

May 9, 2013
BENICIA PLANNING COMMISSION
REGULAR MEETING AGENDA
City Hall Council Chambers
Thursday, May 9, 2013
7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

C. Reference to Fundamental Rights of Public -

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

III. OPPORTUNITY FOR PUBLIC COMMENT

This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN

B. PUBLIC COMMENT

IV. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

* Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

[A. Approval of minutes of APRIL 11, 2013 SPECIAL Meeting WITH THE HISTORIC PRESERVATION REVIEW COMMISSION](#)

[B. AMENDMENT TO SIGN PROGRAM FOR SOUTHAMPTON SHOPPING CENTER](#)

V. REGULAR AGENDA ITEMS

[A. APPEAL OF STAFF GENERAL PLAN CONSISTENCY DETERMINATION – ASSISTED LIVING USE IN LOWER ARSENAL](#)

PROPOSAL:

On March 27, 2013, the Community Development Director issued a zoning/General Plan

consistency letter regarding a proposal for a Residential Care use on Jefferson Street. That determination has been appealed on behalf of APS West Coast, Inc. ("Amports"), the Port of Benicia operator.

Recommendation:

Confirm the Community Development Director determination that an assisted living facility is consistent with zoning ordinance and General Plan provisions applicable to parcels zoned Office Commercial on Jefferson Street in the Lower Arsenal area.

B. USE PERMIT APPLICATION FOR AN OUTDOOR EXERCISE AREA AT 608 FIRST STREET (BENICIA FITNESS)

13PLN-00016

608 First Street; APN: 0089-342-230

PROPOSAL:

Benicia Fitness has requested a Use Permit to expand the existing health/fitness facility at 608 First Street to an outdoor patio area located within the rear courtyard. The patio area is proposed to be used for fitness activities from 9AM to 8PM, Monday through Friday, 9AM to 4PM on Saturday, and 9AM to 3 PM on Sunday. Equipment includes a speed bag, weighted sled, dumbbell rack, bench presses and heavy bag. The applicant proposes amplified music in the courtyard area during these hours.

Recommendation:

Approve a use permit to add an outdoor fitness area to the existing health and fitness facility located at 608 First Street, based on the findings, and subject to the conditions listed in the draft resolution.

VI. COMMUNICATIONS FROM STAFF

A. THE NOTICE OF INTENT TO ADOPT THE INITIAL STUDY FOR INDUSTRIAL ZONING TEXT AMENDMENTS ISSUED ON APRIL 19, 2013 HAS BEEN RETRACTED. THIS ITEM IS NOT SCHEDULED FOR PLANNING COMMISSION REVIEW ON MAY 9, 2013 AND WILL BE SCHEDULED FOR A FUTURE MEETING.

B. UPDATE ON PLAN BAY AREA AND PRIORITY DEVELOPMENT AREA READINESS ASSESSMENT

VII. COMMUNICATIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on agendized and non-agendized matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action the Commission may take.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items, which remain on the agenda, may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions that are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. The Community Development Department is open Monday through Friday (except legal holidays), 8:30 a.m. to 5 p.m. (closed from noon to 1 p.m.). Technical staff is available from 8:30 - 9:30 a.m. and 1:00 - 2:00 p.m. only. If you have questions/comments outside of those hours, please call 746-4280 to make an appointment. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Amy Million, Commission Secretary, as soon as possible so that it may be distributed to the Planning Commission.

 [April 11, 2013 Draft Minutes \(pdf\)](#)

 [Southampton Sign Program.pdf](#)

 [Jefferson Ridge Appeal \(pdf\)](#)

 [Benicia Fitness \(pdf\)](#)

DRAFT



BENICIA PLANNING COMMISSION

JOINT MEETING WITH THE HISTORIC PRESERVATION REVIEW COMMISSION SPECIAL MEETING MINUTES

City Hall Council Chambers

Thursday, April 11, 2013

6:00 P.M.*

***SPECIAL TIME**

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Planning Commission:

Present: Commissioners Cohen-Grossman (arrived 6:10 p.m.),
Dean, Oakes, Smith, Sprague and Chair Sherry (arrived
6:15 p.m.)

Absent: Commissioners Smith and Young

Historic Preservation Review Commission:

Present: Commissioners Berry, Delgado, McKee, Trumbly, Van
Landschoot, and Chair Haughey

Absent: Commissioner vonStudnitz

Staff Present: Charlie Knox, Community Development Director
Amy Million, Principal Planner / Recording Secretary
Heather McLaughlin, City Attorney

C. Reference to Fundamental Rights of Public

II. ADOPTION OF AGENDA

On a motion of Commissioner Van Landschoot seconded by Commissioner Delgado, the agenda was adopted by the following vote:

Ayes: Commissioners Berry, Cohen-Grossman, Delgado, McKee, Oakes,
Sprague, Trumbly, Chair Haughey and Vice –Chair Dean

Noes: None

Absent: Commissioners Cohen-Grossman, Sherry, Smith, vonStudnitz and Young
Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. WOOD WINDOW WORKSHOP

Ms. Million provided an overview of the workshop and introduced the presenters.

Nancy Goldenberg, Carey and Company, gave a presentation on the Secretary of the Interior Standards and the guidelines associated with windows.

Bill Essert, Wooden Windows, Inc., gave a presentation on wood windows including the different types, window composition, methodology for repair and the benefits of retaining existing wood windows.

Phil Joy, Joy Housemoving, gave a presentation on how to repair wood windows.

Chris Bowen, Foster Lumber, gave a presentation on the available alternative materials for replacement windows such as vinyl, aluminum and fiberglass.

The presentations were followed by a Q&A session with the Commissions, audience and presenters.

V. PRESENTATION:

A. OPEN GOVERNMENT PRINCIPLES

The City Attorney gave a presentation to the Commissions on the Open Government ordinance, Brown Act, the City's Code of Conducts and other related documents.

VI. ADJOURNMENT OF JOINT MEETING WITH THE HISTORIC PRESERVATION REVIEW COMMISSION; CONTINUATION OF REGULAR MEETING OF PLANNING COMMISSION

Vice-Chair Dean adjourned the joint meeting at 7:45 p.m.

The Commission took a 15 minute recess.

The regular Planning Commission meeting reconvened at 7:57 p.m.

VII. ELECTION OF OFFICERS (CHAIR AND VICE CHAIR)

Commissioner Oakes nominated Sherry/Dean as Chair/Vice-Chair. On a motion by Commissioner Oakes, seconded by Commissioner Cohen-Grossman, the motion was carried by the Commission.

Ayes: Commissioners Cohen-Grossman, Dean, Oakes, Sprague and Chair Sherry
Noes: None
Absent: Commissioners Smith and Young
Abstain: None

VIII. CONSENT CALENDAR

On a motion of Commissioner Cohen-Grossman, seconded by Commissioner Dean, the consent calendar was approved by the following vote:

Ayes: Commissioners Cohen-Grossman, Oakes, Sprague, and Chair Sherry
Noes: None
Absent: Commissioners Smith and Young
Abstain: Commissioner Dean

A. APPROVAL OF MINUTES OF FEBRUARY 14, 2013 REGULAR MEETING

IX. REGULAR AGENDA ITEMS

A. ZONING ORDINANCE TEXT AMENDMENT TO INCORPORATE REGULATIONS PERTAINING TO COTTAGE FOOD OPERATIONS

Ms. Million gave an overview of the draft zoning text amendment.

The Commission requested clarification on the proposed fees, regulations for employees versus working family members, the Zoning Administrator's role and the permitting process.

Public comment was opened.

Krizey Osada, owner of Whipt Bakery in Benicia spoke as the first Cottage Food Operator in Solano County. Ms. Osada requested clarification on the proposed process and provided the Commission with insight on the permitting process through the County's health agency.

Public comment was closed.

RESOLUTION NO. 13-2 OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE

**ZONING ORDINANCE TEXT AMENDMENT TO INCORPORATE REGULATIONS
PERTAINING TO COTTAGE FOOD OPERATIONS**

On a motion of Commissioner Cohen-Grossman, seconded by Commissioner Dean, with a minor change to subsection C.4. to change Zoning Administrator to Community Development Director, the above resolution was approved by the following vote:

Ayes: Commissioners Cohen-Grossman, Dean, Oakes, Sprague and
Chair Sherry
Noes: None
Absent: Commissioners Smith and Young
Abstain: None

B. GENERAL PLAN IMPLEMENTATION REPORT

Ms. Million provided an overview of the General Plan implementation report.

The Commission requested clarification on the report process, coordination with City departments and the status of program 2.33. C.

No public comment.

On a motion of Commissioner Dean, seconded by Commissioner Oakes, the Commission received and filed the General Plan Implementation report and recommended approval by the City Council by the following vote:

Ayes: Commissioners Cohen-Grossman, Dean, Oakes, Sprague, and
Chair Sherry
Noes: None
Absent: Commissioners Smith and Young
Abstain: None

X. COMMUNICATIONS FROM STAFF

None.

XI. COMMUNICATIONS FROM COMMISSIONERS

Commissioner Cohen-Grossman provided an update on the APA workshop she attended on April 6, 2013 and announced that the CAC meeting for the Urban Waterfront Enhancement and Master Plan would be held on April 18, 2013.

Commissioner Oakes provided an update on the sign ordinance and the committee's progress

XII. ADJOURNMENT

Chair Sherry adjourned the meeting at 8:55 p.m.

AGENDA ITEM
PLANNING COMMISSION MEETING: MAY 9, 2013
CONSENT CALENDAR

DATE : April 25, 2013

TO : Planning Commission

FROM : Adam Petersen, Contract Associate Planner

SUBJECT : **AMENDMENT TO THE SIGN PROGRAM FOR SOUTHAMPTON SHOPPING CENTER**

PROJECT : 13PLN-00012 – Sign Program Amendment
800-892 Southampton Road
APN: 0086-151-110

RECOMMENDATION:

Approve an amendment to the Southampton Shopping Center sign program to allow businesses that are not located adjacent to monument signs to use them at the property owner's discretion at 800-892 Southampton, based on the findings and subject to the conditions listed in the draft resolution.

EXECUTIVE SUMMARY:

The applicant requests approval to amend the Sign Program to allow any business at 800-892 Southampton Shopping Center to use a monument sign at the discretion of the property owner. The existing sign program restricts the use of the four monument signs to businesses located adjacent to the sign.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is Exempt under Section 15061 of the State of California Environmental Quality Act (CEQA) Guidelines, which states that CEQA only applies to "projects" which have the potential for causing significant effects on the environment. The proposal does not involve new signage or expansion of the existing signs.

GENERAL PLAN:

Relevant General Plan Goals, Policies and Programs:

- GOAL 3.7: Maintain and reinforce Benicia's small-town visual characteristics.

BUDGET INFORMATION:

No budget impacts are anticipated.

BACKGROUND:

Applicant: Mike Curry, United Sign Systems

Owner: Gabe Haggemann, Weingarten Realty

General Plan Designation/Zoning: Commercial General

Existing use: Shopping Center

Adjacent Existing Uses, General Plan and Zoning designations:

	Existing Use	General Plan	Zoning
Subject Site	Shopping Center	Commercial General	General Commercial (CG)
North	Multi-family housing	High Density Residential	Medium Density Residential (RM)
South	Freeway / Single Family Residential	Low Density Residential	Single family residential (RS)
East	Office / Public facilities	Public and Quasi-Public / Business and Professional Office	Office Commercial (CO) / Public and Semi Public (PS)
West	Multi-family housing	High Density Residential	Medium Density Residential (RM)

The Planning Commission approved the Southampton Shopping Center sign program in 1983 as part of the overall approval for the development (SPA-2-82). Therefore, the Planning Commission is the responsible body for amendments to the sign program.

SUMMARY:

A. Project Description and Location

The applicant is requesting approval to amend the sign program for the Southampton Shopping Center. The existing sign program approved in 1983 states that:

Each Monument Sign is available for the exclusive use of the closest tenant space only. Referring to the Site Plan, these relations would be:

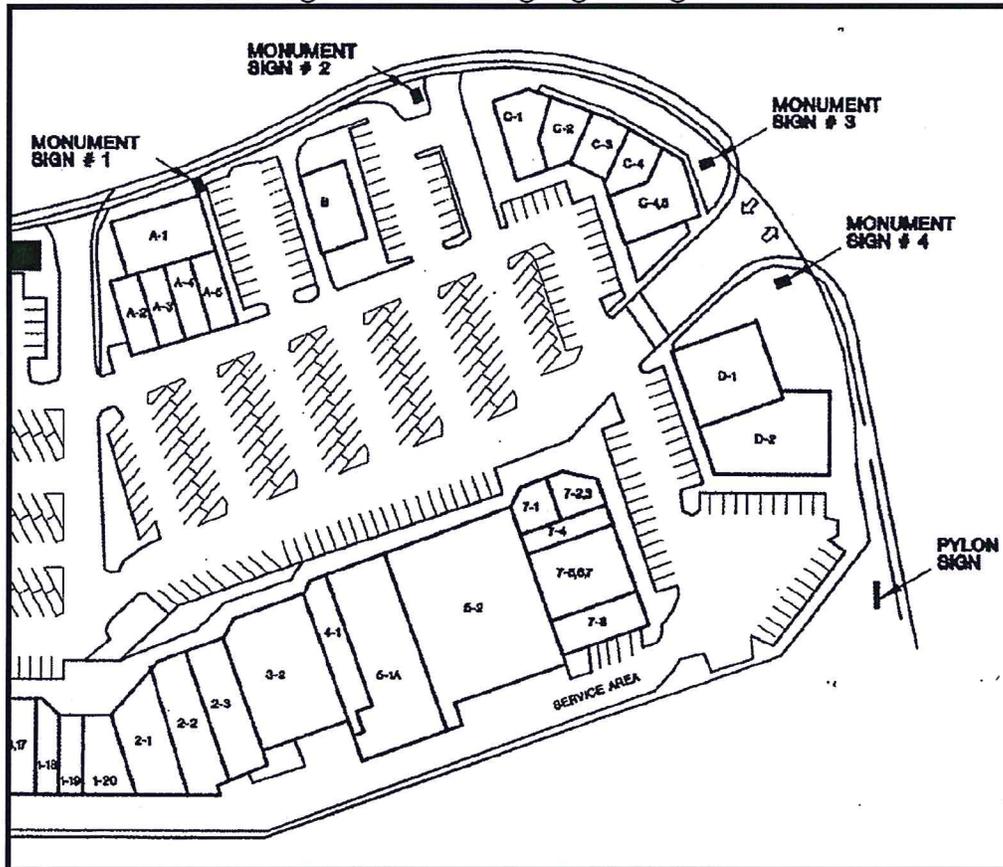
Monument Sign	Tenant Space
1	A-1
2	B
3	C 4, 5
4	D-1

The applicant proposes replacing the above language and table with the following statement:

"Each Monument Sign is available for use by any tenant of the Southampton Shopping Center (800-892 Southampton Road). Specific use of each monument to be determined by the property owner."

Figure 1 shows the location of the four monument signs.

Figure 1 – Existing Sign Program



B. Project Analysis

General Plan Consistency:

General Plan GOAL 3.7 is to *Maintain and reinforce Benicia's small-town visual characteristics*. Amendment of the sign program will not change the amount and intensity and size of the signage at the shopping center. Therefore, signage will not proliferate throughout the commercial center and Benicia's small town aesthetic will not change.

Sign Ordinance Consistency:

Title 18, Signs, of the Benicia Municipal Code (BMC) provides the regulations for signs with the City. Sign programs are used to create uniformity in design, colors, size, and style for multi-tenant spaces such as shopping centers.

The proposed sign program amendment does not propose additional signage. Further it does not propose to expand the area of signs located onsite, nor does it include amendments to the architectural style or colors. Therefore, the proposed amendment is consistent with Title 18, Sign Ordinance.

While Title 18 of the BMC delegates review of signage to staff, this project is being reviewed by the Planning Commission because the Planning Commission originally approved the sign program. In order to maintain consistency with Title 18, staff has included Condition of Approval No. 2 that directs any future amendments to be reviewed by the Community Development Director.

CONCLUSION:

Staff believes that the sign program amendment is consistent with the intent and standards of the Benicia Municipal Code and recommends that the Planning Commission approve the amendment.

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten business days.

Attachments:

- Draft Resolution
- Revised Sign Program Language

DRAFT RESOLUTION

RESOLUTION NO. 13- (PC)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
APROVING AN AMENDMENT TO THE SIGN PROGRAM AT 800-892
SOUTHAMPTON ROAD (13PLN-00012; APN: 0086-151-110)**

WHEREAS, the Planning Commission approved the Southampton Shopping Center sign program in 1983 as part of the overall approval for the development (SPA-2-82); and

WHEREAS, Mike Curry of United Sign Systems, on February 14, 2013 submitted for an amendment to the Sign Program at 800-892 Southampton Road; and

WHEREAS, the Planning Commission at a regular meeting on May 9, 2013 reviewed the proposed amendment to the Sign Program; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia approves the proposed amendment to the Sign Program for the Southampton Shopping Center, based on the following findings:

- a). This project is Exempt under Section 15061 of the State of California Environmental Quality Act (CEQA) Guidelines, which states that CEQA only applies to "projects" which have the potential for causing significant effects on the environment. The proposal does not involve new signage or expansion of the existing signs.
- b). This project is consistent with the provisions found in Title 18 of Benicia Municipal Code.

BE IT FURTHER RESOLVED the Benicia Planning Commission hereby approves the Sign Program amendment subject to the following conditions:

1. This action is for an amendment to the Southampton Shopping Center sign program to permit other tenants in the Southampton Shopping Center use of the monument signs as described in the Planning Commission report on May 9, 2013, including the language and associated Exhibits and Attachments dated received April 8, 2013.
2. Any future proposed amendments of the sign program shall be approved by the Community Development Director.
3. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Historic Preservation Review Commission, Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a

development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * **

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted at a regular meeting of the Planning Commission of the City of Benicia on May 9, 2013 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Rod Sherry
Planning Commission Chair

REVISED SIGN PROGRAM LANGUAGE

IV MONUMENT SIGNS

There are four existing monument signs which predate the writing of this Sign Criteria. See Site Plan Drawing Number 1 for location of these four signs.

The four existing Monument Signs are to remain; no additional monument signs will be allowed, nor can existing signs be expanded.

Each Monument Sign is available for use by any tenant of the Southampton Shopping Center (800 – 892 Southampton Road). Specific use of each monument to be determined by the property owner:

Sign face text, graphics, and colors shall be compatible with the design of the tenant's primary sign, and subject to the approval of the Landlord and the City Planning Department.

Monument Sign box and support structure shall be maintained by the tenant in a proper state of repair, and painted finishes shall be renewed when faded or damaged. The paint color for the sign box shall match the dark bronze anodized aluminum color of the tenant's channel letters.

**REGULAR MEETING
PLANNING COMMISSION MEETING: MAY 9, 2013
REGULAR AGENDA ITEM**

DATE : April 24, 2013

TO : Planning Commission

FROM : Amy Million, Principal Planner

SUBJECT : Appeal of Community Development Director General Plan Consistency Determination – Assisted Living Use in Lower Arsenal

RECOMMENDATION:

Confirm the Community Development Director determination that a proposed use of an assisted living facility is consistent with zoning ordinance and General Plan provisions applicable to parcels zoned Office Commercial on Jefferson Street in the Lower Arsenal area.

EXECUTIVE SUMMARY:

On March 27, 2013, the Community Development Director issued a zoning and General Plan consistency letter regarding the potential for a Residential Care use on Jefferson Street. That determination has been appealed on behalf of APS West Coast, Inc. ("Amports"), the Port of Benicia operator.

SUMMARY:

When an application for a project is submitted to the Community Development Department, it is staff that initially reviews the application to determine if the proposed use complies with Benicia's zoning and development regulations prior to any further discretionary review process. Pursuant to Benicia Municipal Code Sections 17.08.040 and 17.16.010, the Community Development Director is charged with interpreting and applying the zoning regulations and use classifications within each zoning district in the event of any uncertainty or question of use compatibility. The Community Development Director is also charged with advising the City Manager, Planning Commission and City Council on matters relating to the General Plan and for ensuring consistency between the General Plan and the City's zoning and land use regulations.

A "consistency request" allows a proponent of a particular use to obtain a written response from the Community Development Director regarding whether a proposed potential use complies with City land use and development

regulations. However, it does not mean the project will be approved upon subsequent review.

In anticipation of questions regarding the consistency of a Residential Care use on Jefferson Street with the zoning ordinance and General Plan, the Community Development Director issued a memorandum to the Planning Commission and Historic Preservation Review Commission in September 2012, prior to a joint workshop regarding the proposal. The memorandum indicated that a Residential Care use was an allowable use on the subject site and was consistent with the goals and policies of the General Plan.

On March 25, 2013, Rick Beasley of Jefferson Ridge at Benicia, LLC submitted a request for a zoning ordinance and General Plan consistency determination for the proposed land use of an assisted living and memory care facility on Jefferson Street in the Lower Arsenal.

The Community Development Director's March 27, 2013 response, which is the subject of this appeal, determined that a Residential Care use would be consistent with both the Office Commercial zoning district and the Lower Arsenal Mixed Use category in the General Plan, and that the zoning ordinance and General Plan are also consistent with each other in this regard.

Issues Raised in Appeal

The April 3, 2013 appeal filed on behalf of Amports contends that the Director erred and abused his discretion in finding that a Residential Care use on Jefferson Street is consistent with the General Plan, and claims that such a determination cannot be made until the project is subject to discretionary review. Although specific concerns regarding the actual project as it pertains to the goals of the General Plan can appropriately be raised during the discretionary review process, it would be remiss of staff and of the Community Development Director to allow an application to go forward if the **proposed use**, regardless of the specific project details, were incompatible with the zoning ordinance and/or inconsistent with the General Plan.

Since the proposed land use in that location was being questioned, it was understandable that the project proponent would want some certainty with respect to just the proposed "land use" before proceeding through the lengthy process of discretionary review of the specific project. It was therefore not premature for a consistency determination to be made, and was totally within the authority of the Community Development Director to make the determination to resolve the initial concerns about the proposed use. However, as with all such determinations, they are also appropriately subject to appeal to the Planning Commission and ultimately to the City Council.

On April 10, 2013, a supplement to the appeal was filed on behalf of Amports that specifically contends that such a "project's use" is inconsistent with several itemized General Plan goals, which are outlined and addressed below.

A primary contention in the April 10, 2013 appeal supplement is that a project on the site would have to "provide assurance" of "adequate buffers" from nearby industrial activities to protect occupants of a care facility pursuant to General Plan Policy 2.6.5, "Establish and maintain a land buffer between industrial/commercial uses and existing and future residential uses for reasons of health, safety and quality of life." However, as indicated in the Director's determination, any proposal for the site would require project-specific review, and any approval, which is by no means guaranteed, could be subject to a variety of conditions to ensure that this General Plan policy is supported.

Another assertion of the appeal supplement is that a Residential Care facility would be inconsistent with General Plan Policy 2.8.1, "Avoid encroachment by future incompatible uses..." whereby "encroachment" is anticipated to take the form of "threats from new neighbors about nighttime operations, glares (sic) and bright lights, high traffic, noise, and other characteristics inherent in industrial uses that would be objectionable in a traditional residential neighborhood." However, whether a specific proposed project would generate such concerns would be examined by the Commissions, which would also have the ability to require conditions to alleviate such "threats" if and when the specific project is subject to discretionary review.

The appeal supplement further contends that commission consideration of a Residential Care project application "would circumvent any public process" regarding "master planning" for the Lower Arsenal area. To the contrary, Use Permit review by the Planning Commission and Design Review by the Historic Preservation Review Commission would be expected to explore "foundational planning issues" in detail.

Finally, the appeal supplement concludes that "the proposed project has not been evaluated for compatibility" and "is likely to be inconsistent with many of the General Plan's goals and policies, resulting in a violation of CEQA..." The whole point of Use Permit review is to explore these questions for a specific project proposal. Although the Planning Commission and Historic Preservation Review Commission have received a presentation on a potential project for the site, there has been no completed application for the project submitted to date. If and when an application is completed, the purpose of the Use Permit and Design Review processes will be precisely to determine, in the view of the commissions, whether the project as proposed or conditioned (not Residential Care "use" per se), can be found to be consistent with and approvable under the zoning ordinance and General Plan, and to determine what type of

environmental documentation would be required.

FURTHER ACTION:

Planning Commission action on the matter will be forwarded to the City Council for final action.

Attachments:

- Draft Resolution
- Supplement to Appeal, April 10, 2013
- Appeal of General Plan Consistency Determination, April 3, 2013
- Zoning and General Plan Consistency Determination, March 27, 2013
- Zoning and General Plan Consistency Request March 22, 2013
- Zoning and General Plan Consistency Memo, September 13, 2012
- Letter from Gizzi & Reep, April 29, 2013

RESOLUTION NO. 13- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA CONFIRMING THE COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION FOR ZONING AND GENERAL PLAN CONSISTENCY FOR AN ASSISTED LIVING FACILITY ON JEFFERSON STREET, LOWER ARSENAL

WHEREAS, Rick Beasley of Jefferson Ridge at Benicia, LLC submitted a request for a zoning and General Plan consistency determination for the proposed assisted living facility on Jefferson Street in the Lower Arsenal; and

WHEREAS, the subject parcels are located along Jefferson Street, east of Park Road, north of Adams Street and include Assessor Parcel Numbers: 0080-150-005, -038, -039, -040; and

WHEREAS, the subject parcels are located within the CO, Office Commercial Zoning District and within the Lower Arsenal Mixed Use designation in the General Plan; and

WHEREAS, the Community Development Director issued a determination of zoning and General Plan consistency for a Residential Care use on Jefferson Street; and

WHEREAS, that determination has been appealed on behalf of APS West Coast, Inc., dba Amports, the Port of Benicia operator.

NOW THEREFORE BE IT RESOLVED THAT the Planning Commission of the City of Benicia confirms the determination of the Community Development Director that:

1. A land use consisting of an assisted living facility would be consistent with both the Office Commercial zoning district and the Lower Arsenal Mixed Use category in the General Plan, and that the zoning ordinance and General Plan also are consistent with each other in this regard.
2. This determination that the proposed land use is consistent with the General Plan and zoning district does not in any way mean that the specific project is approved as the proposed project must still undergo discretionary review by this body (Planning Commission) for a Use Permit and the Historic Preservation Review Commission for design review.

BE IT FURTHER RESOLVED THAT the Planning Commission recommends that the City Council also confirm the determination of the Community Development Director and make the same findings.

On a motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 9th day of May 2013, and adopted by the following vote:

Ayes

Noes:

Absent:

Abstain:

Rod Sherry
Planning Commission Chair

Dana Dean
Amber Kemble Of Counsel
Venus Viloria Berdan Associate

Law Offices of
DANA DEAN

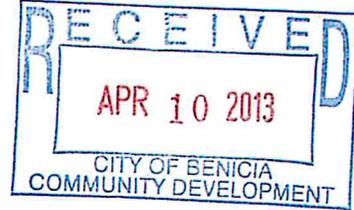


Real Estate • Land Use

283 East H Street
Benicia, California 94510
p 707.747-5206 • f 707.747-5209

April 10, 2013

Planning Commission
City of Benicia
250 East L Street
Benicia, California 94510



Re: *Supplemental Letter in Support of Appeal of Community
Development Director's March 27, 2013 Determination of General
Plan Consistency of Jefferson Ridge at Benicia, LLC's Proposed
Assisted Living and Memory Care Facility*

Dear Commissioners:

As you are aware, this office represents APS West Coast, Inc. dba Amports, Inc. ["Amports"]. We are submitting this supplemental letter in support of Amports' appeal filed on April 3, 2013 with regard to the Community Development Director's ["CD Director"] March 27, 2013 Determination of General Plan Consistency of Jefferson Ridge at Benicia, LLC's Proposed Assisted Living and Memory Care Facility ["proposed project"].

In our initial letter regarding Amports' appeal, we stated that the CD Director's determination that the use of the proposed project as an assisted living and memory care facility is consistent with the General Plan is *in error* and is *not supported* by the record. Our appeal derives, in part, from the fact that the CD Director lacks authority to make such a determination. In addition, any determination that the project is consistent with the General Plan is premature since the necessary discretionary review has yet to occur.

Moreover, as discussed further here the project's use even as proposed is actually inconsistent with the General Plan and does not promote the General Plan's goals and policies.

The Proposed Project's Use Is Inconsistent With the General Plan as it Would Adversely Impact Existing Uses, including Industrial Uses and the Port of Benicia

The proposed project is located near properties which are owned and/or operated for industrial purposes and within the Lower Arsenal. Unrestricted residential use in this specific area may adversely impact existing uses, especially that of the Port of Benicia. Although the intended use of the proposed project does not involve *unrestricted residential* but rather an assisted living and memory care

facility which the CD Director determined to be within the “*residential care, general*” classification, some of the same areas of concern nevertheless apply.

In general, this would include the potential for difficulties that result from the proposed project’s proximity to industrial uses and a 24-hour-a-day, tide-driven port. Issues include the impacts of noise, light, and other aesthetic impacts, especially on sensitive receptors such as the roughly 500 elderly, intended residents of this assisted living and memory care facility. This would be inconsistent with several important General Plan goals, including protecting existing industrial and commercial uses from intrusion by incompatible uses, as well as more explicit protections for Port activities.¹

In addition, the General Plan *requires* that the City maintain sufficient buffers between incompatible uses and protect businesses in the Arsenal and at the Port from encroachment from such incompatible uses, in particular that which is commonly referred to as airport syndrome – wherein over time incompatible uses push out the already existing uses by way of nuisance actions, or the like.² This is seen when there are attempts to stifle long-time industrial use of adjacent or neighboring properties much like the activities of the Port of Benicia and other industrial activities in the Lower Arsenal.

Below is a further discussion of several of the specific General Plan goals and policies that would be compromised if the proposed project’s intended use is implemented without significant protection in place without significant protections in place.

General Plan Goal 2.6: Attract and retain a balance of different kinds of industrial uses to Benicia.

The intended use of the proposed project is inconsistent with the General Plan’s Goal 2.6 to attract and retain a balance of different kinds of industrial uses to Benicia.³ Because the intended use of the proposed project as an assisted living and memory care facility would impose on the surrounding industrial uses, the intended use of the proposed project would be in conflict with the following underlying policies:

Policy 2.6.1 Preserve industrial land purposes....;

Policy 2.6.2 Other land uses should not adversely affect existing industrial and commercial land uses; and

¹ City of Benicia General Plan adopted June 15, 1999 [“General Plan”], Goal 2.6 and its underlying Policies 2.6.1, 2.6.2, and 2.6.5 (p. 43-44), Goal 2.7 (p. 44), Goal 2.8 and its underlying Policy 2.8.1(p. 45), Goal 2.11 and its underlying Policy 2.11.1 (p. 47), and Goal 4.23 and its underlying policies (p. 179).

² General Plan, p.44.

³ General Plan, p. 43.

Policy 2.6.5 Establish and maintain a land buffer between industrial/commercial uses and existing and future residential uses for reasons of health, safety, and quality of life.⁴

This is because use of the property for an assisted living and memory care facility would involve uses similar to those of *residential* use such as sleeping, resting, and eating adjacent to current and future industrial uses, without appropriate protections in place to preserve the industrial uses. Accordingly, the 500 individuals residing at the assisted living and memory care facility may be impacted by industrial uses affecting their use and enjoyment of the assisted living and memory care facility. For example, residents of the proposed project will be affected by the railroad's *proximity* to the project area, especially considering the types of noise and the noise levels from railroad and train activity that take place there on a frequent basis. Accordingly, individuals living in the proposed project area would be frequently subjected to such noises, sometimes on a *daily and even nighttime*, basis as well.

As evidenced in the goal and polices regarding industrial development stated above, the General Plan requires protection of existing uses, in part by means of buffers. Buffers are achieved in a variety of ways, including graduated changes in zoning (i.e. industrial to commercial to residential). Also, as stated in the General Plan, "[a] buffer is 'adequate' to the extent that it physically and psychologically separates uses or properties so as to shield, reduce, or block one set of properties from noise, light, or other nuisances generated on or by the other set of properties."⁵

With the proposed project being in such close proximity to industrial uses, including the 24-hour Port, the burden is on the project proponents to provide assurance that there are adequate buffers to shield, reduce, or block the residential-like use of such property from industrial noise, light, or other potential disturbances. At this point in the process, there is no way for the decision makers to judge whether the proposed project will provide such adequate buffers. As such the CDD's determination comes too early.

General Plan Goal 2.8: Maintain the viability of the Port now and in the future to benefit the City of Benicia

The port area is a unique and precious resource. Water-related and water adjacent industrial land use designations are dwindling in the Bay Area and in California as a whole.

⁴ General Plan, p. 43-44.

⁵ General Plan, p. 44.

The intended use of the proposed project is inconsistent with this goal's accompanying Policy 2.8.1 which seeks to avoid encroachment by future incompatible uses, and where possible, reduce encroachment from existing incompatible uses.⁶

As discussed above, the incompatible use of the assisted living and memory care facility would tend to encroach on the Port, since future residents, employees, and visitors of the facility may complain that the noise, lighting, potential view impacts, and overall adjacent industrial and Port uses are disruptive to their use of the assisted living and memory care facility. The area where the proposed project is situated neighbors industrial and Port activities, which the City is required to protect (as evidenced by the General Plan's goals and policies.) In order to operate successfully, the Port operator and other industrial users must be able to utilize their property without threats from new neighbors about nighttime operations, glares and bright lights, high traffic, noise, and other characteristics inherent in industrial uses that would be objectionable in a traditional residential neighborhood.

Moreover, one of the General Plan policies is to "[e]ncourage and create opportunities and methods for cooperative planning of the [area]".⁷ The General Plan specifically states that instead of reacting to specific development proposals, such as this proposed project, planning in this area should be "pro-active" and "master-planning" in nature and should be conducted in public and should include stakeholders such as City officials, Amports representatives, and the general public.⁸ In addition, "Master Planning" for these areas would evaluate, among other things, the historic preservation of buildings, public access, circulation, affordable housing, live-work space, infrastructure needs (train station, new bridge ramps and interchanges, and ferry service), potential for economic development and revenue enhancement for the City, reconsideration of uses in the Lower Arsenal, restrictions on hazardous materials and waste, and improving the public process for project approval.

Quite obviously that has not happened here. Instead the CDD's determination, if allowed to stand, would circumvent any public process regarding one of the foundational planning issues.

General Plan Goal 2.11 Encourage the retention and continued evolution of the lower Arsenal into a historic/cultural/commercial/industrial center of mutually compatible uses.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ General Plan, p. 45-46. As a note, the General Plan references "representatives of Benicia Industries", which is now Amports.

It should be noted that "compatible" as defined in the General Plan means "capable of existing together without conflict or ill effects".⁹ Considering the arguments set forth herein discussing how residential use is incompatible with industrial uses in this case, the intended use of the proposed project is also inconsistent with this goal and its underlying Policy 2.11.1 to retain and expand the mix of *compatible and balanced* uses in the lower Arsenal area.

General Plan Goal 4.23: Reduce or eliminate the effects of excessive noise.

The intended use of the proposed project would also be in direct conflict with the General Plan's Goal 4.23 and its underlying policies regarding reducing or eliminating effects of excessive noise because bringing individuals to sleep, eat, and rest in an area that is predominantly used for and/or surrounded by industrial purposes would instead tend to increase the effects of excessive noise on these individuals.¹⁰

Because of the unique tide-sensitive nature of port operations, large ships and their supporting crews may well arrive in the middle of the night. Work is done based on tides, not based on a 9-5 timeline. Thus, there is a potential for not only very loud noise, but also for sudden noise and late night noise.

Also, train switching and railroad loading and unloading are routine in the area and take place frequently near the area where the proposed project is located. As a result, there is significant noise created from railroad and train activity on a daily basis such that individuals living in the area, or in this case individuals also working at or visiting the proposed project, would be frequently subjected to such noises, sometimes on a *daily and even nighttime* basis as well. The train and railroad activity noises and measurements could result in physiological or psychological damage or interference with communication, work, rest, recreation or sleep if the proposed project were approved and implemented.

As it is presented at this time, the proposed project has not been evaluated for its compatibility with respect to existing and future transportation noise levels, including the nighttime operations, high traffic, and other noise related to industrial and Port activity.¹¹ Nor does it address any techniques or tools that would be required to reduce such excessive noise, or other disturbances, for its prospective residents, employees, and visitors.¹²

Based on all of the above, it is apparent that the project's intended use as an assisted living and memory care facility is likely to be inconsistent with many of

⁹ General Plan, p. 187.

¹⁰ General Plan, p. 179.

¹¹ General Plan, p. 179-180; *Policies 4.23.1.*

¹² General Plan, p. 179-180; *Policies 4.23.2-4.23.6.*

the General Plan's goals and policies, resulting in a violation of CEQA as potential adverse impacts to the environment stem from such inconsistencies.

Moreover, here there is no way for the CDD (or the governing bodies) to make the necessary precise determinations of consistency at this early stage in the planning process. As such we ask that the CDD's determination be reversed.

Thank you again for your attention and consideration of this matter.

Respectfully submitted,



DANA DEAN
DD/vwb



Community Development Department Planning Division

APPEAL FORM

1. Project Information.

Address/location Jefferson St.(east of Park Rd./north of Adams St.) APN 0080-150-005, -038, -039,-040,-041
Project Name/Number Proposed Assisted Living and Memory Care Facility
Project Sponsor/Applicant Jefferson Ridge at Benicia, LLC

2. Type of Appeal. Indicate which type of decision you are appealing.

- Zoning Administrator
- Community Development Director
- Historic Preservation Review Commission
- Planning Commission

Hearing/Decision Date March 27, 2013
Decision Rendered Determination of consistency with zoning ordinance and General Plan.

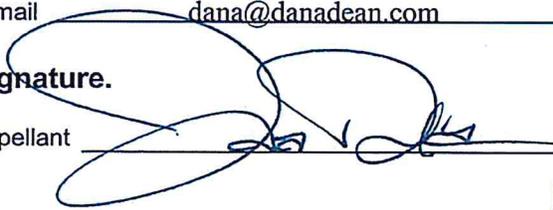
3. Reason(s) for Appeal. State the reasons for the appeal, and the grounds on which the reasons are based. See separate "Appeal Information" handout. Please use a separate sheet of paper if necessary.

See attached Letter.

4. Appellant Information.

Name Amports, Inc. Organization c/o Dana Dean, Attorney at Law
Mailing address c/o Law Offices of Dana Dean, 283 East H Street, Benicia, CA. 94510
Phone (707) 747-5206 Phone (2) _____
E-mail dana@danadean.com Fax (707) 747-5209

5. Signature.

Appellant  Date 4/3/13



For Staff Use: Appl. # _____		Date Filed _____	
Date Entered _____	Entered By _____	Receipt # _____	Total Fees Paid \$ _____

Dana Dean
Amber Kemble Of Counsel
Venus Vilorio Berdan Associate

Law Offices of
DANA DEAN



Real Estate • Land Use

283 East H Street
Benicia, California 94510
p 707.747-5206 • f 707.747-5209

April 3, 2013

Planning Commission
City of Benicia
250 East L Street
Benicia, California 94510



Re: *Appeal of Community Development Director's March 27, 2013
Determination of General Plan Consistency of Jefferson Ridge at
Benicia, LLC's Proposed Assisted Living and Memory Care Facility*

Dear Commissioners:

This office represents APS West Coast, Inc. dba Amports, Inc. ["Amports"]. As such, we on its behalf submit this appeal with regard to the Community Development Director's March 27, 2013 Determination of General Plan Consistency of Jefferson Ridge at Benicia, LLC's Proposed Assisted Living and Memory Care Facility ["proposed project"].

Amports owns property near or adjacent to the location of the proposed project, it owns and operates the Port of Benicia, and it may be affected by any decisions regarding the proposed project. (See Benicia Municipal Code §1.44.040.) The bases for the appeal are set out below. In addition, please expect further correspondence from this office detailing the reasons for the appeal.

The Community Development Director Exceeded His Authority in Making a Determination regarding General Plan Consistency

The CD Director erred and abused his discretion by making a determination regarding the consistency of the use and project with the General Plan. The CD Director does not have authority under Benicia's Municipal Code ["BMC"] to make a determination on whether the use and/or the project is consistent with the General Plan, especially at this stage when the project has not yet undergone public hearing and discretionary review process for its approval, including by the Planning Commission for a use permit and by the HPRC for design review.

While the BMC seems to indicate that the CD Director has the authority to make determinations regarding interpretation of the *zoning ordinance* as it applies to a specific site and regarding whether a specific use is within a use classification under the *zoning ordinance* (see BMC §§17.08.040 and 17.16.010), it does not provide direct authority for the CD Director to make the same determinations

with regards to the *General Plan*. Having the authority to interpret and make a determination regarding the *zoning ordinance* is not the same thing as doing the same with regards to the *General Plan*.

In addition, the BMC sets forth the requirements for a zoning permit prior to issuance of a building permit, certificate of occupancy, business license, grading permit, or utility service connection to ensure that a use complies with the zoning ordinance and that the CD Director has the duty to issue a zoning permit “upon determining that the use or structure complies with [the zoning ordinance] and that environmental documentation, if any, required by the California Environmental Quality Act (CEQA) is complete”. (BMC §§17.100.010, 17.100.030.) In this case, environmental documentation is yet to even be submitted. Moreover, this zoning permit duty does not directly confer a specific authority to the CD Director to determine whether the use and project is consistent with the *General Plan* as it only discusses the CD Director’s determination of compliance with the *zoning ordinance*.

Also, while the CD Director’s duties include “advis[ing] the planning commission and conduct[ing] investigations and mak[ing] reports and recommendations on matters relating to zoning, subdivisions, land divisions, architectural and outdoor advertising controls and review, and such other matters as directed” pursuant to BMC Section 2.32.020, the determination made in his March 27, 2013 letter regarding General Plan Consistency oversteps the boundaries of those duties advising and making reports and recommendations to the Planning Commission on this matter, especially considering that the CD Director has specifically designated his determination regarding General Plan consistency as a *decision* that is final in ten business days from the date of the March 27, 2013 letter unless an appeal to the Planning Commission is filed. (See page 2 of CD Director’s March 27, 2013 letter.) Making a “final decision” is very different than advising a decision-making body about its final determination.

The Issue of General Plan Consistency is Not Ripe for Review

Any determination regarding the consistency of the proposed project or its use with the *General Plan* is in error because such a determination is premature and the matter is not yet ripe for review. As is clear from the record, the proposed project has not even undergone the discretionary review process for a use permit and design review, which could include environmental review under CEQA and which is generally the stage during which a project’s *General Plan* consistency is determined.

(1) During the September 13, 2012 Joint Workshop for the Planning Commission and HPRC regarding the proposed project, the CD Director indicated that, “the project will go before the Historic Preservation Review

Commission first for Design Review, and then followed by Planning Commission for Use Permit consideration. An Initial Study will be prepared to determine if a Negative Declaration or EIR will be necessary.” (See Approved Minutes for the September 13, 2012 Joint Workshop for the Planning Commission and HPRC regarding the proposed project, page 3.)

(2) The CD Director stated in his March 27, 2013 letter to Rick Beasley (on behalf of Jefferson Ridge at Benicia LLC) that “the proposal must undergo discretionary review by the Planning Commission (Use Permit) and the HPRC (Design Review)”. (See page 2 of CD Director’s March 27, 2013 letter.)

Furthermore, the proposed project has not yet been scheduled or noticed for the requisite public hearing pursuant to BMC Sections 17.104.040 and 17.104.050 in order to hear the arguments for and against the application nor has it been considered by the Planning Commission. Therefore, even if the CD Director had authority to do so, which he does not, one of the three requisite findings for issuance of a use permit which deals specifically with General Plan consistency cannot yet be made without the proper public hearing and consideration by the Planning Commission:

[i]f, on the basis of the application, plans, materials and testimony submitted, the planning commission...finds that the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the general plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city. (BMC §17.104.060(A)(2).)

Also, considering that “[d]esign review is intended to implement general plan policies” according to BMC Section 17.108.010, the proposed use has not yet gone through the required design review by the HPRC nor has it been scheduled or noticed for the requisite public hearing for design review pursuant to BMC Sections 17.108.020 to 17.108.080.

As a result of the noncompliance with the discretionary review process, including the use permit requirements and design review process under the BMC, any determination regarding the consistency of the proposed project and/or of its use with the General Plan by the CD Director in his March 27, 2013 letter is in error because it is inconsistent with the purposes of the zoning ordinance, specifically and the BMC generally.

Due Process Has Been Violated Because the Public Has Not Participated In the Discretionary Review Process

Due process has also been violated because the public has not had the opportunity to participate in public hearings regarding the discretionary review process for the proposed project, including the opportunity to comment and testify regarding issues related to design review of the proposed project, approval of a use permit, environmental review under CEQA, and the determination of General Plan consistency.

For example, as stated above, the BMC requires a public hearing to hear the arguments for and against an application for a use permit and to hear comments and testimony from the public regarding design review. (See BMC §§ 17.104.050(A), 17.108.070(C), 17.108.080.) This is especially important regarding due process rights for interested parties like Amports and other industrial park occupants who are affected by any decision regarding the proposed project because they must be afforded the opportunity to provide evidence and testimony regarding their concerns, issues, and objections to the proposed project.

Making a Determination regarding Consistency with General Plan Designation is Different Than a Determination regarding Consistency with the General Plan as a Whole

In his March 27, 2013 letter, the CD Director stated “the fact that the use is consistent with the General Plan and the Office Commercial zoning district does not require that it be approved...” The CD Director later confirmed that with his determination in his letter he meant that the use was consistent *with the General Plan*.

Assuming arguendo that the CD Director had authority to determine that the use is consistent with *General Plan designation*, this determination is separate and distinct from a determination that the use is consistent with the *General Plan as a whole*. A determination of consistency with the General Plan has broader implications and the mandated review process necessary to make such a determination has not been completed.

Not only did the CD Director err in making a determination regarding consistency with the General Plan because he exceeded his authority to do so and because the issue is not yet ripe for review, but as will be discussed below, this determination is also in error because the proposed project’s use would result in numerous inconsistencies with the General Plan.

The Proposed Project’s Use is Not Consistent with the General Plan

The CD Director’s determination that the use is consistent with the General Plan is in error and is not supported by the record. The proposed project’s use as an

approximately 500-bed assisted living and memory care facility is inconsistent with the General Plan for a number of reasons, which include among other things inconsistencies involving incompatibility of uses in general; protection and maintenance of Port activity; and encroachment by future incompatible uses on industrial uses. Namely, the use for this proposed project is inconsistent with the General Plan because it does not satisfy or promote many of the General Plan's goals and policies dealing with these issues, including but not limited to the following:

Goal 2.6: Attract and retain a balance of different kinds of industrial uses in Benicia;

Policy 2.6.2: Other land uses should not adversely affect existing industrial and commercial land uses.

Policy 2.6.5 Establish and maintain a buffer between industrial and commercial uses and existing and future residential uses for reasons of health, safety, and quality of life.”

Goal 2.7 Attract and retain industrial facilities that provide fiscal and economic benefit to- and meet the present and future needs- of Benicia;

Goal 2.8 Maintain the viability if the Port now and in the future to benefit the City of Benicia;

Policy 2.8.1 Avoid encroachment by future incompatible uses, and where possible, reduce encroachment of existing incompatible uses in concert with Policy 2.11.1;

Goal 2.9 Ensure adequate land for port activity;

Goal 2.11 Encourage the retention and continued evolution of the lower Arsenal into a historic/cultural/commercial/industrial center of mutually compatible uses.

Policy 2.11.1 Retain and expand the mix of compatible and balanced uses in the lower arsenal;

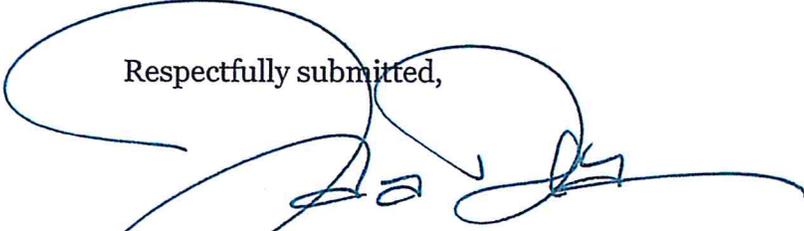
Policy 2.11.2 Continue to allow live/work uses in the lower Arsenal where it can be demonstrated that adequate buffer exists, including noise buffers, and the presence of residents would not significantly constrain industrial operations, including the flow of good and materials;

Policy 4.23.4 Control development of noise sensitive land uses in areas exposed to existing or projected noise which exceeds levels specified in Tables 4-3 and 4-4, unless the project includes specific, effective mitigation measures that reduce interior and exterior noise levels to those specified in Tables 4-3 and 4-4.

In summary, the CD Director's March 27, 2013 determination regarding the proposed project and General Plan consistency is in error and is not supported by the record. It is impossible for *anyone* to have made a supportable determination regarding General Plan consistency at this point in the process. Accordingly, Amports requests that the Planning Commission review the matter and reverse the CD Director's determination.

Thank you for your attention and consideration of this matter.

Respectfully submitted,



DANA DEAN
DD/vvb



March 27, 2013

Rick Beasley
Jefferson Ridge at Benicia, LLC
3462 Stagecoach Trail
Loomis, CA 95650

RE: Proposed Residential Care Facility – Zoning/General Plan Consistency
Address: Jefferson Street, east of Park Road, north of Adams Street
APN: 0080-150-005, -038, -039, -040, -041

Dear Mr. Beasley,

This letter is in response to your request dated March 22, 2013, for a determination regarding Zoning ordinance and General Plan consistency for the proposed assisted living and memory care project located on the parcels referenced above. The subject parcels are located within the CO, Office Commercial zoning district and the Lower Arsenal Mixed Use designation in the General Plan.

The proposed assisted living and memory care facility is determined to be within the Residential Care, General use classification. Per Benicia Municipal Code (BMC) Section 17.16.040, Residential Care, General “means 24-hour nonmedical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the state of California.” Residential Care, General may be allowed within the Office Commercial zoning district upon approval of a Use Permit.

The General Plan states that, the purpose of the Lower Arsenal Mixed Use category is “to continue to encourage a mix of compatible uses in areas of the Lower Arsenal; to promote the upgrading of existing buildings, and the preservation and adaptive reuse of historic buildings; and to allow new, compatible buildings to house mixed use....” [p. 28].

“Mixed use” refers to the presence of different types of activities on a variety of scales, ranging from within individual buildings to lots, blocks, neighborhoods, districts, and/or corridors. The General Plan allows a mix of residential, live/work, office, retail, public, quasi-public, and limited industrial uses in the Lower Arsenal. All of these activities also are allowed among the combination of zoning districts that make up the Lower Arsenal mixed-use district: General Industrial, General Commercial, Office Commercial and Planned Development. Therefore, the General Plan and zoning are consistent with each other.

ELIZABETH PATTERSON, *Mayor*
Members of the City Council
TOM CAMPBELL, *Vice Mayor* . ALAN M. SCHWARTZMAN . MARK C. HUGHES . CHRISTINA STRAWBRIDGE

BRAD KILGER, *City Manager*
H.R. AUTZ, *City Treasurer*
LISA WOLFE, *City Clerk*

Of the uses listed in the General Plan for the Lower Arsenal, the ones allowed in the Office Commercial zoning district are residential (though not on ground floors), retail (though limited), public, quasi-public, and office. Residential Care facilities may be allowed as a quasi-public use ("semipublic" in the language of the zoning ordinance) in the Office Commercial zoning district, subject to use permit review by the Planning Commission.

In summary, the proposed use is consistent with both the Office Commercial zoning district and the Lower Arsenal Mixed Use category in the General Plan, and the zoning ordinance and General Plan also are consistent with each other in this regard. However, the fact that the use is consistent with the General Plan and the Office Commercial zoning district does not require that it be approved: the proposal must undergo discretionary review by the Planning Commission (Use Permit) and the Historic Preservation Review Commission (Design Review).

Please be advised that this decision is final, ten (10) business days from the date of this letter, unless an appeal to the Planning Commission is filed. The deadline to file an appeal is 5:00 p.m. Wednesday April 10, 2013.

If you have any questions, please contact Amy Million, Principal Planner at 707-746-4372 or amillion@ci.benicia.ca.us.

Regards,



Charlie Knox
Community Development Director

Jefferson Ridge at Benicia, LLC

3462 Stagecoach Trail
Loomis, CA 95650
(916) 715-7418
group4@zetabroadband.com

March 22, 2013

City of Benicia, Planning Department
250 East L Street
Benicia, CA 94510
Attn: Amy Million

Re: Compliance finding, Jefferson Ridge at Benicia Assisted Living and Memory Care facility

Dear Ms. Million:

We are requesting that the City of Benicia schedule our assisted living and memory care project for public hearing regarding its consistency with and conformance to existing zoning code and general plan designations.

This project is located at Jefferson and Adams Streets and consists of the following Solano County Assessor Parcel Numbers: 080-150-005, 080-150-038, 080-150-039, 080-150-040 and 080-150-041.

Thank you in advance for your time and considerations.

Sincerely,



Rick Beasley

Copy: Neil Huettenhain, Jefferson Ridge at Benicia, LLC
Steve Gizzi, Gizzi & Reed, LLP



Community Development Department
MEMORANDUM

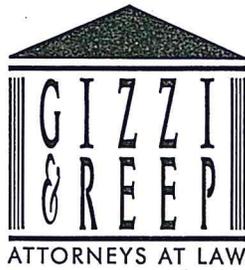
Date: September 13, 2012
To: Planning and Historic Preservation Review Commissions
From: Charlie Knox, Community Development Director
Subject: Proposed Residential Care Facility – Zoning/General Plan Consistency

The purpose of this memorandum is to confirm that the proposal for a Residential Care facility on Jefferson Street is consistent with both the Office Commercial zoning district and the Lower Arsenal Mixed Use category in the General Plan, and that the zoning ordinance and General Plan also are consistent with each other in this regard.

The fact that zoning in the Lower Arsenal has not changed since the General Plan was adopted in 1999 with a mixed-use designation for the area does not make the zoning ordinance and General Plan inconsistent. In fact, the General Plan specifically notes that mixed use was an existing condition in 1999 with the zoning that was then, and still remains, in place: "The purpose of this category is to continue to encourage a mix of compatible uses in areas of the Lower Arsenal..." [p. 28; underline added].

"Mixed use" refers to the presence of different types of activities on a variety of scales, ranging from within individual buildings to lots, blocks, neighborhoods, districts, and/or corridors. The General Plan allows a mix of residential, live/work, office, retail, public, quasi-public, and limited industrial uses in the Lower Arsenal. All of these activities also are allowed among the combination of zoning districts that make up the Lower Arsenal mixed-use district: General Industrial, General Commercial, Office Commercial and Planned Development. Therefore, the General Plan and zoning are consistent with each other.

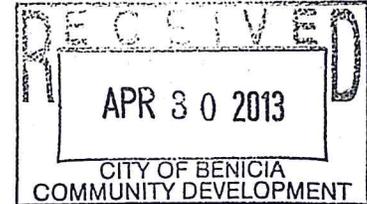
Of the uses listed in the General Plan for the Lower Arsenal, the ones allowed in the Office Commercial zoning district are residential (though not on ground floors), retail (though limited), public, quasi-public, and office. Residential Care facilities may be allowed as a quasi-public use ("semipublic" in the language of the zoning ordinance) in the Office Commercial zoning district, subject to use permit review by the Planning Commission and design review by the Historic Preservation Review Commission. Therefore, the fact that the use is consistent with the General Plan and the Office Commercial zoning does not require that it be approved: it still must undergo discretionary review by both commissions.



Scott D. Reep, Esq.

Stephen Gizzi, Esq.

April 29, 2013



Planning Commission
City of Benicia
250 East L Street
Benicia, California 94510

REF: Jefferson Ridge Assisted Living & Memory Care Facility
Design Review 12PLN-00036 and Use Permit 12PLN-00037

Dear Commissioners:

On behalf of Jefferson Ridge at Benicia, LLC, we submit this response to the Appeal and Supplement submitted on behalf of APS West Coast, Inc. dba Amports, Inc. ("Amports"), regarding the Community Development Director's March 27, 2013 Determination of Zoning Ordinance and General Plan Consistency of the Jefferson Ridge at Benicia, LLC's Proposed Assisted Living and Memory Care Facility. Though the formal Appeal and Supplement comprise over 13 pages, once the duplicative arguments are consolidated, the key issues may be distilled to the following four issues:

ISSUES RAISED AND RESPONSES

- 1) Issue: Amports Alleges That The Community Development Director Exceeded His Authority in Making a Determination Regarding General Plan Consistency

Response: While counsel for Amports agrees that the Community Development Director ("CD Director") has the authority to make determinations regarding interpretation of the Zoning Ordinance as it applies to a specific site, and regarding whether a specific use is within a use classification under the Zoning Ordinance, she alleges that the Benicia Municipal Code ("BMC") does not provide direct authority for the CD Director to make the same determinations with regard to the General Plan. There is nothing in the BMC specifically prohibiting the CD Director from making such determinations and, in fact, BMC §17.16.010 implies that the CD Director *does* have the authority by providing as follows: "...[t]he community development director **shall** determine whether a specific use shall be deemed to be within one or more use classification or not within any classification in this title. The community development director may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification." This language is consistent with the City of Benicia General Plan which

provides that proposed amendments to the plan shall be reviewed by the Planning Department staff, and the Planning Department staff will then prepare a report advising the Planning Commission whether any such amendment should be approved or denied.¹

Counsel for Amports takes issue with the CD Director's use of the term "this decision is final," by stating that "[m]aking a 'final decision' is very different than advising a decision-making body about its final determination." However, when taken in context with the entire March 27, 2013 letter from the CD Director, it is clear that the letter is advisory in nature and is consistent with the CD Director's role in the very public process of decision making with regard to proposed projects in The City of Benicia.

2) Issue: Amport Alleges The Issue of General Plan Consistency is Not Ripe for Review

Response: For the reasons previously set forth, the March 27, 2013 letter from the CD Director is consistent with the CD Director's role in this process. The CD Director is not issuing a zoning permit, and in fact design approval is a prerequisite to issuance of a zoning permit under BMC §17.108.020. Rather, the CD Director's actions are consistent with the sequence of design review set forth in BMC §§17.108.030 and 17.108.040. On the other hand, such an opinion from the CD Director provides a very important service to applicants. The development process is extremely expensive and time-consuming. In cases where the CD Director identifies a lack of project consistency, such a finding can save significant resources for both applicants and City staff.

3) Issue: Amport Alleges Due Process has Been Violated Because the Public has Not Participated in the Discretionary Review Process

Response: As was clearly set forth in the subject Letter, the project is still subject to use permit review by the Planning Commission, and design review by the HPRC. Future public hearings will allow for testimony both for and against the application, and will be conducted in compliance with the Brown Act and the Open Government Ordinance.

4) Issue: Amport Alleges the Proposed Project Use is Not Consistent with the General Plan

Response: Amport's objections to the proposed project are based solely on one thing – Amport's fears that by permitting the development of the project, Amport's ability to circumvent existing noise ordinances will be in jeopardy. Ironically, and as a backdrop to its claims is the fact that, from an economic standpoint, Amport makes no financial contribution to the City, as compared to the proposed Project, which will bring significant

¹ General Plan, p. 11

jobs, tax revenue and development fees to the City, and a much needed service to our area's growing senior population.

Contrary to Amports allegation, and as confirmed by the CD Director, the Jefferson Ridge project is consistent with both the Office Commercial Zoning District and the Lower Arsenal Use category in the General Plan. The Zoning Ordinance and General Plan are also consistent regarding this use. In fact, according to the General Plan, mixed uses are encouraged in the lower Arsenal area. "Mixed Use" refers to different types of activities on a variety of scales. As a residential care facility, this is considered to be a "quasi-public use," which is specifically iterated in the General Plan as an allowable use in the Lower Arsenal.² The General Plan allows mixed uses in the Lower Arsenal and, in fact, *encourages* such uses.

The General Plan sets forth over 90 goals, and yet the appellant has articulated only four which it argues substantiate the claim that the proposed project's use is inconsistent with the General Plan. These four all have to do with industrial uses: the viability of the Port area, the compatibility of the industrial center with the evolution of other uses, and the reduction or elimination of the effects of excessive noise.

A key role of the General Plan is to express the desires of Benicia residents in regard to the physical, social, economic, cultural, and environment character of Benicia.³ It is built on issues defined by the community, many of which were identified during the course of two communitywide surveys conducted as part of formulating the General Plan. These surveys identified a number of community concerns: feeling safe, good public schools, balancing growth, small town atmosphere, giving citizens a voice, attracting business that sustain environmental quality, and pedestrian-friendly streets.⁴ While Amports is essentially advocating a "tail should wag the dog" view of the General Plan, a simple reading of the document in a broader context makes it clear that such an approach was never the intent of the community at large.

Goal 4.1, 4.2, and 4.3 of the General Plan promote making Benicia a healthy and safe community by improving access to medical services and attracting additional health services to Benicia.⁵

American baby boomers recently started turning 65, and the number of people over the age of 65 is projected to rise rapidly over the coming years.⁶ The Jefferson Ridge project will provide an independent and positive environment for the aging population while bringing a significant revenue source to the City.

² Referred to as "semi-public" in the zoning ordinance

³ General Plan, p. 1

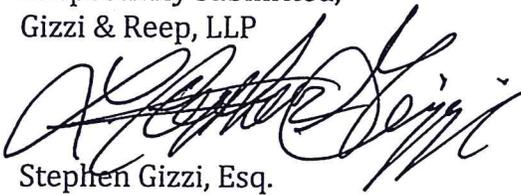
⁴ General Plan, p. 5

⁵ General Plan pp. 142-144

⁶ Linda A. Jacobsen et al., "America's Aging Population," *Population Bulletin* 66, no. 1 (2011).

In summary, the CD Director acted within his authority in determining that the proposed use is consistent with both the Office Commercial Zoning District and the Lower Arsenal Mixed Use category in the General Plan, and that the Zoning Ordinance and the General Plan are consistent with each other. Further, the final decision on the Project can only be made in accordance with the established policies and procedures our City has in place, after duly noticed public meetings, and with an opportunity for public input.

Respectfully submitted,
Gizzi & Reep, LLP

A handwritten signature in black ink, appearing to read "Stephen Gizzi". The signature is stylized and cursive, written over the printed name below it.

Stephen Gizzi, Esq.

AGENDA ITEM
PLANNING COMMISSION MEETING: MAY 9, 2013
REGULAR CALENDAR

DATE : April 25, 2013

TO : Planning Commission

FROM : Adam Petersen, Contract Associate Planner

SUBJECT : **USE PERMIT TO ADD AN OUTDOOR FITNESS AREA AT THE EXISTING HEALTH AND FITNESS FACILITY AT 608 FIRST STREET (BENICIA FITNESS)**

PROJECT : 13PLN-00016 Use Permit
608 First Street
APN: 0089-342-230

RECOMMENDATION:

Approve a use permit to add an outdoor fitness area to the existing health and fitness facility located at 608 First Street, based on the findings, and subject to the conditions listed in the draft resolution.

EXECUTIVE SUMMARY:

Benicia Fitness has requested a Use Permit to expand the existing health/fitness facility at 608 First Street to an outdoor patio area located within the rear courtyard. The patio area is proposed to be used for fitness activities from 9AM to 8PM, Monday through Friday, 9AM to 4PM on Saturday, and 9AM to 3 PM on Sunday. Equipment includes a speed bag, weighted sled, dumbbell rack, bench presses and heavy bag. The applicant proposes amplified music in the courtyard area during these hours.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is Categorically Exempt under Section 15301(e) of the State of California Environmental Quality Act (CEQA) Guidelines, which exempts minor alterations to existing facilities involving negligible or no expansion of use. The use of the outdoor patio area will involve minor alterations that include pouring a concrete slab within a 624 square foot area for the placement of fitness equipment.

GENERAL PLAN:

Relevant General Plan Goals and Policies:

- GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
- GOAL 2.12: Strengthen the Downtown as the City's central commercial zone.
 - Policy 2.12.2: Permit a mix of residential and commercial uses including detached single-family homes and live/work quarters in the first row of blocks east and west of First Street. Allow small retail commercial businesses on parcels closest to First Street, and small, less intense uses (such as offices, personal services, and bed-and-breakfast establishments) anywhere within the block.
 - Policy 2.12.3: Seek to make Downtown a thriving and vigorous community center offering a variety of activities and attractions for residents and visitors.

BUDGET INFORMATION:

No budget impacts are anticipated.

BACKGROUND:

Applicant: Lori Bishop, Benicia Fitness, Inc.

Owner: Laverne Willits

General Plan Designation/Zoning: Downtown

Existing use: Health/Fitness Facility

Adjacent uses and zoning:

	Existing Use	Zoning
Subject Site	Health/Fitness Facility	Town Core
North	Mixed Use – Retail and Residence	Town Core
South	Retail	Town Core
East	Glass blowing studio	Town Core
West	Chamber of Commerce / Hair Salon	Town Core

In 1994, the Planning Commission approved a use permit for a 3,000 square foot health and fitness facility at 606 First Street. Subsequently, the Zoning Administrator approved an expansion of the facility to the 950 square foot studio at 608 First Street in 2004. In 2007, the parcel was rezoned to Town Core as part of the adoption of the Downtown Mixed Use Master Plan (DMUMP). The DMUMP requires that health and fitness facilities over 1,500 square feet are subject to Use Permit approval by the Planning Commission.

SUMMARY:

A. Project Description and Location:

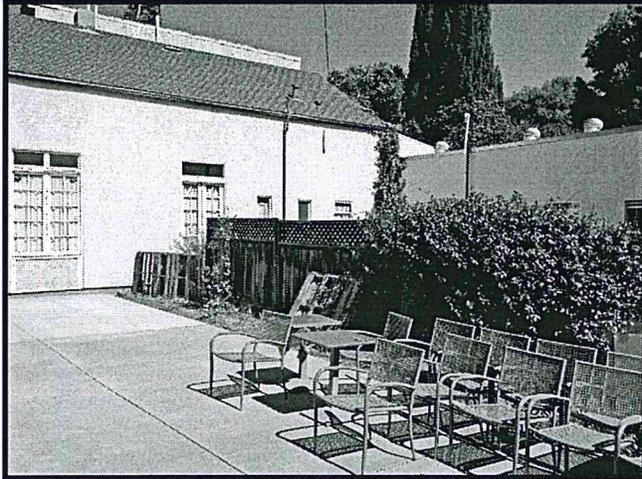
The applicant is requesting approval of a use permit to expand their existing health/fitness facility (Benicia Fitness) located at 606/608 First Street. The expansion to the fitness facility comprises a 624 square foot outdoor patio area to be used for fitness related purposes. The patio area is located in the rear courtyard, to the side of the building at 606 First Street and to the rear of the building located at 608 First Street. Figure 1 provides an aerial image of 606 and 608 First Street.

Figure 1: 606/608 First Street Aerial



Access to this patio area is provided through the side door of 606 First Street and rear door of 608 First Street. The open courtyard is divided in half by a wood fence. East of the fence would remain open and unused by the tenant. West of the fence would contain the workout equipment. Equipment will include a weighted sled on artificial turf, dumbbell rack, bench presses on rubber mats, heavy bag, an existing table and chairs, exercise balls, and weight tree. An existing speed bag is currently used by gym members. The applicant proposes to have amplified music in the courtyard area during fitness uses (see attached site plan). Figure 2 below shows the patio area.

Figure 2:



View of patio area looking at the mixed use building.



View of patio area toward 608 First Street (on the right) and 606 First Street (in rear).

Benicia Fitness currently operates from 5 AM until 9 PM Monday through Thursday and from 5AM to 8PM on Fridays. Saturday and Sunday hours of operation are from 7:30 AM to 4 PM and 7:30 AM to 3 PM, respectively. The applicant proposes to operate the outdoor fitness area between the hours of 9 AM to 8 PM, Monday through Friday, 9 AM to 4 PM on Saturday and 9 AM to 3 PM on Sunday.

Table 1 – Proposed Hours of Patio Operation

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6 AM							
7 AM							
8 AM							
9 AM							
10 AM							
11 AM							
12 PM							
1 PM							
2 PM							
3 PM							
4 PM							
5 PM							
6 PM							
7 PM							
8 PM							
9 PM							

B. Zoning Ordinance and Downtown Mixed Use Master Plan Consistency: The proposed project is located within the Downtown Mixed Use Master Plan (DMUMP). The subject building is located within the Town Core (TC) Zoning district. The DMUMP establishes land use regulations and development standards for structures, parking, encroachments, and frontage types. The project is not subject to the development standards for structures, parking, encroachments, or frontage types because the project does not propose to expand or construct any structures.

Parking

The subject property does not provide any off-street parking. The DMUMP requires that one parking space be provided for every 500 square feet of floor area for uses larger than 3,000 square feet. The total fitness area is approximately 4,574 square feet (3,000 square foot main facility; 950 square foot fitness studio, and 624 square foot proposed outdoor fitness area) and would therefore generate a total parking demand of approximately 10 spaces.

The DMUMP notes that parking may be provided off-site within 1,300 feet or as shared parking. There is parking for the project along First Street as well as along East and West F Streets that can accommodate the required number of parking spaces. Therefore, the project is consistent with the parking requirements in the DMUMP.

Noise

Benicia Municipal Code (BMC) Chapter 8.20 Noise Regulations prohibits excessive noise that "disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area." It also provides standards that are considered in determining whether a violation of the ordinance exists. The Police Department regularly enforces Chapter 8.20 and responds to citizen complaints under the provisions of this ordinance. BMC Section 8.20.080B and C state, respectively, that sound amplifying equipment shall only be used from 9 AM to 8 PM, and shall not exceed 15 decibels above the existing ambient noise level. Amplifying equipment is defined as 'any machine or device for the amplification of the human voice, music, or any other sound.' This would include a stereo or speaker for music.

On the north side of the subject property, immediately adjacent to the patio area is a mixed-use residential and commercial building at 620 First Street. The retail business at 620 First Street currently operates from 11 AM to 5:30 PM Tuesday through Sunday. The location of the residential unit to the side of the subject patio area presents potential conflicts in regard to noise levels.

The applicant has proposed to use the outdoor patio area from 9 AM to 8 PM Monday through Friday. Due to the location of the residential unit, staff is concerned with the impact of the amplified music on the residence. Staff is recommending in Condition of Approval No. 4 that amplified music be limited from 9 AM to 7 PM to help preserve the peaceful enjoyment of the neighborhood as intended by the noise regulations. During all other hours of operation, Benicia Fitness would be subject to the 15 decibel standard for sound amplification equipment.

It is unlikely that use of the fitness equipment itself will generate much noise. Benches are placed on black rubber mats; the speed bag has been in existence since 1994 when the applicant opened business; the weighted sled is placed on artificial surface; the table and chairs were installed in 2004 with the use permit for the studio space; and the exercise balls make minimal noise when in use. Therefore, the equipment will not generate noise beyond acceptable and tolerable levels for the adjacent resident. Further, the use would be subject to the provisions of Chapter 8.20 of the BMC which would ensure noise levels do not adversely affect the public health, safety and welfare.

C. General Plan Consistency:

General Plan Goal 2.5 is to *facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.* The installation of an outdoor fitness area will promote the economic vitality of First Street by supporting local a business's efforts to expand and enhance their services to new and existing clients. Compliance with the findings for a use permit will ensure that health, safety and quality of life are maintained for the citizenry.

General Plan Goal 2.12 is to strengthen the Downtown as the City's central commercial zone.

General Plan Policy 2.12.2 is to *permit a mix of residential and commercial uses including detached single-family homes and live/work quarters in the first row of blocks east and west of First Street. Allow small retail commercial businesses on parcels closest to First Street, and small, less intense uses (such as offices, personal services, and bed-and-breakfast establishments) anywhere within the block.* Approval of a use permit would allow the commercial use to expand their business while integrating with mixed-use quarters in the area.

General Plan Policy 2.12.3 seek(s) to *make Downtown a thriving and vigorous community center offering a variety of activities and attractions for residents and visitors.* The outdoor fitness area will promote Benicia Fitness and offer more fitness options to existing and potentially new clients. The attraction of new

clients seeking a variety in their workout and workout locations will make Downtown Benicia a thriving destination for people. It will allow Benicia Fitness to remain competitive in an ever evolving and fast paced world of personal fitness, which will help sustain and develop their business.

D. Findings:

Pursuant to Benicia Municipal Code Section 17.104.060, in order to approve the use permit, the Planning Commission must make the following findings:

- 1) *That the proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located.*

The proposed fitness facility is located in the Town Core Zone established by the Downtown Mixed Use Master Plan (DMUMP), and is subject to the standards therein. The project does not propose any structures; therefore the development standards of the DMUMP do not apply. The project is required to comply with Chapter 8.20 of the Benicia Municipal Code, and it meets the prescribed standards for hours of noise amplification.

- 2) *That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the general plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city.*

The proposed use is consistent with the General Plan, the DMUMP, and the Zoning Ordinance and will therefore not be detrimental to the public health, safety, or welfare, or properties or improvements in the vicinity or to the general welfare of the City. The proposed expansion of Benicia Fitness will attract more individuals to downtown Benicia which will enable them to peruse existing businesses. Further, additional clients develop the business of Benicia Fitness and therefore sustain and promote economic development.

The subject project is consistent with the provisions of the DMUMP which ensures that uses are not detrimental to the public health, safety, welfare and properties. The project ensures that all uses will be conducted on the gyms property, which will therefore not subject other property owners to liability for gym patrons. The downtown area provides adequate parking for the proposed use and will therefore not impact the ability of persons in the downtown to park and patronize

other businesses. There are no structures as part of the project that would be subject to the DMUMP, therefore development standards relating to setbacks, height, signage, and lot frontage that ensure development does not impact adjacent properties would not be applicable to this project.

The project is required to meet the standards prescribed by the City of Benicia's Noise Ordinance (Chapter 8.20). Compliance with these standards ensures that the use will not be detrimental to the public health, safety and welfare.

- 3) *That the proposed conditional use will comply with the provisions of this title, including any specific condition required for the proposed conditional.*

The project is required to comply with the standards contained in the Benicia Municipal Code as well as the conditions of approval in place for previous projects. The project is consistent with all previous conditions of approval. Failure to comply with the Benicia Municipal Code will result in termination of the use.

CONCLUSION:

Staff believes the use is appropriate for this location and recommends that the Planning Commission approve the use permit. The use, if approved, will be subject to the noise ordinance and conditions of approval which will ensure that the public health, safety and welfare are maintained.

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten business days.

Attachments:

- Draft Resolution
- Site Plan

DRAFT RESOLUTION

RESOLUTION NO. 13- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A CONDITIONAL USE PERMIT FOR AN OUTDOOR FITNESS AREA AT 608 FIRST STREET, BENICIA FITNESS (13PLN-00016; APN: 0089-342-230)

WHEREAS, on March 7, 2013, Lori Bishop of Benicia Fitness submitted an application for a Use Permit for the installation and use of a 624 square foot outdoor fitness area to expand the existing health/fitness facility of Benicia Fitness; and

WHEREAS, the Planning Commission at a regular meeting on May 9, 2013 conducted a public hearing and reviewed the proposed project; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby approves the proposed project based on the following findings:

- a). This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (e), Additions to Existing Facilities which exempts minor alterations to existing facilities involving negligible or no expansion of use. The use of the outdoor patio area will involve minor alterations that include pouring a concrete slab within a 624 square foot area for the placement of fitness equipment. The outdoor area is less than 50 percent of the floor area of the existing gym (3,000 square feet) and 2,500 square feet. All public services and facilities are available and the area is not considered environmentally sensitive because of the urban uses surrounding the project site. Staff reviewed the proposed project and did not find any evidence that special circumstances exist that would create a reasonable possibility that the proposed project will have a significant adverse effect on the environment. Therefore, this project qualifies for the identified exemption and no further environmental review is required.
- b). *That the proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located.*

The proposed fitness facility is located in the Town Core Zone established by the Downtown Mixed Use Master Plan (DMUMP), and is subject to the standards therein. The project does not propose any structures; therefore the development standards of the DMUMP do not apply. The project is required to comply with Chapter 8.20 of the Benicia Municipal Code, and it meets the prescribed standards for hours of noise amplification.

- c) *That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the general plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city.*

The proposed use is consistent with the General Plan, the DMUMP, and the Zoning Ordinance and will therefore not be detrimental to the public health, safety, or welfare, or properties or improvements in the vicinity or to the general welfare of the City. The proposed expansion of Benicia Fitness will attract more individuals to downtown Benicia which will enable them to peruse existing businesses. Further, additional clients increase the business of Benicia Fitness and therefore sustain and promote economic development.

The subject project is consistent with the provisions of the DMUMP which ensures that uses are not detrimental to the public health, safety, welfare and properties. The project ensures that all uses will be conducted on the gym property, which will therefore not subject other property owners to liability for gym patrons. The downtown area provides adequate parking for the proposed use and will therefore not impact the ability of persons in the downtown to park and patronize other businesses. There are no structures as part of the project that would be subject to the DMUMP, therefore development standards relating to setbacks, height, signage, and lot frontage that ensure development does not impact adjacent properties would not be applicable to this project.

The project is required to meet the standards prescribed by the City of Benicia's Noise Ordinance (Chapter 8.20). Compliance with these standards ensures that the use will not be detrimental to the public health, safety and welfare.

- d) *That the proposed conditional use will comply with the provisions of this title, including any specific condition required for the proposed conditional.*

The project is required to comply with the standards contained in the Benicia Municipal Code as well as the conditions of approval in place for previous projects. The project is consistent with all previous conditions of approval. Failure to comply with the Benicia Municipal Code will result in termination of the use.

BE IT FURTHER RESOLVED the approval of the proposed project by the Benicia Planning Commission is subject to the following conditions:

1. The development approved by this action is for a *Conditional Use Permit* to permit a 624 sq. ft. outdoor fitness area as described in the Planning Commission report on May 9, 2013, including the hours of operation, and associated Exhibits and Attachments dated March 7, 2013, as illustrated in the project plans described below and attached herein as Exhibit B. Any deviations from the approved plans shall be reviewed by the City for substantial compliance and may require amendment by the appropriate hearing body.

2. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit and the commencement of work that is diligently pursued to completion. Alternatively, the time period may be extended, by the Community Development Director, if the application for time extension is received prior to the end of the initial two year deadline and there has been no change in the City's development policies, which affect the site and there is no change in the physical circumstances nor new information about the project site which would warrant reconsideration of the approval.
3. The patio area is permitted to be used for fitness activities between the hours of 9 AM to 8 PM, Monday through Friday, 9 AM to 4 PM on Saturday and 9 AM to 3 PM on Sunday. Equipment includes a speed bag, weighted sled, dumbbell rack, bench presses and heavy bag.
4. Sound amplifying equipment is allowed during fitness uses in the outdoor patio area limited to 9 AM to 7 PM Monday through Friday, 9 AM to 4 PM on Saturday and 9 AM to 3 PM on Sunday
5. The project shall adhere to all applicable ordinances, standards plans, and specifications of the City of Benicia.
6. The project shall comply with all conditions of approval described in the project Use Permit 94-6 and Decision of Record ZA 04-2 and those conditions provided herein.
7. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Historic Preservation Review Commission, Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * **

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted at a regular meeting of the Planning Commission of the City of Benicia on May 9, 2013 by the following vote:

Ayes:

Noes:

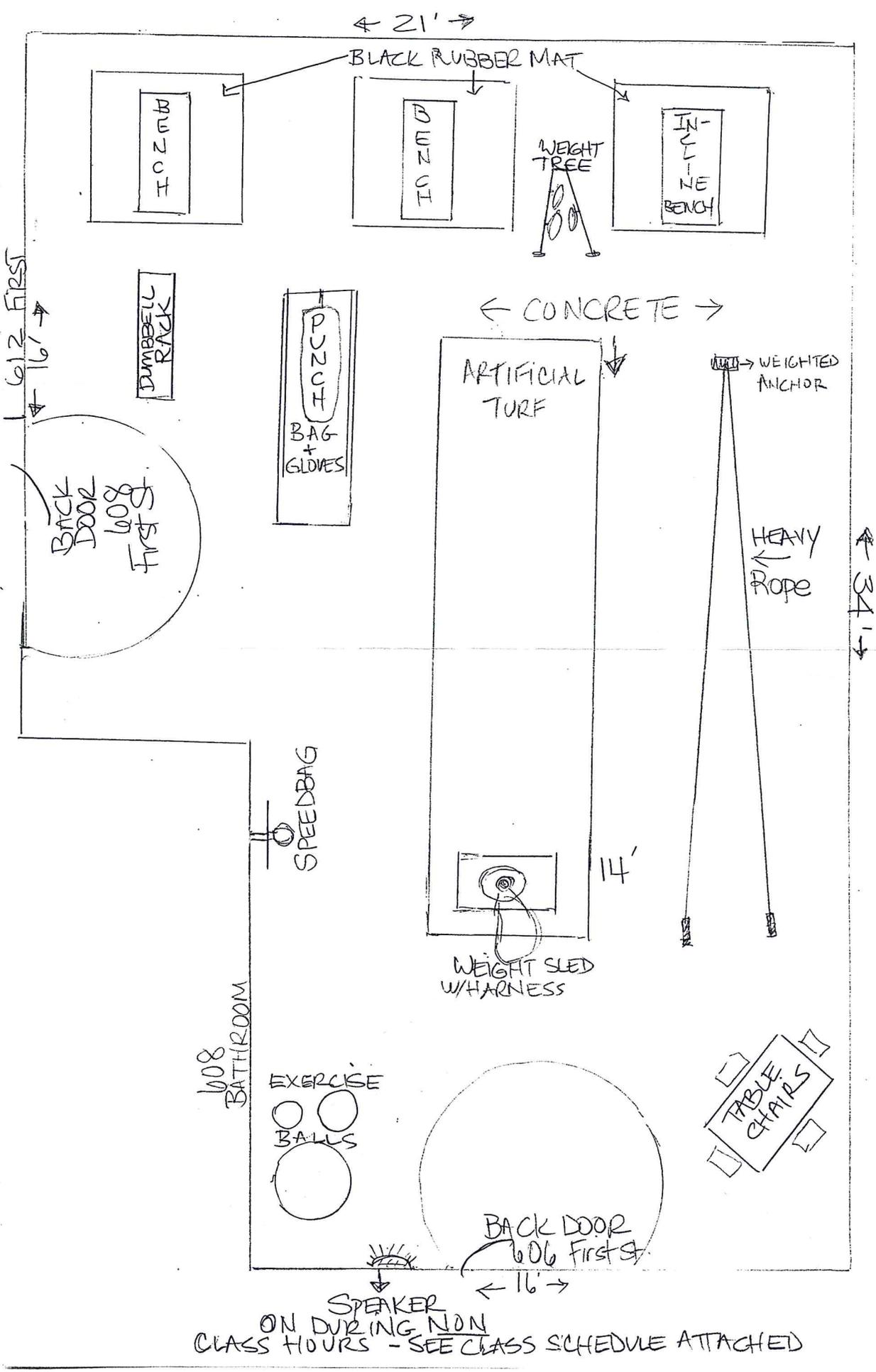
Absent:

Abstain:

Rod Sherry
Planning Commission Chair

SITE PLAN

BENICIA FITNESS 606 + 608 First Street



SPEAKER ON DURING NON CLASS HOURS - SEE CLASS SCHEDULE ATTACHED