

**ACTION MINUTES**  
**Town of Tiburon**  
**Planning Commission – Regular Meeting**  
**August 27, 2003**

**CALL TO ORDER AND ROLL CALL**

**7:30 PM**

Commissioner Collins, Commissioner Greenberg, Commissioner Stein,  
Vice-Chairman Snow, Chairman Smith

**All Present**

**ORAL COMMUNICATIONS**

**There Were None**

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) minutes.

**COMMISSION AND STAFF BRIEFING**

Staff Update  
Commission Information Items

**REGULAR AGENDA**

**Chairman Smith and Commissioner Greenberg Recused  
Themselves Due to Potential Conflicts of Interest**

1. CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT FOR THE TIBURON GLEN PRECISE DEVELOPMENT PLAN TO CREATE EIGHT BUILDING SITES ON A 26.03 ACRE PARCEL; 3700 BLOCK OF PARADISE DRIVE NEAR NORMAN WAY; Xanadu Property Holdings, Inc., Owners; Assessor's Parcel No. 39-241-01 **M/S Stein/Collins (3-0) to Recommend Certification of the EIR to the Town Council**

**ADJOURNMENT 9:15 PM**

Future Agenda Items  
CEQA Workshop (Date Undetermined)  
a082703

**MINUTES NO. 884**

**Planning Commission  
August 27, 2003  
Regular Meeting  
Town Council Chambers  
1505 Tiburon Boulevard, Tiburon, CA**

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Chair Smith called the meeting to order at 7:30 p.m.

**ROLL CALL**

Present: Chair Smith, Commissioners Collins, Greenberg, Snow and Stein

Staff: Community Development Director Anderson; Town Attorney Danforth; Consulting Planner Allsep; EIR Consultants Berman, Harrison, Cole, & Hopkins

**ORAL COMMUNICATIONS**

There were none.

**COMMISSION AND STAFF BRIEFING**

Community Development Director Anderson noted that as yet there were no items scheduled for the September 10<sup>th</sup> meeting, and the Commission may wish to consider canceling that meeting at the end of this meeting.

**REGULAR AGENDA**

1. CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE TIBURON GLEN PRECISE DEVELOPMENT PLAN TO CREATE EIGHT BUILDING SITES ON A 26.03 ACRE PARCEL; 3700 BLOCK OF PARADISE DRIVE NEAR NORMAN WAY; Xanadu Property Holdings, Inc., Owners; Assessor's Parcel No. 39-241-01

Commissioner Greenberg recused herself from participation on this item as a Planning Commissioner due to the fact that her personal residence was within 500 feet of the property and that constituted a financial conflict of interest. She reserved the right to speak as an individual on this application.

Chairman Smith stated that he was currently being retained by Sanitary District No. 5 and this could pose a potential conflict or the appearance of a conflict as this property was seeking permits from the Sanitary District. He recused himself from participation as a Planning Commissioner on this item and left the room.

Anderson introduced the various consultants at the staff table, including EIR Biologist Rick Hopkins, EIR consultants Bob Berman and Jordan Harrison, and EIR Transportation Consultant Carolyn Cole.

Allsep presented the staff report, highlighting those changes to the RDEIR that were made as a result of the comments received during the public review period. She concluded by stating that the Final EIR does not reveal any new significant impacts, any substantial increase in the severity of impacts, or other information that would require recirculation. She recommended that the Planning Commission recommend certification of the FEIR to the Town Council.

Commissioner Stein asked that if the Planning Commission wished to make changes to the document or wanted additional information, how that request might affect the Town Council hearing set for September 3<sup>rd</sup>.

Town Attorney Danforth responded that it would depend on the nature of the changes. Such changes could be part of the Planning Commission's recommendation to the Town Council or, if additional information was requested, it could be supplied prior to the merits hearings but not as part of the EIR certification.

Commissioner Collins noted that many letters have been received in the day or two prior to this meeting and asked if the consultants had the opportunity to review the letters. Allsep responded that the consultants have read the late mail letters. Danforth noted that late mail occurs with most EIRs of a controversial nature and that this is not unusual, although it can be frustrating to decision-makers.

Commissioner Stein asked that the consultants be identified again and Allsep repeated the names and roles of the consultants.

Chairman Snow opened comment to the public.

John Kunzweiler, Norman Way, stated that he disagreed with many of the statements made in the Staff Report. In some cases, he thought the FEIR had made the situation worse. He asserted that the Town might have legal exposure from approving a project based on an inadequate EIR. Mr. Kunzweiler listed a series of concerns with the project and the EIR. He also asserted that the EIR is rapidly losing its integrity, based on the comments from the Sudden Oak Death Syndrome (SODS) researchers, and that the proposed mitigation of bicycle rest stops is not a serious mitigation for traffic problems. He stated that the alternative 3-lot design included in the FEIR was not requested by neighbors. His most serious concern with the EIR was the tree loss mitigations and the two SODS researchers who disavowed any support for this mitigation measure. He asserted that these issues call into question the integrity of the entire document.

Commissioner Stein asked if the two SODS researchers who sent letters had discussed the merits of the original mitigation measure with Mr. Kunzweiler, who responded that they had not. Commissioner Stein wanted to know Mr. Kunzweiler's interpretation of the two mitigation measures (old and new). Mr. Kunzweiler said the issue was complex and referred the Commissioners to Mr. Grassetti's letter for details.

Scott Pearson, Norman Way, echoed Mr. Kunzweiler's comments. He described the alternative 3-lot project as a good faith effort to describe a project that did not rely on two development areas, but expressed serious concerns about the proximity of the lots in that alternative to his home and that of his neighbors, Anne and Olav Norman. He preferred the location of homes to be farther from their homes if development was to be confined to a single development area. Mr. Pearson submitted a drawing to the Commission showing the lots that concerned him.

Anne Norman, Norman Way, read her letter dated August 27, 2003 into the record for the Commission.

Sandra Swanson, Seafirth Estates, noted the many references in the EIR to Paradise Drive as an unsafe roadway. She summarized the points made in her letter dated August 26, 2003. She recommended deletion of the rest stop mitigation along the property frontage and strongly urged that only one entry road to the project be allowed.

Randy Greenberg, Norman Way, addressed the loss of woodlands issue and said that wrong solutions could permanently change the visual character of the area. She spoke with a SODS expert, Janice Alexander, who was consulted for this EIR, and who expressed her dissatisfaction with the new mitigation measure. Greenberg said the original mitigation called for minimizing tree removal and finding off-site replacement sites. She compared the thrust of the old and new mitigation measures for the Commission. She found the new mitigation measure had internal conflicts, was poorly written, not easily understood, and believed it wouldn't work. She mentioned the two SODS researchers who expressed their concerns about the new measure. She also believed that replacement of tree canopy with new saplings would increase erosion. She encouraged the Commission to recommend the original tree loss mitigation measure to the Town Council.

Commissioner Stein asked why she believed the mitigation measure changed. Greenberg responded that she could only speculate, but that she found the first one far superior.

Chairman Snow asked if there were any other comments. There being none, he closed the public comment and thanked the public for their letters and comments. The item was returned to the Commission for discussion.

Commissioner Collins had questions about the tree loss mitigation. Hopkins responded that he apologized for any misunderstandings about attribution. He wrote both the old and new mitigation measures, and in no way intended to imply that any of the SODS experts consulted had in any way approved the mitigation measures. In fact, they had never seen them before publication of the EIR. Hopkins explained the difference between the old and new tree loss mitigation measures, and the differing circumstances in which they had been developed. The first measure was developed when the extent of tree loss was not known, and it was conceivable that the site would lose all of its tree cover depending on the unknown extent of landslide repair activities. Once the subsequent landslide repair information was developed, a mitigation measure more appropriately crafted to this site and this project could be developed. This led to the formulation of the new mitigation measure. Hopkins emphasized that the tree planting methods and success standards were essentially the same for both mitigations, and noted that the project would preserve 17 acres of oak woodland.

Commissioner Stein found the concept that preservation in itself should weigh heavily as mitigation to be disturbing, since the preserved areas were unbuildable to begin with. Hopkins responded that from a biological standpoint, whether the portion of a site is buildable or not is irrelevant. The preservation by itself is biologically very important.

Commissioner Stein asked about the letter from [SODS researcher] Mr. Garbelotto. Why did Mr. Garbelotto find the new mitigation “ecologically and socially irresponsible”? Hopkins repeated that he never meant to imply that Mr. Garbelotto had written or reviewed the mitigation measure. He could not say exactly what the concerns were, but that he appeared to be under the impression that elements of the mitigation measure were attributed to him, which they were not.

Danforth asked Hopkins to clarify what the expertise of the two SODS consultants who had expressed concerns might be. Hopkins responded that Mr. Garbelotto is a plant pathologist and researcher, not an expert in restoration. Hopkins believed that Ms. Alexander had some restoration expertise, but noted that both scientists are researchers who are probably not familiar with CEQA and with the development of mitigation measures.

Commissioner Collins asked about the susceptibility issue of the replacement trees. Hopkins said that susceptibility of trees to SODS is not fully understood, but that other factors weigh in as well. For example, you must select trees that do well in a fairly wet environment such as the north-facing Tiburon Glen hillsides. That rules out many trees that otherwise flourish in California climates. Hopkins stated that it is generally accepted that young oak trees appear to fare better (are more resistant to SODS), although no one knows why.

Commissioner Snow asked if tree replacement ratios were sacred or could be changed by the Town. Hopkins replied that ratios may be changed. There is no standard tree replacement ratio for oak woodland, unlike that established for riparian vegetation.

Allsep clarified that there seemed to be some confusion about the tree replacement ratios in the two mitigation measures. The original mitigation measure contained a 3:1 tree replacement ratio, while the new mitigation measured replacement in terms of acres, not trees. If converted to a tree replacement ratio, the new mitigation would be approximately a 2:1 tree replacement ratio. Hopkins agreed.

Commissioner Collins asked if trees would be replaced in otherwise undisturbed areas. Hopkins replied that “enhancement” would occur in the undisturbed areas. “Replacement” would occur in areas that were graded for the landslide repair.

Commissioner Stein asked about increased runoff due to the removal of tree canopy area as part of the woodland “enhancement” process. Allsep said the EIR hydrologist had been asked this specific question and quoted from a response to comment that peak runoff would not increase from the canopy removal and that ground infiltration might actually increase slightly.

Commissioner Collins asked about the new 3-lot alternative that was developed in the FEIR, asking whether this was from the developer. Allsep responded that this alternative was a collaborative effort of staff and the EIR consultants, based on attempting to reduce landslide repair secondary impacts [the most environmentally damaging impacts that would be created by this project], while limiting the project to a single development area. The proximity of proposed homes to existing homes was not a factor in developing this alternative, as CEQA directs that alternatives should focus on reducing environmental impacts.

Commissioner Stein commented that the vagueness of this project had been a problem over time and had made completion of the EIR a difficult process. He indicated that had the applicant been more cooperative and proactive, the process could have been easier and faster. He read from the Shute, Mihaly, Weinberger letter of August 26<sup>th</sup> regarding the tree loss mitigation. He expressed concern about recommending this EIR to the Town Council for certification with the currently-proposed tree mitigation measure.

Danforth responded that CEQA requires environmental analysis to be performed at the earliest stage of project review, when the least detail is known about a project. This can be very frustrating, and EIR analysis often relies on a worst-case scenario. In this case, the impacts of the proposed 8-lot project cannot be mitigated to a less than significant level.

Commissioner Collins asked if the 2-lot alternative results in the same conclusion. Allsep said that the EIR found that with mitigation, the 2-lot alternative could reduce all impacts to less than significant levels.

Commissioner Stein noted that CEQA can be viewed as the “environmental eye on the developer guy”. This applicant was less cooperative than most in working with staff and neighbors to resolve impacts through design changes to the project, and this was unfortunate.

Commissioner Stein stated that he was prepared to make a motion to recommend certification of the FEIR to the Town Council as submitted.

Commissioner Collins asked the Town Attorney if she found the EIR adequate. Danforth responded that she believed the EIR had performed its required functions under CEQA.

**M/S Stein/Collins (3-0) to recommend to the Town Council certification of the Tiburon Glen Final Environmental Impact Report as submitted.**

Anderson asked whether the Commission desired to cancel its September 10<sup>th</sup> meeting.

**M/S Stein/Collins (3-0) to cancel the September 10, 2003 meeting.**

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:15 p.m.

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WAYNE SNOW, VICE-CHAIR  
Tiburon Planning Commission

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SCOTT ANDERSON, SECRETARY

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