



**TOWN OF TIBURON  
PLANNING COMMISSION  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
Action and Approved Minutes  
December 13, 2004 – 7:30 PM**

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## **ACTION MINUTES**

### **CALL TO ORDER AND ROLL CALL                      7:30 pm**

Chairman Collins, Vice Chairman Kunzweiler, Commissioner Fraser, Commissioner Hermann, Commissioner Snow

### **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.

### **PUBLIC HEARING**

TIBURON GLEN PRECISE DEVELOPMENT PLAN: FILE #30403; CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING A PRECISE DEVELOPMENT PLAN (PD#22) TO CREATE FOUR BUILDING SITES ON A 26.03 ACRE PARCEL; REVIEW OF ADDENDUM TO CERTIFIED EIR; 3700 BLOCK OF PARADISE DRIVE NEAR NORMAN WAY; XANADU PROPERTY HOLDINGS, INC., OWNERS; ASSESSOR'S PARCEL NO. 39-241-01                      Continued to Meeting of January 26, 2005

### **ADJOURNMENT      10:30 pm**

**MINUTES NO. 902  
PLANNING COMMISSION  
December 13, 2004  
Special Meeting  
Town Council Chambers  
1505 Tiburon Boulevard, Tiburon, California**

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**CALL TO ORDER AND ROLL CALL**

Present: Chair Collins, Vice-Chairman Kunzweiler, Commissioners Fraser & Hermann

Absent: Commissioner Snow

Staff Present: Community Development Director Anderson, Contract Planner Allsep, Miller Pacific Engineer Stephens, EIR Consultant Berman, EIR Consultant Harrison and Meeting Recorder Flanagan

**ORAL COMMUNICATIONS**

Betsy Little asked that a discussion/description of the Ling Property be included in the draft General Plan Land Use Element, as was done for the other large undeveloped properties.

**PUBLIC HEARING**

**TIBURON GLEN PRECISE DEVELOPMENT PLAN #30403; CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING A PRECISE DEVELOPMENT PLAN (PD #22) TO CREATE FOUR BUILDING SITES ON A 26.03-ACRE PARCEL; REVIEW OF ADDENDUM TO CERTIFIED EIR; 3700 BLOCK OF PARADISE DRIVE NEAR NORMAN WAY; XANADU PROPERTY HOLDINGS, INC., OWNERS; ASSESSOR'S PARCEL NO. 39-241-01**

Vice-Chair Kunzweiler recused himself from this item as his home is within 500 feet of the site.

Planner Allsep presented the Staff report in some detail. She noted the November 2004 plans were prepared by applicant's team, not Staff. Modification of landslide stabilization methods for Landslides D and E and the relocation of Lot 2 would reduce site impacts from landslide repair, although the impacts would continue to be significant and unavoidable. Home sizes would range from 4,100 to 4,500 square feet, consistent with recently-approved homes on planned development lots; however, the Commission may require further floor area reductions to increase neighborhood compatibility. The proposed deer fence will be visible from Paradise Drive and may lead owners to think they can landscape outside the residential use areas on the lots. She requested that the Commission consider whether to allow or delete the deer fencing.

Commissioner Hermann asked who, apart from the developer, is responsible for the landslides, a public problem.

Community Development Director Anderson responded that if the Town has been made aware of landslides and takes no action to ensure their repair, then the Town could potentially have some liability should something bad happen with the slide. The Town can require the landslide repairs at this time on this site because of the subdivision application.

Commissioner Hermann asked if Staff feels there is consistency of the draft General Plan to this project.

Community Development Director Anderson responded the project is being reviewed under the current General Plan, which is the only plan that has any force and effect. On balance, Staff feels the project is consistent with and furthers the goals and objectives of the General Plan.

Commissioner Fraser asked if the Town has approved a development where there were four significant unavoidable impacts that were allowed because of overriding considerations.

Community Development Director Anderson responded that the Perini project off Trestle Glen, the Highlands subdivision off Cecilia Way, and the Vista Tiburon project are some examples of projects where the Town adopted overriding considerations. There were 26 significant unavoidable impacts accepted as part of the current General Plan adoption. There has been no cause to introduce overriding considerations in recent years because projects have been small; however, this project site has very serious environmental restraints.

Commissioner Fraser asked if the visual impact analysis of this project design was adequate, as there were no photosimulations.

Planner Allsep stated that photosimulations are not required for visual analysis and there is judgment used by the EIR preparer in assessing visual impacts, which are somewhat subjective by nature. She believed that the visual analysis was adequate given the nature of the changes from the prior plan where there were photosimulations prepared.

Commissioner Fraser noted he asked at the last meeting for information regarding potential trauma to the site, including the amount of land moved offsite, and asked the difference between the excavation in the previous proposal and the proposed excavation plan.

Miller Pacific Engineer Stephens stated that most of the grading reduction was because, instead of excavating one-half Landslide E and rebuilding it, vertical retaining walls could be drilled into the surface and held onto the rock by tiebacks, which would buttress the landslide and result in a smaller disturbed area, which would be within the work limits of the road itself. This retaining wall would minimize trauma to the hill.

Chair Collins asked whether Staff directed the November 2004 alternative referred to in the letters from IPA, Inc.

Planner Allsep responded that Staff recommended IPA look into it, including reducing the surface area and the amount of trees impacted, and to consider the alternative slide repair methodology. It is not a Town plan; rather, it is the applicant's plan in response to Staff's suggestions for reducing impacts.

Chair Collins noted that a letter from Ms. McEachron dated December 8, 2004 states the current proposal is the result of a Planning Commission recommendation, and he wants to clarify that the Planning Commission did not direct anything; rather, simply asked for information. Chair Collins expressed concern about the visibility of the retaining wall supporting Landslides D and E along Roadway B. He asked about the elevation of the base of the new wall.

EIR Consultant Harrison responded that the wall goes along the upslope side of the road. From Paradise Drive, it varies in elevation above because Paradise Drive varies in elevation. The wall reaches seventeen feet in height about where the Lot 3 driveway entrance is located. Preceding that, it is ten to thirteen feet in height above Road B. Road B at that location is about elevation 220 and the Paradise Drive elevation is about elevation 165; hence, a 55-foot elevation difference. Planner Allsep responded the screening for the wall will be a combination of existing and future landscaping. Based on a level of criteria to establish levels of significance, and how it was driven by Lot 2, the wall will be screened, and reasonable minds concluded there would be less visual impact than with the January 2004 Plan. The impact is now less-than-significant. The retention of numerous tall trees in the area of former Lot 2 would largely screen the wall from public view.

Chair Collins stated he thought it likely that portions of the wall would be visible if it is 55 feet higher in elevation than Paradise Drive.

Chair Collins asked if fuel breaks are included in the count of removed trees.

Community Development Director Anderson responded he spoke with the fire marshal last week regarding this issue and that the fire district rarely requires trees to be removed for fuel break purposes. They require removal of the lower branches to prevent grass fires from reaching tree foliage, and sometimes require thinning or trimming of branches, but rarely more than that. Actual tree removal is rare.

Chair Collins asked about the scale and method of earth repair for Landslide C.

Mr. Stephens responded he tried to consider secondary impacts that might be improved; and Landslide C has a soldier pile wall with backfill behind it, which a parking area created. With a landscaped area, he can accomplish stopping the landslide with earth fill, which can be landscaped. He also noted that the debris flow wall below Lot 3 is close to Paradise Drive, and it should be moved farther up from Paradise Drive, roughly in line with the deer fence.

In response to an earlier question from Commissioner Fraser, Community Development Director Anderson noted that Page 6 of the Staff report gives a summary of disturbed area in numbers, and it appears there is less than three acres of the site that will be totally disrupted. The visual effect can be very shocking in the early construction stage. The site will look like it is being developed. Most effects will no longer be visible over time due to the replacement plantings.

The public comment period was opened.

Scott Hochstrasser, representing the project sponsor, stated he and Staff explored all feasible alternatives at meetings, and looked at feasible alternatives to address comments from the last meeting. Ms. McEachron's letter indeed indicates the Planning Commission directed the November 2004 Plan; however, he agrees that it is the applicant's plan. This alternative will ameliorate impacts; it is acceptable under the General Plan and codes, though it does not meet the applicant's goals, which called for eight lots. It must be clear that there are project impacts and those that cannot be mitigated, which are listed on Page 5 of the Staff report, are secondary and cumulative effects of the project. Staff finds the project is consistent with the general plan, but the project still has significant environmental impacts, which are secondary and cumulative effects. CEQA is a

disclosure process. It requires facts and exposure to give the Planning Commission the facts, not mere opinions. The tables in the Staff report are facts. The analyses in the EIR are facts. There has been a decrease in the disturbed soil area and grading. Export soil is reduced by 34 percent. Two-fifths of site grading is exclusively a result of Town-required landslide repair. There is an overlap of disturbed soil from landslide repair and lot development, and the overall disturbed area is about one and one-third acres, not the three acres previously stated by Staff. Regarding the seventeen-foot-high retaining wall, there is no change from the previous plan. There is no direct view of the wall. Many trees over 40 feet tall will screen the wall. The wall that will stop the landslide is ten feet high and runs for 120 feet; 48 trees remain below the curve of the road and they will screen the wall. Regarding house sizes, the project's goals and objectives included 8,000-square-foot houses. There is currently one-half the density as originally submitted. The test of this plan is that the new General Plan has no proposal to change density on this site. Regarding overriding considerations, CEQA is a disclosure process and overriding considerations can be accepted if there are public benefits. The Norman Way property has several acres of open space, and owners there might be worried that people will wander onto Norman Way's open space if public trails are approved with this project. Retaining walls were proposed before; the only change is that one goes ten feet above rather than five feet below, the road. The other retaining walls are a series of low walls to retain House #2. Regarding spot zoning of this property, downzoning is part of this process in reducing the number of units to four, from eight, and the General Plan allows for eight units. The project is consistent with the General Plan and the project proposes 95 percent of the land for open space. Regarding profitability of the project, his team estimates a two-unit project will lose \$1 million, a four-unit project would profit \$800,000. Missing from the numbers is the land purchase price of \$1.5 million. The land was purchased 4.5 years ago. Regarding public benefits analyzed by Ms. Greenberg in her letter, the mixed benefit of trails and concerns that the trails will run through special status grasslands, perhaps she is concerned about the public gaining access to the Norman Way open space. Neighbors do not want to be annoyed by any noise generated by use of the public trails. Ms. McEachron does not feel the eleven public benefits can be extracted from the developer; but the owner is offering them to off-set remaining cumulative and secondary impacts. The project has been changed to respond to many concerns. The project is fair, credible and offers a significant public benefit.

Commissioner Fraser asked that if the unavoidable impacts are "secondary impacts"; what constitutes a primary impact.

Mr. Hochstrasser responded that road development would be a primary impact of the project. The landslide repair and tree loss from landslide repair is driving the secondary biological and grading-related significant unavoidable impacts.

Chair Collins asked how it is that the developer is willing to lose \$700,000 net to develop a four-unit project.

Mr. Hochstrasser responded that the applicant thinks property values in Tiburon are going up and the developer may break even with four units.

Chair Collins asked with respect to the retaining walls above the road, if there is a way to put planters between the road and the base of the wall to allow plants to grow up the wall.

Mr. Hochstrasser responded this was considered, but there is not enough room. They will plant vines to grow over and down the walls. In response to questions, he stated the homes, given their size and clustered form of development, are not considered high end. The lots are small. The sewer pump station is in a vault that will rise three feet above ground. Permeable surfaces have not been considered for the parking areas but are a worthy suggestion.

Chair Collins stated with the new proposal there is as much disturbed area on Lot 1 as there is now on Lot 2.

In response to questions, Mr. Hochstrasser stated that maintenance of the common area planting will be shared by a homeowners association, for which mitigation monitoring includes a detailed management plan. This will be required as part of the Tentative Map.

Commissioner Hermann stated there are three unavoidable impacts and it appears that the applicant is trying to mitigate them via his November 2004 plan and by providing benefits. He asked how applicant came up with the benefits and established their value.

Mr. Hochstrasser responded the public benefit has no direct nexus, but is relative in terms of value to the public. He had asked Staff how to offset the impacts and Staff said they would like trails to hook up Paradise Drive and the Town's open space, then decided three trails would be better. Regarding open space and conservation, the Town cannot require that, but he is offering to put an easement on the property that will protect it into perpetuity. Regarding the bicycle refuge area, which he believes Norman Way residents do not want, it is an area off the main road. Regarding broom eradication, this has occurred on other sites. If he cannot get the tree impact mitigated on-site, he will do the broom eradication.

Commissioner Hermann asked if it is fair to say that if a Planning Commission accepts impacts in a project, the Planning Commission must substantiate the benefits and be able to stand up in front of the community saying it is a fair trade.

Mr. Hochstrasser responded, in fact, yes. The Planning Commission must substantiate the benefits. In response to questions, he stated there can be a tax benefit to the granting of the open space and conservation easement, but it must be volunteered at the beginning of the project and not required as an exaction.

Craig Herzog, civil engineer for the applicant, explained that pervious surfaces for parking areas would be a bad idea as the issue of water percolation into the soils on this site is a big concern. The goal is to direct runoff flows overland into structures, and not let it seep into areas where it could cause soil instability and soil creep.

The public comment period was opened.

Karen Nygren stated she would like the Planning Commission to recommend the two-lot alternative since it is the only project that reduces the impacts to insignificant levels. There must be a nexus of the project to the benefits. The General Plan states the property can have up to eight units, to be determined on a case-by-case basis at the time of EIR analysis. The General Plan indicates retaining walls are to be kept to a minimum, and the seventeen-foot wall does not meet that test. If the

Planning Commission approves the project, the developer can be required to improve, for example, the visual appearance of retaining walls and can be required to surface walls with rock or natural materials. Deer fencing should not be required; it would restrict the flow of habitat. The Planning Commission could require specifics as to which trees will be removed and require an arborist to develop a plan to monitor trees during grading, and require a landscape plan that shows what trees will be removed and where on a 3:1 replacement plan, to be maintained and monitored for three to five years. Also can be required is the vegetation species and who will pay and monitor the landscape over the retaining walls. The Planning Commission should require community CC&Rs to ensure all is followed. A project agreement should ensure there is funding for the homeowners association to ensure this takes place over the long term.

Commissioner Hermann asked if all these would be the same for a four-lot project.

Ms. Nygren responded, yes. She suggested the item could be continued and Staff asked to create the requirements.

Commissioner Hermann asked if she feels, as a member of the community, that she had enough notice to consider the new modified plan.

Ms. Nygren responded there was not adequate time to review the latest plan. The public should have had more time to review the plan.

John Kunzweiler, Norman Way, stated that approval boils down to whether the benefits of the plan outweigh the environmental impacts of the project. He disagrees there are three significant and unavoidable impacts. He believes there are four. The wall gives everyone concern. The visual impact of the walls is very significant. Wall #3 is a horrible precedent to be set; it does not retain the rural character of the area. Wall #3 will run for 930 feet. He compared it to walking along Main Street and Ark Row in Downtown Tiburon. The formerly rural area will be laced with a series of walls running hundreds of feet up to seventeen feet high. Citizens want to keep the area rural. The two-unit alternative has been on the table for years. The developer made a bad deal, this is a tough piece of land. The Planning Commission is to vote on the plan submitted based upon legal findings that the benefits outweigh the impacts of the project, and there is no foundation to support the benefits.

Sandra Swanson stated Community Development Director Anderson says three acres will be disturbed and Mr. Hochstrasser says 1-1/3 acres. The densities in the General Plan can be changed. Merits must be weighed against impacts. The loss of the oak woodlands mitigated by planting oaks in other areas of Tiburon is tragic. The mitigation does not make up for the irreversible impact of decimating the woodlands. Most of the land is unbuildable and would be open space anyway. Removal of 273 trees is unique in Tiburon and could set a precedent. There are seven projects along Paradise Drive and they could remove all the trees along Paradise Drive. There are inconsistencies with the Paradise Drive Vision Plan, which is to maintain the rural character of Paradise Drive.

Dave Coury, Paradise Drive, stated the November 2004 plan should be denied; approval is premature.

Randy Greenberg, Norman Way, stated Mr. Hochstrasser argued grading impacts were generated by required landslide repair. The table on Page 6 shows 2.5 times as much grading for lot development as for slide repair. Two lots being proposed on the steep portion of the site is what is causing the great amount of slide repair grading. A 2-lot project takes the massive grading out of this area. It is the development of those two houses that causes the major excavation. She stated that, in the EIR, one of four policies is described as inconsistent or partially inconsistent with the General Plan. She thinks that there are more; hence, the project would be inconsistent with one out of three policies. The developer particularly should not build on lots of more than 40 percent slope, a Town policy. From no direction can anyone see Norman Way's open space; no one uses the open space; and the broom has been removed. This process is about preserving. The purity of the oak stand is virtually unheard of because no one goes there. She generally favors trails, but these might have biological impacts. Regarding economic viability, there is no requirement that a developer makes a profit. He does get an economic use of his property, but it does not have to be profit. Mr. Hochstrasser has understated the value of the sale of the houses. While four units seem like a major reduction, no one thought the maximum number of units would ever be approved. Staff recommended the owner lower the number of units from the start. The Planning Commission should assess the merits of the project itself. Approval of a four-unit project will set a terrible precedent for the future developments on Paradise Drive.

Betsy Little asked for an explanation of measurements listed on Page 6 of the Staff report.

Planner Allsep responded the first three rows are measured in square feet for surface area. Below the "total" row, they are measured in cubic yards for expressions of volume.

Ms. Little asked who is culpable, regarding the Town's responsibility when it is known there is a slide. If the Town approves a slide site, who is liable?

Community Development Director Anderson reiterated if the Town is aware and has the opportunity to have a slide repaired, and takes no action, then the Town could potentially have some liability, but if there is no opportunity for the Town to have the slide repaired, such as a development permit approval, then the Town would have no liability at all.

Scott Pearson, President of Norman Way Homeowners Association, stated the Norman Way residents approve of the two-lot alternative and oppose the four-unit project. He would like to see financial calculations of project costs submitted to the Planning Commission. The developer should have been wiser and filed for a smaller project earlier and not gone through the extensive EIR review. Regarding slide removal, if the two-lot proposal is adopted and the two eastern homes are not built, the amount and type of slide repair will be different. He urged the Planning Commission to approve two lots and to engage in slide repair that would be the least destructive on the old growth oak trees. He would not want the trees removed in order to repair the slides.

Peter Brekhus, attorney for applicant, stated an ordinance requires an owner to repair slides above and below and protect those people above and below. The project is required to meet geotechnical review that will make it more secure and safer. If nothing is done on a property, the Town cannot tell an owner to repair a slide until an applicant applies for a permit for development work. An applicant under the ordinance must address that a house will not be threatened by a dormant or active slide. He understands, based on Tiburon's ordinance, the Town can require the applicant to

address any landslide instability. Regarding benefits versus impacts, a court would not overturn a Planning Commission decision as to the value of project benefits. Spot zoning is a real local issue. The Planning Commission must be concerned about any unreasonable imposition of conditions. The applicant has offered benefits that cannot be extracted. There must be substantial proof of adverse impacts. An EIR is intended to study, not stop, a project.

There being no further public comment, the public comment period was closed.

Chair Collins asked if the Town is short of meeting its regional fair share of housing production.

Community Development Director Anderson responded it is too early to tell yet. By 2007, the Town will possibly achieve its market rate but not below-market rate housing share. Anderson clarified that the project benefits are not mitigations, but rather a list of benefits that occur if a project is built versus not built. Someone should upgrade the drainage systems below Paradise Drive. If facilities are undersized, which they are, then damage will continue to occur until the facility is built to the appropriate size. This project would add to the flow of water and the project would have to bring the facilities up to an adequate level to handle their water, or detain the water on site during the peak storm. He reiterated that there is no property owner duty to repair slides unless and until he secures development approvals.

Planner Allsep added that the bicycle refuge area was suggested with the eight-unit proposal. Given there is nothing other than a landscaped area, there is not a bench, or anything, the bicycle refuge area has evolved into a wide spot in the road for a bicycle to get out of the lane of traffic.

Community Development Director Anderson noted that a trail easement is an exaction because a person is giving up a real property interest in his land. Regarding dedication of open space, the General Plan sets a goal of 50 percent of large undeveloped projects. This would be a justifiable exaction. Above and beyond the 50% could be a problem if there is an unwilling applicant.

Commissioner Fraser asked if Staff and the applicant have looked at a proposed timeline for project construction.

Planner Allsep responded that this was discussed in the EIR and she will review this section.

Commissioner Fraser asked if a performance bond is required.

Community Development Director Anderson responded the law requires it at the time of subdivision approval.

Chair Collins thanked the applicant for the 900 pages of EIR work, their work, the consultants and Staff's work and the public for its good input. While he normally does like to follow Staff's recommendation, he cannot conclude that the benefits listed in the proposed statement of overriding considerations are all actual benefits to the Town, or that those in the list that are in fact benefits outweigh or override the significant unavoidable impacts of the proposed project.

Commissioner Hermann stated he is disturbed that 4.5 years and \$1.5 million was spent, and now the applicant must go through it again. Applicants should get more community input early on. As to

whether the project adheres to the General Plan and follows the General Plan in principle, it does not appear that there is agreement. There are three significant unavoidable impacts, and the issue is whether the value of the benefits balances the impacts. Staff says yes. However, community members say the benefits do not balance the impacts, which means to him, no. The applicant could go through the process to value the benefits, which would require more input by the community and Staff. He believes it would have been better and cheaper if the Town gave the applicant guidelines from the community and the Planning Commission in the beginning of the process. He recommends a two-unit project. While it is healthy to maximize numbers, the potential for profit is still out there and impacts can be resolved. The project should not be denied; rather, returned with a two-unit proposal.

Commissioner Fraser stated this is a large parcel with significant constraints that will not go away. We have a developer who desires to develop his land; we should encourage that. Perhaps the unavoidable impacts can be reduced by 50 percent; even so, they will remain significant. Ideally, we need to find a win-win situation. Commissioner Fraser stated that he cannot support the project as it is now proposed, and he is not prepared to look at a two-unit or three-unit project tonight. There is an approvable project out there, but he does not know what it would be at this time.

Chair Collins stated that if there is any way to keep the project entirely on the west side [of Development Area #1], and make three lots, then the applicant should consider doing so. He stated that there may be consistency of the project with the General Plan and Zoning Ordinance, but that significant unavoidable environmental impact issues would preclude him from voting to approve the four-unit plan. He asked the applicant if he wanted a continuance to consider proposing an alternative plan that would avoid the significant unavoidable impacts, or a vote on the application at this meeting.

The applicant requested the Commission continue the hearing to late January.

The Commission voted unanimously to continue the item to the meeting on January 26, 2005.

### **ADJOURNMENT**

The meeting was adjourned at 10:15 p.m.

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RICHARD COLLINS, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY