

RESOLUTION NO. 2395-08

**A RESOLUTION OF THE TOWN OF WINDSOR
TOWN COUNCIL APPROVING OF A USE PERMIT, AND MITIGATED NEGATIVE
DECLARATION INCLUDING FINAL SITE PLAN AND DESIGN REVIEW AS
REQUESTED BY SEAN RODRIGUES / NORTH STREET PROPERTIES L.L.C. FOR
THE SHILOH SUSTAINABLE VILLAGE PROJECT
(FILE NO. UP/MJS 04-51)**

WHEREAS, the Town of Windsor Town Council received an application from Sean Rodrigues requesting approval of a mixed-use development on 5.9+/- acres. The project includes 76 residential condominium units constructed over 63,000+/- square feet of commercial space and 60 row homes. Application includes a tentative map to divide 5.9 acres into two parcels consisting of 2.41 and 2.66 acres and containing a total of 136 units. The project is located at 295 Shiloh Road (APN 163-171-039).

WHEREAS, this application is determined to be within the jurisdiction of the Town Council due to the applicant's request for a Priority Waiver from the provisions of the Growth Management Ordinance. Priority Waivers are approvable only by the Town Council, require environmental review, and require sufficient architectural and design detail to warrant project approval. The applicant has further elected to include sufficient information for Final Site Plan & Design Review as well as Tentative Map approval; and

WHEREAS, a Mitigated Negative Declaration has been prepared in associated with the proposed project; and

WHEREAS, the applicant has also submitted a request for approval of a Tentative Map for this property. This request is addressed in a separate resolution; and

WHEREAS, by Ordinance No. 2006-210 Town Council has approved the allocations from the Growth Control Ordinance from the provisions of the Growth Control Ordinance in support of the project; and

WHEREAS, the proposal, as conditioned, is determined to be consistent with the provisions of the Town of Windsor General Plan, and Shiloh Road Village Vision Plans; and

WHEREAS, in accordance with the provisions of law, the Town of Windsor Town Council did conduct a public hearing on November 19, 2008, on said application at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Town of Windsor Town Council has made the following findings regarding the proposed use:

1. The proposed use is allowed within the "Boulevard Mixed- Use" and "Compact Residential" zoning districts as approved for the property, and complies with all other applicable provision of the Zoning Ordinance and the Town Code.

2. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity.
3. The site is physically suitable for the type, density and intensity of the use being proposed, including access, utilities, and the absence of physical constraints.
4. Granting a Use Permit would not be detrimental to the public interest, health, safety, convenience or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.
5. The project does not meet the parking requirement found in the Zoning ordinance. However a parking analysis completed by Nelson Nygaard concluded the project contains adequate parking.

WHEREAS, the Town Council makes the following additional findings regarding the proposed design of the project:

1. The design and layout of the proposed development are consistent with the General Plan, the development standards of the applicable zoning district, design standards / guidelines, the Shiloh Road Village Vision Plan, and architectural criteria for special areas;
2. The design and layout of the proposed development will not interfere with the use and enjoyment of neighboring existing or future developments, and will not create traffic or pedestrian hazards;
3. The architectural design of the proposed development is compatible with the character of the surrounding neighborhood.
4. The design of the proposed development will provide a desirable environment for its occupants, visiting public, and its neighbors through the appropriate use of materials, texture and color, and will remain aesthetically appealing and be appropriately maintained;
5. The proposed development will not be detrimental to the public health, safety or welfare or materially injurious to the properties or improvements in the vicinity; and
6. The project may result in potential adverse effect, either individually or cumulatively, on wildlife resources.

WHEREAS, the Town Council adopts the Mitigated Negative Declaration prepared for this project.

WHEREAS, mitigation measures identified in the Mitigated Negative Declaration have been incorporated herein as conditions of approval.

NOW, THEREFORE, BE IT RESOLVED that the Town Council approves of the Use Permit and Final Site Plan / Design Review and Mitigated Negative Declaration subject to the following conditions:

TOWN ENGINEER (Unless otherwise stated, conditions in this section shall be to the satisfaction of the Town Engineer):

The following conditions are applicable to issuance of a building permit:

1. A tentative map shall be approved and a final map recorded prior to the issuance of a building permit. All right of way dedications and dispositions, public improvements and utility extensions, as well as public use easements will be required as part of the mapping process.

BUILDING INSPECTION DEPARTMENT (Unless otherwise stated, conditions in this section shall be to the satisfaction of the Building Official):

Conditions applicable to issuance of a building permit:

2. Construction shall comply with all applicable current codes. No site clearance, grubbing, grading, or fill stockpiling, may be performed without prior approval of the Building Official.
3. No site work, including grading, shall be initiated until improvement plans have been approved by the Planning Director and Town Engineer. Grading permits must be applied for and issued by the Building Department, prior to beginning site work.
4. Abandon any existing wells, septic tanks, or underground fuel storage tanks under permit and inspection of Environmental Health or other designated agency. If there are none, provide a letter from the project engineer relating to the scope of the search done to make this determination.
5. Upon initiation of plan check, the developer shall file with the Chief Building Official a preliminary soils report, prepared by a civil engineer experienced and knowledgeable in the practice of soils engineering, who is registered in this state. The preliminary soil report may be waived if the Building Inspection Department shall determine that, due to the knowledge of such department as to the soils qualities of the project, no preliminary analysis is necessary.
6. The developer shall pay all applicable development impact fees as required by the Town of Windsor, prior to the issuance of a building permit. The developer shall pay all applicable impact fees to the Windsor Unified School District and Windsor Fire Protection District, prior to issuance of a building permit.

A fire equipment mitigation fee may be applicable to this project if enacted prior to the issuance of building permits. The purpose of this fee is to fund fire protection and emergency rescue equipment for structures three stories and higher.

7. Site improvements shall be reviewed and approved by the Windsor Fire Protection District.
8. Building design shall generally prohibit exterior roof access, and shall include pre-wiring for security systems. Design of interior corridors / stairwells and access to interior security systems shall be coordinated with the Windsor Fire Protection District and the Police Chief.

PLANNING DEPARTMENT (Unless otherwise stated, conditions in this section shall be to the satisfaction of the Planning Director):

Conditions applicable to issuance of a grading permit or building permit:

9. A signage plan shall be prepared for this project and approved by the Planning Commission. Amendments to the Program shall be approved by the Planning Commission.
10. Owners shall post security in the form of a bond, cash deposit or other form of acceptable to the Town Planning Director to assure that the required landscaping planting and irrigation improvements are completed in accordance with the approved construction documents. This requirement may be deferred to a request for occupancy at the discretion of the Planning Director.
11. Building plans shall specify colors and materials as approved by the Planning Commission.
12. The applicant shall be prepare C&CR's to be approved by the Planning Director and the Town Attorney.
13. Prior to recordation of map the developer shall submit a parking plan approved by the Town and reflected in the CC&Rs.
14. Improvement Plans shall be approved by Planning and signed by the Town Engineer.
15. Roof mounted appurtenances shall be limited to those screened within an approved equipment well.
16. A tentative map shall be approved and final map recorded prior to the issuance of building permits. Requirements for an Owners Association, parking administration, management documents, and site maintenance will be included as part of the mapping process.

Conditions applicable to a request for occupancy:

17. The applicant shall provide to the Town Planning Director a written statement signed by the Landscape Architect who prepared the approved construction documents verifying that the landscaping planting and irrigation improvements are completed in accordance with the approved drawings and that the irrigation system has been completely tested and found to be functioning per design.

The following general conditions shall apply:

18. This project is approved for an initial two year period from the effective date of adoption of this resolution. Extensions of time may be requested at the time in accordance with the Town Code. Following approval of a tentative map (if applicable), time limits of the map expiration shall apply, except that building permits shall be issued within one year of final map recordation.

19. As part of this approval, the applicant agrees to defend, indemnify, and hold harmless the Town of Windsor, its agents, officers, council members, employees, boards, commissions and Council from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul any approval of the application or related decision, or the adoption of any environmental documents or negative declaration which relates to the approval. This indemnification shall include, but is not limited to, all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision, whether or not there is concurrent, passive or active negligence on the part of the Town, its agents, officers, council members, employees, boards, commissions and Council. If for any reason, any portion of this indemnification agreement is held to be void or unenforceable by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect.

The Town of Windsor shall have the right to appear and defend its interests in any action through its Town Attorney or outside counsel. The applicant shall not be required to reimburse the Town for attorney's fees incurred by Town Attorney or the Town's outside counsel if the Town chooses to appear and defend itself in the litigation.

20. Prior to issuance of building permits, and within 5 days of project approval, applicant shall submit \$1,926.75 (payable to the Sonoma County Clerk) to the Planning Department for filing of a Notice of Determination.
- a. No additional fee because the project is exempt from Fish and Game fee.
 - b. \$850 because the project is non-exempt from Fish and Game fee, and an EIR was prepared, for a total of \$885.
 - c. \$1,926.75 because the project is non-exempt from Fish and Game fee, and a Mitigated Negative Declaration was prepared, for a total of \$1926.75.

The following conditions of Use Permit approval shall apply to on-going use of the site:

21. The project shall generally comply with the project description and materials included and referenced in the staff reports dated October 14, 2008 and materials presented to and approved by the Planning Commission and Town Council, except as modified herein. Improvements shall be maintained in accordance with plans approved by the Town.
22. Dwelling units are eligible for use as home occupations and small family day care facilities as defined by the ordinance.
23. The following general conditions shall apply:
- a. Noise shall be controlled on an on-going basis in accordance with the Noise Element of the Town of Windsor General Plan and the Zoning Ordinance.

- b. Lighting shall be maintained so as not to be a source of glare onto adjacent residential uses or public rights-of-way. The Planning Director reserves the right to require fixture replacement if it is found that glare continues to be an issue following installation.
- c. Exterior colors shall comply with color palette approved by the Town.
- d. Roof and utility appurtenances (including satellite dishes) shall be limited to approved locations screened from view from all public streets.
- e. All signage shall be erected and maintained in conformance with the approved comprehensive sign program.

24. Assignment of Growth Control Allocations are included in the Town Council Resolution 2006-210.

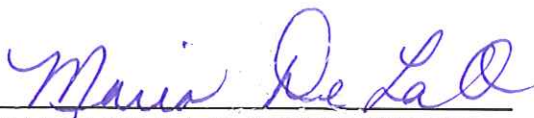
PASSED, APPROVED AND ADOPTED this 19th day of November 2008, by the following vote:

**AYES: COUNCILMEMBERS ALLEN, GOBLE, PARKER, SALMON AND
MAYOR FUDGE**
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE



DEBORA FUDGE, MAYOR

ATTEST:



MARIA DE LA O, TOWN CLERK