recently published version of the *LEED® for New Construction* or other more appropriate LEED® rating system as determined by the Building Official based on the proposed construction type, and
- h) New non-residential construction exceeding 19,999 square feet of conditioned space shall achieve at least a LEED® “Gold” rating (39-51 points) using the most recently published version of the *LEED® for New Construction* or other more appropriate LEED® rating system as determined by the Building Official based on the proposed construction type.
- i) Town-sponsored projects shall achieve at least a LEED® “Gold” rating (39-51 points), using the most recently published version of the *LEED® for New Construction* or other more appropriate LEED® rating system as determined by the Building Official based on the proposed construction type, unless specifically exempted by resolution of the Town Council.

## Incentives

Projects that meet the following enhanced green building standards are entitled to administrative and financial incentives:

- a) New single-family dwellings and major additions thereto, and new two-family dwellings and major additions thereto, which achieve at least one hundred (100) points using the most recently published edition of the New Home Construction Green Building Guidelines and the associated Single Family GreenPoint Checklist published by Build It Green.
- b) New multi-family dwelling units or major additions thereto, which achieve at least one hundred (100) points using the most recently published edition of the Multifamily Green Building Guidelines and the associated Multifamily GreenPoint Checklist published by Build It Green.
- c) New non-residential construction that achieves at least a LEED® “Platinum” rating using the most recently published version of the *LEED® for New Construction* or other more appropriate LEED® rating system as determined by the Building Official based on the proposed construction type.

Administrative and financial incentives shall include all of the following:

- a) Expedited processing of building permit plan checks.
- b) Reimbursement for costs of a Certified Green Building Rater associated with verification of compliance with green building regulations for residential projects up to a maximum of \$1,000 per project.
- c) Provision of a plaque certifying the building as meeting the Town’s “Emerald” Green Building Standards.
- d) Provision of a Town Green Building logo for placement on construction and sales signage.
- e) Listing on the Town’s website for a period of time, as determined by the Director of Community Development.

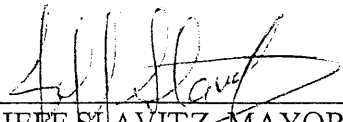
**BE IT FURTHER RESOLVED** that this resolution shall go into effect on October 31, 2008.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Tiburon held on October 15, 2008, by the following vote:

AYES: COUNCILMEMBERS: Berger, Collins, Fredericks, Gram, Slavitz

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

  
\_\_\_\_\_  
JEFF SLAVITZ, MAYOR  
TOWN OF TIBURON

ATTEST:

  
\_\_\_\_\_  
DIANE CRANE IACOPI, TOWN CLERK

TOWN MANAGER'S  
Report

R E C E I V E D  
FEB -9 2011

TOWN CLERK  
TOWN OF TIBURON

January 10, 2011,

Dear Town of Tiburon,

We are very excited to host the 2<sup>nd</sup> bi-annual *Walk Your History* event this year on May 7th. The 2009 event was sponsored equally by the Town of Tiburon, City of Belvedere, Tiburon Peninsula Foundation and Belvedere Community Foundation. It was an incredible success with over 1000 community members joining us for a day of history, exercise and camaraderie!

This year we are planning two self-directed, walking loops on the peninsula dotted with volunteer docents at historic hotspots. The focus of these walks will be the colorful boating and golfing history of the peninsula and will incorporate the *Then and Now* and *Looking Back* plaques in Belvedere and Tiburon, as well as historical homes, China Cabin, and Old St. Hilary. We will end at the Belvedere Community Park with music, community non-profit information booths and BBQ Lunch.

This is a free community event and not possible without your sponsorship! Please consider donating \$2500 for the event! In return we will include your name with our list of sponsors on all publications including but not limited to: banners, postcards, posters, newspaper ads, fact sheets, e-mails, and newsletters.

Thank you for your consideration and ongoing support.

Sincerely,

Cathleen Andreucci  
Director  
Belvedere Tiburon Joint Recreation  
415-435-4355  
[Director@btrecreation.org](mailto:Director@btrecreation.org)

Leslie Doyle  
Co-Director  
Belvedere Tiburon Landmarks Society  
415-847-4209  
[Lesliedoyle@sbcglobal.net](mailto:Lesliedoyle@sbcglobal.net)

A great new community event...

# Walk Your History



## 2011 Budget

<b>PR - Advertising</b>	<b>\$2,050</b>
Postcards	\$450
Ads	\$500
Postage	\$1000
Window Posters	\$100
<b>Volunteers</b>	<b>\$850</b>
Cast Party (training)	\$150
Coffee & Lunch	\$300
Costumes	\$400
<b>Belvedere Park</b>	<b>\$2,800</b>
Park set-up (Garbage, toilets)	\$300
Music	\$1000
BBQ Lunch	\$1500
<b>Other Expenses</b>	<b>\$4,300</b>
Historic Site Information	\$400
Passport - Walk Booklet	\$3000
Insurance	\$200
Directional Signage	\$600
Misc.	\$100