



**TOWN OF TIBURON
PLANNING COMMISSION
1505 Tiburon Boulevard
Tiburon, CA 94920
Action and Approved Minutes
Special Meeting
November 29, 2005 – 7:30 PM**

ACTION MINUTES

CALL TO ORDER AND ROLL CALL 7:30 pm

Chairman Kunzweiler, Vice Chairman Fraser, Commissioner Aguirre, Commissioner Collins. **All Commissioners Present**

ORAL COMMUNICATIONS

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. **There Were None**

COMMISSION AND STAFF BRIEFING

Staff Update
Commission Information Items

PUBLIC HEARING

1. 3700 BLOCK OF PARADISE DRIVE NEAR NORMAN WAY: TIBURON GLEN PROJECT; CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING A PRECISE DEVELOPMENT PLAN (PD #22) TO CREATE THREE (3) BUILDING SITES ON A 26.03 ACRE PARCEL; REVIEW OF SECOND ADDENDUM TO CERTIFIED EIR; Xanadu Property Holdings, Inc., Owners; Assessor's Parcel No. 39-241-01 **Following Discussion, Continued to a Date Uncertain 3-0 (Chair Kunzweiler recused himself)**

MINUTES

2. Planning Commission Minutes - Regular Meeting of November 9, 2005 **Adopted with corrections 3-0-1 (Collins abstained)**

ADJOURNMENT 10:25 PM

**APPROVED MINUTES
PLANNING COMMISSION
NOVEMBER 29, 2005
Special Meeting
Town Council Chambers
1505 Tiburon Boulevard, Tiburon, California**

The special meeting was called to order at 7:30 P.M.

ROLL CALL

Present: Chair Kunzweiler, Vice-Chairman Fraser, Commissioner Aguirre and Commissioner Collins
Absent: None (one vacancy)
Staff Present: Community Development Director Anderson, EIR Consultant Berman, and Meeting Recorder Creekmore

ORAL COMMUNICATIONS

There were none.

COMMISSION AND STAFF BRIEFING

There were none.

MINUTES

The Commission decided to take approval of the minutes out of order.

1. Planning Commission Minutes – Regular Meeting of November 9, 2005

Amend the following:

Page 2, paragraph 3, line 1: Insert “about” after “Commissioner Fraser asked”

Page 2, paragraph 7, line 5: Change “Cellular” to “Cingular”

Page 3, paragraph 3, lines 5-8: Change to “He understood that the Town’s direction would be to just deal with the large unit now rather than building an insufficiently sized structure.”

M/S Fraser/Aguirre (4-0) to approve the minutes as amended.

PUBLIC HEARING

2. 3700 BLOCK OF PARADISE DRIVE NEAR NORMAN WAY: TIBURON GLEN PROJECT; CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING A PRECISE DEVELOPMENT PLAN (PD #22) TO CREATE THREE (3) BUILDING SITES ON A 26.03 ACRE PARCEL; REVIEW OF SECOND ADDENDUM TO CERTIFIED EIR; Xanadu Property Holdings, Inc., Owners; Assessor’s Parcel No. 39-241-01

Chair Kunzweiler recused himself from participating as a Commissioner because his home is within 500 feet of the subject property. Vice-Chairman Fraser assumed the role of Acting Chairman for this item.

Community Development Director Anderson presented the Staff report.

Commissioner Collins asked what number of trees being removed constitutes a significant impact. Bob Berman, EIR consultant, said that there is not a specific number but rather whether the project can replace the number of trees at a 3:1 ratio on-site. Mr. Berman explained that as long as there is not adequate replacement off-site, removal would be deemed a significant unavoidable impact, even if it was as only as a single tree that could not be replaced.

Commissioner Aguirre asked what makes a disturbance to the site significant as opposed to insignificant with respect to the 2-home sites versus the 3-home sites. Mr. Berman replied that the issue of replacing the trees is determined by whether the Town's recommended 3:1 replacement ratio has been met either on-site, off-site, or both.

The Commissioners discussed what specific number of trees would qualify a significant impact for the 2-home project versus the 3-home project. Community Development Director Anderson replied that with respect to the actual numbers, he said that an educated guess, rather than an actual calculation, was probably made to determine the level of impact for the two-lot alternative because the review of alternatives is much less detailed than the review of the actual project being proposed.

Commissioner Collins expressed concern that there is a lack of specific tree loss information regarding the two-lot alternative versus the three-lot project. Commissioner Aguirre added to that concern by stating that with the current information, the deforestation associated with the two-lot alternative appears to be declared an insignificant impact, yet there doesn't appear to be a big distinction between the two plans in terms of tree loss. Community Development Director Anderson added that the certified EIR assumed a loss of 132 trees for the two-lot alternative, equaling 396 trees needing to be replaced on-site. He noted that the current three-lot plan only provides enough room for 315 replacement trees on-site, and questioned whether the two-lot alternative would be able to mitigate tree loss on-site as well.

Mr. Berman pointed out that the EIR certified by the Town does indicate that the two-lot subdivision is the environmentally superior alternative. Commissioner Aguirre said that the issue is not what is environmentally superior, as there will always be a case in which there is an environmentally better alternative, but rather what are the significant unmitigated impacts for each alternative.

Gregory Fishman, project representative, said that he agrees with the Town's recommendations and supports their conditions of approval. He gave an overview of the history of the project and the efforts made to refine it in order to meet CEQA guidelines and to address the concerns of neighbors. He said that many of the concerns raised by neighbors have been incorporated into the project's revised plans. He pointed out that there has not been another application with this much neighborhood involvement and that neighborhood concerns have been kept in mind during the process of revising the project. He said that he was disappointed in the opposition raised in recent correspondence as those concerns were not brought to his attention beforehand. He noted that the revised plan has significant positive revisions over the 4-lot plan and that tree loss has been reduced to 168 trees for the three lot plan and that the emphasis of the revised plan is to reduce adverse visual and biological impacts while maintaining an economically viable project. He referenced several aspects of the project as addressed in the Staff report and urged the Commission to approve the project and follow Staff's recommendations.

Commissioner Collins asked Mr. Fishman to speak to the economics of the project. Mr. Fishman stated that per the advice of his legal counsel, he cannot disclose specific financial details about the project at this time. He did state that at least .5 to 1 million dollars have been spent on the project thus far, which includes environmental analysis and ancillary revisions. Mr. Fishman added that there are major unavoidable development costs that are associated with this plan, including major landslide repairs and roadway utilities. He said that creative measures have been taken to avoid an economic loss for this project. He ended by stating that a 2-unit project would not be economically feasible.

Commissioner Aguirre commented that providing data to support the project's feasibility is important and questioned why that information cannot be made available. Mr. Fishman agreed with his concern but stated that due to litigation concerns, the project's attorneys have deemed that financial data should not be disclosed at this time.

Commissioner Aguirre asked Staff how the Commission can make a decision as to whether a feasible alternative exists without having economic data. Community Development Director Anderson replied that it is the Town Council's role, not the Planning Commissions, to make that determination. He said that the Commission could consider whether the two-lot alternative reasonably satisfies the objectives of the project or request evidence from the applicant to support his contention that the project is not likely to proceed if the two-lot alternative is approved. He gave an overview of the Town Council's role as the decision making body for this project.

Mr. Fishman stated that he would like to reserve the right to have the project's attorney make additional financial information available about the project.

Commissioner Collins said that without economic data, it makes it more difficult for the Commission to make a determination about the project. Community Development Director Anderson stated that the Planning Commission's role is to make a recommendation about the project and that the Town Council will make the final decision about the project, including whether project alternatives are feasible.

Community Development Director Anderson informed the Commission that when the idea of off-site tree mitigation was initially brought forth, it was decided that replanting would be problematic because of the large number of trees required to be planted and the assumption that a large number of acres would be required to accommodate that many trees. He said that upon review of the discussion in the revised EIR, it was noticed that 200 trees per acre is allowable, and that the 189 trees could feasibly be planted on only one acre of land. He confirmed for Commissioner Aguirre that complete off-site mitigation could likely be achieved in order to avoid a significant unavoidable impact if they are able to find an acre or so to replant 189 trees. Mr. Berman referenced Addendum #2 of the EIR and said that to date the Town has not yet seen an off-site tree mitigation plan from the applicant.

Commissioner Fraser asked if a condition could be brought forward requesting that a plan be reviewed and accepted by Staff that would allow for planting of the trees off-site. Community Development Director Anderson replied that the condition could be sent forward as a prerequisite for approval of the three-lot project as part of the recommendation. Commissioner Aguirre asked if the applicant could be asked to come back to the Commission with a plan on December 8. Community Development Director Anderson replied that since the land would be Town-owned, only the Council can authorize the use of land for that purpose. He said that since they are only looking for roughly

one acre of land he does not believe it will be nearly as difficult as he originally envisioned to locate a feasible off-site planting area.

Mr. Fishman informed the Commission that the applicant would be willing to provide non-feasibility economic data for the two-lot alternative to the Town Council.

Mr. Aguirre asked the project representative how he arrived at the \$25,000 figure as a monetary payment for funding off-site tree replacement. Don Blayney, landscape architect for the project, said that replacement of 189 trees at \$85 per tree, maintenance of \$25 per tree, and administration and planting of the trees at \$4,000 is approximately \$25,000. He said that 15-gallon trees would be used and the maintenance period is for approximately one year. He said that the success rate of a 15-gallon tree is twice that of a 24-inch box tree. Mr. Blayney added that he is proud of the plan that is being presented to the Commission.

Joe Farrell, project architect, said that it is his understanding that the Town does not have a green building ordinance but that the project has incorporated approximately half of the 90 green building guidelines used by the County of Marin, such as using native non-invasive landscaping, drip irrigation, reclaimed lumber, electricity reducing appliances, and high efficiency windows.

Commissioner Fraser asked if the guidelines were incorporated into the Tiburon Glen architectural design guidelines. Mr. Farrell replied that they were not but that they could be added.

The public comment period was opened.

Richard Grasetti, environmental consultant and representative for the Norman Way Homeowner's Association, stated that based on a recent CEQA court decision, the visual impacts of the project are still significant. He said that the bottom line is that the houses are large, near a busy road, require vegetation to be cleared around them and would therefore result in a substantial change for the area surrounding the project site. He said that the question of whether an open space easement on land that is currently open really provides a benefit is still an open question and that the \$25,000 for tree replacement is really mitigation for trees that are lost. He stated that the financial benefit for the Town was not listed in the Staff report and that he does not believe that the project will not help the current housing crisis. He said that if the landslide stabilization is required for all Town projects, then it is questionable whether it should be considered a benefit for overriding consideration purposes for this project.

Bill White, attorney representing the Norman Way Homeowner's Association, said that all comments that he has seen involve issues that have been raised repeatedly throughout this project for years and that for the project's representatives to suggest that they have been ambushed by recent comments is disingenuous. He said that with respect to legal issues, he sees two key considerations issues that implicate the Town's ability to approve the project in its current form, those being CEQA and the Town's General Plan. He said that the proposed project has significant and unmitigated impacts, particularly related to tree loss. He said in order to approve the project, it is necessary to find an alternative that would avoid or lessen the significant impacts. He stated that the question of feasibility is key to the project and if the applicant can't show that the two-lot alternative is infeasible, the project cannot be approved. He stated that the project is inconsistent with the Town's General Plan policies with respect to tree loss and is therefore not approvable. In response to off-site mitigation, he said that off-site mitigation is inferior to on-site preservation.

Brian Prince, Tiburon resident, said that he disagrees that the visual impacts are less than significant. He said he does not agree with the proposed mitigation measures for the trees and echoed Mr. White's comments regarding on-site preservation. He said that public access trails connecting Paradise Drive to the ridge would be a benefit and that those plans should be more clearly defined prior to construction.

Sandra Swanson, Tiburon resident, noted that this project is one of four being planned for Paradise Drive and asked that the Commission consider the cumulative effects of all the proposed development. She said that the "environmentally superior" alternative would still result in a tragic loss of trees and stated that she is confident that the Commission will make the right decision for this development.

Scott Pearson, president of the Norman Estates Homeowner's Association, asked that the Commissioners apply their own reasonable and personal judgment to the two impacts identified in the EIR: the loss of woodland and visual impacts as depicted by the photo simulations.

John Kunzweiler, speaking as an affected resident, said that the project has three significant and unmitigated impacts. He said that the photo-simulations are not an adequate means of portraying the projects visual impacts. He said that it is unprecedented to have structures looming over Paradise Drive and that it will take at least five to 10 years to for the trees to mature enough to screen the structures. He likened the project's proposed 10-foot wall to an aircraft carrier landing spot. He encouraged the Commission to consider what the benefits of the project are and whether those benefits outweigh the costs of the project.

Randy Greenberg, Tiburon resident, said that the property has been resold a number of times because the site is problematic with respect to development. She said that the two-lot proposal is the least damaging and urged the Commission to carefully evaluate the replanting plan. She said that a natural meadow exists on the site and that she strongly doubts that the Town will be able to find an appropriate place for replanting. She said on a constrained site such as this one, there is no justification for approving more than what is necessary. She noted that a more appropriate project would locate all homes west of the project entryway. She said that with respect to grading, a substantial reduction in grading would be achieved by removing Lot 3 from the proposal. She said that the Town's economic exception ordinance requires that the Town be supplied with economic data that supports their claims. She urged the Commission to comply with Town policies and CEQA guidelines.

Betsy Little, Tiburon resident, said that she agrees with Ms. Greenberg's comments and said that the project is inconsistent with the Town's General Plan. She questioned whether the project was necessary, especially when weighed against its impacts. She expressed concern with the impacts of the three-lot plan and requested that the developer provide data demonstrating economic feasibility.

The public comment period was closed.

Commissioner Collins said that he would like to see if a feasible alternative exists in terms of replanting trees and the visual impacts of the project. He said that he would like to see the project's economic details for the three-lot plan versus the two-lot plan. He said that he would also like to see if there is a way to mitigate the loss of the trees. He noted that he did not see any offer to pay for traffic improvements, as had been included in the prior four-lot project resolution, and that offer would be a benefit to the public. He said that the \$25,000 in-lieu fee for tree loss seems somewhat

arbitrary and does not resonate well with him. He said that he is not ready to make a recommendation to the Council at this time.

Commissioner Aguirre echoed Commissioner Collin's comments and expressed disappointment over the lack of feasibility data for the two-lot alternative. He said that replanting the trees needs to be done in a manner that would best suit the needs of the Town. He said that he believes there are significant benefits to the project and agreed that the \$25,000 figure is not enough to compensate for the loss of trees. He said that there has to be a balance between the competing interests of the developer and citizens of the Town. He said that from his perspective, two homes would be better than three but that if two homes are not feasible he would be willing to support three if off-site tree mitigation is possible.

Commissioner Fraser noted that both the applicant and the neighborhood are desirous of an outcome but that the new information that has come forward regarding off-site tree mitigation warrants additional research and evaluation before a decision can be made. He said that from an economic standpoint, the owner has a right to develop their property but that economic data for both the two-lot plan and three-lot plan is necessary in order to make a recommendation on the project. He also expressed uncertainty about the \$25,000 in-lieu figure for tree loss. He said that the Commission is not in a position to make a recommendation to the Council until the applicant provides additional details about the project.

Commissioner Collins said that he believes the overall square footage of the homes does not appear to be consistent with other homes that are currently in that area. He added that he believes that ideally all homes would be on the west side of the entry road.

Community Development Director Anderson said that Staff would be willing to assist the applicant should they wish to pursue an off-site mitigation plan. He noted that the economic data for the two-lot alternative may not be as much of an issue if an off-site tree replanting program is found to be feasible. He clarified that the proposed in-lieu fee for off-site habitat restoration was intended to be used for off-site tree replacement.

Commissioner Fraser noted that he sensed a spirit of involvement and cooperation from the developer with the neighborhood and that their efforts are applauded by the Commission. He asked the applicant if they would like to continue to work with Staff so that the Commission could revisit the application.

Commissioner Aguirre said that without economic information for the two-lot plan, he cannot say whether the project is favorable or not.

Commissioner Collins said that he is not comfortable with the size of the houses as proposed.

Mr. Fishman requested that the item be continued and that he will address the issues of economic feasibility, tree replanting, costs for potential tree fund contribution, house sizes, and traffic improvement fees at a future meeting.

Mr. Blayney asked if a special meeting would be necessary to meet with the Town Council to determine potential replanting sites. He also asked if the \$25,000 contribution would be waived if an off-site mitigation plan was developed.

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Community Development Director Anderson stated that the applicant could work with Staff to find suitable sites.

Commissioner Aguirre said that a statement of overriding considerations would not be necessary if the applicant provides an adequate off-site mitigation plan that reduces the impact to insignificant. The \$25,000 in-lieu fee would not be required.

The Commission agreed that the applicant would work with Staff regarding scheduling of the next hearing of this item.

M/S Collins/Aguirre (passed 3-0) to continue this item to a future meeting and to be re-noticed to the public.

ADJOURNMENT

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

JIM FRASER, VICE-CHAIRMAN
Tiburon Planning Commission

ATTEST:

SCOTT ANDERSON, SECRETARY