



and subject to the Conditions of Approval in Exhibit E.

## **INTRODUCTION / BACKGROUND**

The applicant submitted an initial proposal on April 25, 2005 (hereinafter referred to as “the first proposal”). The first proposal consisted of a 3-story 20-unit residential building at 5, 15, and 19 La Goma Street. The Planning Commission considered the first proposal at a Study Session on July 11, 2005. Based on comments and direction from that meeting, the applicant revised the design and installed story poles. The applicant then introduced this revised design at a neighborhood meeting at the Mill Valley Community Center in October 2005. In December 2005, the City contracted with an environmental consulting firm, CirclePoint, to prepare an Initial Study in compliance with the California Environmental Quality Act. The Initial Study was completed in March 2006. On May 22, 2006, the Planning Commission discussed the revised first proposal and associated environmental documentation. Attachment 1 is a copy of the minutes from that meeting. The Planning Commission continued the item to the next meeting, June 12, 2006, in order to provide staff time to respond to the Planning Commission’s suggestion that an Environmental Impact Report should be prepared for the first proposal. On June 12, 2006, the applicant stated the intent to withdraw the application for the first proposal and submit a new project at a later date.

Based on the comments and direction from the meeting on May 22, 2006, the applicant submitted a new project (hereinafter referred to as “the second proposal”) on September 15, 2006. Prior to scheduling this item for a Study Session, the applicant and architect met with staff on several occasions, and conducted a neighborhood meeting. The second proposal in its entirety was discussed at the Planning Commission meeting on November 13, 2006. Attachments 2 and 3 are copies of the staff report and minutes from that meeting, respectively. In addition to receiving direction on the project as a whole, items discussed that night included the architecture of the mixed-use building fronting Miller Avenue. Based on staff’s concerns and comments received from the Commission, the architecture of this building was modified and then brought back for discussion at a separate Study Session. The revised architecture for this mixed-use building was the only aspect of the project discussed at the Planning Commission meeting on January 22, 2007. Attachments 4 and 5 are copies of the staff report and minutes from that meeting, respectively.

Based on the comments and direction from the Planning Commission meetings, staff finalized the project description and initiated the environmental review process for the second proposal on February 15, 2007. The City contracted with the environmental consulting firm, CirclePoint, to perform the environmental review since it had familiarity with the project because it was the environmental consultant on the first proposal.

## **PROJECT DESCRIPTION**

The project site is comprised of 363 Miller Avenue, and 5, 15 and 19 La Goma Street. The 0.98-acre site has more than 100 feet of street frontage on two sides of the property. Along the Miller Avenue street frontage, an approximately 8,000 square-foot multi-tenant commercial building occupies the site. There is a drive aisle along the north side of the commercial building that leads to the parking for the building and continues through the property to an exit on La Goma

Street. Along the La Goma side of the property, there are two small single-family residences and four accessory buildings. The northeast portion of the property is vacant and mostly covered by concrete or asphalt – it used to be a tow yard. Two commercial buildings, including an automobile repair shop abut the commercial building on Miller. More commercial buildings, including a mixed-use building with three rental units, abut the property along the northern property line. The Arroyo Corte Madera del Presidio creek abuts the property along the eastern property line. Four single-family homes are across the creek from the subject property.

The project involves the removal of all of the existing buildings and improvements and the construction of five new buildings. Attachments 6 and 7 are copies of the revised current proposal and color elevations, respectively. The proposed construction and site improvements include the following:

- Three, two-story for-sale town-home duplexes with each unit consisting of approximately 1,460 square feet and a two-car garage. The duplexes are proposed along the eastern property line. While each structure meets the 30-foot creek setback, fenced backyards for each unit are proposed to be included within the 30-foot creek setback. The proposed maximum height for each duplex is 28.5 feet.
- One two-story for-sale single-family home consisting of approximately 1,370 square feet and a two-car garage. This building is proposed along La Goma Street between the new driveway and existing auto repair shop at the corner of Miller and La Goma. The proposed maximum height for this structure is 28.5 feet.
- A two-story mixed-use building with the ground floor consisting of 4 rental commercial spaces totaling approximately 4,100 square feet and approximately 1,600 of utility space. The second floor consists of 10 rental residential units with an average of 950 square feet. This building is proposed to occupy the entire Miller Avenue street frontage of the property. While a majority of the building is proposed to be 30 feet tall, there are four tower elements at the corners of the building proposed to be 35 feet tall.
- A 17-car parking lot is proposed behind the mixed-use building.
- Two new curb cuts and driveways are proposed. A new driveway off Miller Avenue would provide vehicular access to the parking for the mixed-use building. A new driveway off La Goma Street would provide vehicular access to the garages for the townhomes and single-family residence. While there is an access aisle between the two driveways, its use is for emergency vehicles only; and as such, bollards will be installed in the middle of this access aisle to prevent any other type of vehicle from utilizing this drive aisle.
- With the exception of some trees and vegetation in the creek area, all new landscaping is proposed for the site. The landscape plan also includes enhancements to areas of the creek bank.

- The grading and drainage plan includes off-site drainage for the west side (the mixed-use building and parking lot) of the property, and on-site drainage for the east side (the townhomes and driveway) of the property. The total impervious surface area for the site is proposed to be reduced from 70.2% to 55.7%.

## **DISCUSSION**

### *Conformance to the General Plan*

The project supports the policies and guidelines and conforms to the implementation programs of the General Plan. The most notable instances occur between the Housing and Land Use Elements, such as:

- Housing Element Policy H3.6: Variety of Housing Choices states, “In response to the broad range of housing needs in Mill Valley, the City will strive to achieve a mix of housing types, densities, affordability levels and designs. The City will work with developers of non-traditional and innovative housing approaches in financing, design, construction and types of housing that meet local housing needs.” The proposed development consists of a broad range of housing types (six townhomes, ten rental units, and a single-family home), affordability (two units at the low affordable level and one unit at the very low affordable level), and design.
- Housing Element Policy H3.9: Mixed Use Housing states, “Well-designed mixed use residential/non-residential developments are highly encouraged by the City where residential use is appropriate to the setting and development impacts can be mitigated. The City will consider the following incentives to encourage mixed use development in appropriate locations: allowing an additional story for housing; developing more flexible parking requirements to reflect peak period overlap for mixed use projects; and relating permitted residential density and parking requirements to unit size (i.e., allowing a greater number of smaller units or lesser number of larger units).” Residential use of the subject property is appropriate to the setting since the property is a quintessential in-fill site – it is surrounded by existing development, including residential; it is located near transit; and fronts onto Miller Avenue, which is a community serving commercial area. A Final Mitigated Negative Declaration has been completed for the project and all development impact can be mitigated.
- Housing Element Implementing Program H3.J: Implement Mixed Use Development Opportunities states, “Encourage mixed residential/commercial uses on those parcels where a mix of uses is feasible and appropriate, consistent with the General Plan, through the following and other means, if appropriate: (1) increased densities; (2) reduced unit sizes; (3) allowances for ground-floor retail; and (4) modifications to parking requirements. Continue to permit residential uses as conditional uses in commercial zoning districts (light-industrial district excluded). Publicize mixed-use development opportunities to developers and local businesses through the City’s website, mailings, and informational meetings, and by distributing press releases to the local press.” The proposed project is consistent with this implementing program since it

proposes a mix of uses, smaller unit sizes, ground-floor retail, and parking that is related to the complimentary uses.

- Housing Element Policy H3.15: Income Levels states, “Inclusionary zoning requirements will target very low or low income rental units and low or moderate income ownership units.” Two of the ten rental units will be offered at the low and very low affordable level, respectively. One of the for-sale townhomes will be offered at the low affordable level.
- Land Use Element Policy C-5 states, “The Lower Miller Avenue area, from Camino Alto to Willow, should continue to serve as an office and community and neighborhood serving commercial and service area and the City will develop programs and will utilize area specific design guidelines to enhance the visual appearance of the area.” The proposed mixed-use building includes ground floor retail and the design of this building is meant to assimilate it with the buildings that abut and surround it.
- Land Use Element Implementing Program C-5-4: Design Guideline 3: Site Development states, “Site development should strive to achieve loosely organized clusters of buildings unified by courtyards and landscape areas or parking lots. The Miller Avenue frontage should provide the automotive access, with actual building activities focusing inward or toward Corte Madera Creek. The latter is intended to help implement a program of renewal of the stream area. The main intent should be to knit together existing and future buildings which may vary substantially in scale.” The proposed site development includes a centralized landscaped parking lot, automobile access from Miller Avenue, and residential backyards that face the creek. The overall design intent of the project is to be compatible to the existing buildings, which vary in scale.
- Land Use Element Implementing Program C-5-4: Design Guideline 4(b): Architecture states, “New buildings or remodeled buildings with undistinguished character should be of high quality architectural design and quaint or nostalgic architecture should be avoided.” The design intent of the new buildings is to be of high quality architectural design and not quaint or nostalgic.

#### Conformance to Existing Zoning and Development Standards

The site is currently zoned Neighborhood Commercial (C-N). The proposed project’s conformance to the existing zoning and development standards can be broken down into five sections: uses, development standards, floor area ratio, density, and parking.

- Uses: This zone delineates which uses are principally permitted, conditionally permitted, and prohibited. In addition to a multitude of commercial uses being principally and conditionally permitted, residential units and mixed-use projects are conditionally permitted. As proposed, the project would be consistent with the existing allowed uses on the basis of receiving a conditional use permit.
- Development Standards: The zone specifies a maximum building height of 35 feet. As proposed, no portion of the project is proposed to be taller than 35 feet. The zone

specifies two types of setbacks, exterior (i.e., street side) and interior (i.e., non-street side). Exterior setbacks are only required when the frontage in the block is partially in a Residential (R) district. Interior setbacks are only required when the boundary of a commercially zoned lot abuts a lot within a R district. If either instance occurs, then the exterior and/or interior setback for the respective R district would apply. Since the Miller Avenue frontage is not in a block with a R district and the northern property line does not abut a R district, no setbacks apply for these sides. Since the eastern (creek side) property line abuts a R district and a creek, a 30-foot creek setback would apply – the project as proposed meets this requirement. Since the La Goma Street frontage is in a block with a R district, a 15-foot setback would apply. While the single-family residence meets this setback, the duplex along this frontage is proposed at 10'9". However, if the requested Special Development Permit is approved, the inconsistency with the setback would be resolved through the establishment of project-specific development standards.

- Floor Area Ratio: The General Plan provides a floor area ratio of 0.45 for this portion of the city. While each of the duplexes and the single-family residence would meet this provision, the floor area ratio for mixed-use building is proposed at 1.04.
- Density: The only development standard that is not delineated is density. Based upon language that appears in connection with the conditionally permitted residential units use, the property development standards that apply are established by the Planning Commission at the time of approval. The proposed density for project is aligned with the RM 2.5 zoning district, which allows 17 units per acre.
- Parking Requirements: The zone defers to the Municipal Code Section (20.60.090) for parking requirements. The parking requirements for the proposed project would be as follows: 2 spaces for each of the townhomes and the single-family residence, 1 space for each of the rental units, 4 spaces for guest parking for the residential portion of the project, and 17 spaces for the leasable commercial floor area. The total required parking spaces would be 45. The project proposes 31 parking spaces. Within the same code section, 20.60.090, there is a provision that states the following, “Where more than one use is included within any one building or on any single parcel, or on any series of parcels covered by any application before the City, the parking space requirements shall be the sum total of the requirements of the various uses; however, where the operation of these uses is such that hours of operation complement each other in regard to parking, the Planning Commission may authorize a reduction in these requirements.” Since the residential uses and the commercial uses of the project would compliment each other, this code section would apply. The proposed parking and this code section are discussed further in the Issues section below.

### Rezone

The project involves a rezone of the entire property from Neighborhood Commercial (C-N) to Neighborhood Commercial-Planned Development (CN-PD). A PD district provides the applicant, staff, and Planning Commission the ability to work together and establish the applicable property development standards. As stated in Municipal Code Section 20.57.010,

“The purpose of the PD district is to provide the City with a tool to review, guide and promote the orderly and beneficial development of those areas which may be of particular impact, value and benefit to the entire community.” As detailed above, the project would by and large conform to the existing zoning and development standards; and in the areas it doesn’t there are either existing codes or tools that could speak to the non-conformity. While this process was considered, staff felt the rezoning process was a better tool that would produce a more beneficial project overall for the community. The mechanism that provides the orderly and beneficial development is the Special Development Permit. This permit formalizes the development regulations and runs with the project for life.

### Architecture and Design

The design of the townhomes and single-family residence is meant to provide a transition from the commercial and industrial character of the Miller – La Goma area to the single-family character of the Sycamore Park neighborhood. The proposed exterior materials are a combination of wood board and batten siding, wood trim, hardi-plank lap siding, stucco, vertical corrugated metal, and a metal roof. The exterior color palette is in the earth-tone range with a reddish-brown and yellowy-tan being emphasized. Staff feels the architecture for the townhomes and single-family residence is suitable for its transitional area location and is in agreement with the articulation and materials proposed.

The design of the mixed-use building is meant to assimilate it with the buildings that abut and surround it. Its design is also meant to complement the architecture of the townhomes and single-family residence in order to provide a cohesive development. Similar to the townhomes and single-family residence, the proposed exterior materials are combination of wood board and batten siding, wood trim, hardi-plank lap siding, and stucco. The exterior color palette is in the earth-tone range with a two-tone gray and beige being emphasized. In addition to the color elevations provided, the architect will have a large color and material sample board at the meeting.

In regards to incorporating green building design features, the applicant completed and submitted a copy of Multifamily GreenPoint Checklist created by Build It Green. Build It Green is a non-profit organization and its checklist is the document that staff is using to model for the city’s future green building design ordinance. Based on the applicant’s submission, the project would earn a total of 107.4 points. This point total is more than double the amount required for a project to be considered green by Build It Green. As delineated in the checklist, some of the more notable proposals are: 75% or more of the components of the project are pre-assembled off-site and delivered to the project; structural insulated panels are or other solid wall systems are used for 80% of all floors, walls, and roofs; use of solar hot water systems; and onsite electricity generation through the installation of a photovoltaic system. Attachments 8 and 9 are copies of the Build It Green checklist and a summary from the architect of the green building measures incorporated into the project, respectively.

### Floodplain

The subject property is within the Zone AO (Depth 2') flood zone based on the Flood Insurance Rate Map issued by U.S. Department of Housing and Urban Development. Title 18, Floodplain Management, of the Municipal Code provides the regulations for residential and commercial construction within this flood zone and the floodplain as a whole. For new solely residential structures proposed within this flood zone, the finished floor elevation of the habitable space must be 3 feet above the next highest adjacent grade to the foundation. The habitable space of all the townhomes and the single-family residence are proposed to meet this regulation. For new commercial construction, the property owner has a choice between two alternatives in order to meet the floodplain management ordinance. The first choice is to employ the same requirement for residential construction described above. The second choice requires the new construction to "be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and be certified by a registered professional engineer or architect that the standards of this subsection are satisfied." The applicant has chosen the second alternative. Staff supports this decision since the first choice would erode the streetscape and increase the height of the building.

### Affordable Housing

Based on Municipal Code Chapter 20.80, Inclusionary Housing Requirements, the project is required to provide three affordable units. As proposed, the project includes three affordable units. Two of the ten rental units will be offered at the low and very low affordable level, and one of the for-sale townhomes will be offered at the low affordable level.

### **PLANNING COMMISSION DISCUSSION**

As stated above, the first proposal was first heard as a Study Session item at the Planning Commission meeting on July 11, 2005, and then as an Action item at the Planning Commission meeting on May 22, 2006. Based on the comments and direction received during those two meetings, the applicant submitted the second proposal. Some of the more notable comments received and subsequent modifications (or proposals) incorporated into the second proposal include:

#### Incorporating Commercial Building/Density

*Planning Commission Comment:* The project should incorporate the commercial building on Miller Avenue into the overall concept to provide more design options and reduce the density by locating units above the commercial space on Miller.

*Modification:* The existing commercial building will be demolished and a new two-story mixed-use building will be constructed. In addition to ground floor commercial space, 10 one-bedroom loft units are proposed for the second floor. Not only has the overall number of units proposed been reduced from 18 to 17, but the density of the project has also been reduced to 17 units per acre from 29 units per acre.

#### Traffic/Vehicular Access

*Planning Commission Comment:* The project should be modified to route a majority of the vehicular traffic to Miller Avenue.

*Modification:* The proposed project includes a new two-way driveway at the southeastern edge of the lot along Miller Avenue. Since this driveway provides the only access to the parking for the mixed-use building, it will considerably reduce the number of vehicles accessing the site from La Goma Street.

### Affordability

*Planning Commission Concern:* The applicant needed to specifically designate the affordable units and their level of affordability.

*Applicant's Proposal:* The three affordable units will include a mix of housing types and affordability levels. Two of the ten rental units in the mixed-use building will be affordable – one at the low income level and the other at the very low income level. One of the for-sale townhome units will be made available at the low income affordability level. The applicant has not yet specifically designated which of the rental or for-sale units will be the affordable units.

These modifications and the second proposal, in its entirety, were discussed as a Study Session item at the Planning Commission meeting on November 13, 2006. Another study session for the architecture of the mixed-use building only occurred at the Planning Commission meeting on January 22, 2007. While the Planning Commission stated that they generally supported the direction (most notably the density and site design) the project had taken during these two meetings, staff felt it would aid the Planning Commission's review if a summary of the comments received and the applicant's proposal to address them was provided.

### Height of the Townhomes

*Planning Commission Comment:* The maximum height of the townhomes should be reduced and the massing of the roof should be modified.

*Applicant's Proposal:* The maximum height of the townhomes has been reduced to from 30' to 28'6". The roof area over the north and south ends of the townhomes has been eliminated.

### Creek Setback and Impervious Surface Area

*Planning Commission Comment:* All proposed structures, including deck areas, shall comply with the 30-foot creek setback and the total impervious surface area should be lowered to around 50%.

*Modification:* All proposed structures, including deck areas, comply with the 30-foot creek setback and the proposed impervious surface area is 55.7%.

### Analysis of the Proposed Parking, Traffic, and Site Access

*Planning Commission Comment:* The proposed parking, traffic, and site access need to be properly analyzed.

*Applicant's Proposal:* The proposed parking, traffic, and site access were properly reviewed during the environmental review process and the results of this analysis are summarized in the Final Mitigated Negative Declaration and by staff below.

#### Architecture of the Mixed-Use Building

*Planning Commission Comment:* The overall design of this building should be simplified, which includes removing the corrugated metal and a commitment to a particular style and materials. Some additional design work should be performed on the tower elements and rear of the building.

*Modification:* In brief, the corrugated metal has been removed and the design has been simplified. For a complete summary of the proposed design modifications, please see the correspondence (Attachment 10) from the project architect.

#### **ENVIRONMENTAL REVIEW**

Following the Planning Commission meeting on January 22, 2007, staff contracted with CirclePoint to analyze the potential environmental impacts of the second proposal. Working with the staff of the Planning Department, as well as, staff from many other city departments, CirclePoint completed a Draft Mitigated Negative Declaration (DMND). It was released for the California Environmental Quality Act (CEQA) mandated 30-day public review period on May 20, 2007. During this period, staff received comments from the public and other governmental agencies. These comments were collated and CirclePoint began formulating responses and amending the Draft Mitigated Negative Declaration where necessary. The City Attorney's Office (CAO) then reviewed these responses and the amended Draft Mitigated Negative Declaration. The Final Mitigated Negative Declaration (FMND) was completed at the beginning of September 2008, and released for public review on September 12, 2008. While CEQA does not mandate a public review period for a FMND, the Planning Department can accept public comment on the FMND through the night of the hearing. While the Planning Commission has received a copy of the FMND, staff thought it would be best to summarize some of the major issues discussed and commented on in the FMND.

#### Preparation of an Environmental Impact Report (EIR)

A majority of public comment regarding the environmental review process for this application has been the request for the preparation of an EIR. The regulations, guidelines, and procedures for completing the environmental review process are set by CEQA, which is part of California law. CEQA Section 15064, Determining the Significance of the Environmental Effects Caused By A Project, provides the lead agency (the City of Mill Valley in this case) guidance in determining whether an EIR needs to be prepared. The City of Mill Valley followed all CEQA statutes and guidelines in completing the environmental review process, and as such, determined that the preparation of an EIR is not warranted since the project would not result in any significant and unavoidable impacts.

### Traffic and Parking

For the Initial Study, an analysis of the potential traffic and parking impacts generated by the project was performed by W-Trans and reviewed by the city's traffic consultant, Fehr & Peers. The result of this analysis and review was a finding that the proposed project would not generate any significant traffic or parking impacts. During the public review period, there was a range of comments in regards to the analysis, finding, and potential traffic and parking impacts. In order to address some of these comments, two studies and a modified analysis were performed. First, a parking study was performed by Fehr & Peers to "determine whether parking supply in the project vicinity was sufficient to accommodate additional vehicles generated by the project without significant impacts to overall parking supply", as stated on page 6 of the FMND. Second, Fehr & Peers analyzed the Miller Avenue / Locust Street intersection given that northbound traffic exiting the proposed project from the Miller Avenue driveway would make a U-turn at Locust Avenue in order to head south on Miller Avenue. Lastly, CirclePoint performed a "worst-case scenario" analysis of the potential traffic impacts generated by the proposed project by not providing a credit for vehicle trips generated by the existing uses. In other words, assuming that the existing uses generated zero vehicle trips. These studies and the modified analysis verified either previous analysis or assumptions in regards to the potential traffic and parking impacts generated by the proposed project. As stated on page 18 of the FMND, "In summary, the project does not have impacts to traffic that are individually or cumulatively considerable."

### Site Contamination

Due to portions of the subject property previously being used for vehicle storage/repair and a home-based ceramics shop, lead, petroleum, and related contaminants were identified as being present in the soil at the site through several subsurface investigations. Before the DMND was released, the impacts of this contamination had been analyzed and the proper mitigation measures had been identified to reduce the impact to a less than significant level. Although these steps had been performed, staff received numerous comments regarding this matter during the public review period. While some of these comments generated some minor additional analysis, the conclusion remained the same. In summary, as stated on pages 19 and 20 of the FMND, "...the nature and magnitude of the contamination at the project site have been adequately identified. The remedial options (mitigation measures) available to address that contamination have been discussed, the performance standard that will have to be met at the project site has been defined, and the mechanism to verify that the performance standard will be met has been established. The mitigation measures proposed for the project site will protect health and safety both in the short term and long term, thereby reducing potential impacts related to the remediation of hazardous materials to a level that is considered less than significant."

## ISSUES

### Parking

While the potential parking impacts have been analyzed and previously summarized above and in the FMND, the Planning Commission will have to approve the proposed parking since it does not provide the required number of spaces specified by the current code regulations. In addition

to having the choice of applying two separate sections of the Municipal Code, staff thought it would aid the Planning Commission in supporting staff's recommendation below by reiterating that there are several sections of the Housing Element that discuss modifications to parking requirements as incentives to encourage mixed residential/commercial use developments. The first code section that the Planning Commission could apply is 20.60.090(B). This section states "Where more than one use is included within any one building or on any single parcel, or on any series of parcels covered by any application before the City, the parking space requirements shall be the sum total of the requirements of the various uses; however, where the operation of these uses is such that hours of operation complement each other in regard to parking, the Planning Commission may authorize a reduction in these requirements." The second code section that the Planning Commission could apply is 20.57.080(B). This section states "At the time of approving a special development permit, the Planning Commission or City Council may allow lot area, lot width, yard, height, bulk and space, and parking space requirements varying from and different from those which would otherwise apply in the basic zoning district with which the PD district is combined..." Since the applicant is applying for a Special Development Permit as part of the rezoning process, staff recommends that the Planning Commission apply this code section to approve the proposed parking.

#### Existing Access and Utility Easement

Prior to the study session that occurred at the Planning Commission meeting on November 13, 2006, staff received a letter (Attachment 11) from an attorney representing the property owner of 375 Miller Avenue. The letter stated that there are portions of the project that are proposed in a right-of-way easement to the north of the existing building at 375 Miller Avenue that is currently being used as an auto repair shop. This access and utility easement is denoted on the site plan. The applicant discussed this matter with the neighboring property owner and has arrived at an agreement in order to clear the respective titles for the involved properties. Based on discussions with staff, the applicant will be giving the property owner of 375 Miller Avenue 16 feet of his property that lies north of the existing auto repair shop building in exchange for the removal of the easement from the titles of both of the properties. Since the applicant desires to receive an approval of the project prior to finalizing the agreement process, staff added a Condition of Approval to verify this finalization process occurs prior to issuance of a building permit and requested that the applicant provide staff with some form of concurrence from the property owner of 375 Miller Avenue to this arrangement. Attachment 12 is a copy of this concurrence.

#### Dedication of Parkland

Chapter 21.50, Dedication for Park and Recreational Purposes, of the Municipal Code delineates the standards for determining the amount of land that is required to be dedicated, the applicability of in-lieu fees, and the potential for granting credits for privately owned open space areas and/or recreational facilities against land or fees otherwise required by the provisions of this chapter. Based on the standards set forth in Municipal Code Section 21.50.040, the proposed project is required to dedicate 0.141 acres (6,153 sq. ft) of parkland. Municipal Code Section 21.50.030 states that "...the dedication of land, the payment of fees in lieu thereof, or a combination of both..." will satisfy the requirement this chapter. Additionally, Municipal Code Section 21.50.060 sets forth the ability for the City to grant a credit against land or fees required with privately owned open space areas and/or recreational facilities. There is an existing

Irrevocable Offer and Dedication of a Public Pedestrian and Bicycle Access Easement (Attachment 13) recorded on Assessor Parcel Number 028-212-11 that could be used, or modified so that it could be used as a credit. With the potential for in lieu fees to be in the hundreds of thousands of dollars, staff feels a solution similar to what was approved for the 505 Miller Avenue project should be discussed and applied towards this project. Since the in lieu fees for the 505 Miller Avenue development were also in the hundreds of thousands of dollars, it fulfilled the dedication requirement with three project components: a) a 10' wide dedication of land along the creek bank for public use; b) private backyards for the town home units; and c) private balconies for the units in the mixed-use building. Since there are several scenarios for how the applicant could fulfill the dedication requirement associated with this project, staff believes a discussion with the Planning Commission would be the most efficient method to finalize the process.

### **PUBLIC COMMENT**

Public comment is received on an ongoing basis. Attachment 14 is copy of the public comment submitted for the two Study Sessions regarding the second proposal. Attachment 15 is copy of the public comment submitted prior to preparing this staff report.

### **CONCLUSION**

Staff recommends that the Planning Commission recommend that City Council approve the project as delineated in the Motion section found at the beginning of this report.

### **ATTACHMENTS**

1. Approved Minutes from Planning Commission meeting on May 22, 2005
2. Staff Report from Planning Commission meeting on November 13, 2006
3. Approved Minutes from Planning Commission meeting on November 13, 2006
4. Staff Report from Planning Commission meeting on January 22, 2007
5. Approved Minutes from Planning Commission meeting on January 22, 2007
6. Full Size Project Plans
7. Reduced Size of Project Plans in Color
8. Build It Green Checklist
9. Summary from Architect of the Incorporated Green Building Measures
10. Summary from Architect of Proposed Architectural Modifications
11. Attorney's Letter from 375 Miller Avenue
12. Copy of Concurrence to Agreement by Property Owner of 375 Miller Avenue
13. Copy of Irrevocable Offer and Dedication of a Public Pedestrian and Bicycle Access Easement
14. Public Comment Submitted for Previous Two Study Sessions
15. Public Comment Submitted Prior to Planning Commission meeting on October 27, 2008
16. Draft Planning Commission Resolution recommending approval of the Project subject to Conditions of Approval