



TOWN OF TIBURON  
Tiburon Town Hall  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Action and Approved Minutes - Regular Meeting  
Tiburon Planning Commission  
February 24, 2010 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

#### CALL TO ORDER AND ROLL CALL    **At 7:33 PM**

**Present:** Chairman Kunzweiler, Vice Chairman Frymier, Commissioner Corcoran,  
Commissioner Tollini

**Absent:** Commissioner Doyle

#### 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. Testimony regarding matters not on the agenda will not be considered part of the administrative record.

#### COMMISSION AND STAFF BRIEFING

Commission and Committee Reports  
Director's Report

#### PUBLIC HEARING

1. VICINITY OF 3825 PARADISE DRIVE: DETERMINATION AS TO WHETHER RECIRCULATION IS REQUIRED FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE PROPOSED ALTA ROBLES RESIDENTIAL PROJECT; FILE #30701; Irving and Varda Rabin, et al, Owner and Applicants; Assessor Parcel Numbers 039-021-13 and 039-301-01 [SA] **Directed EIR Consultant to Respond to Comments; No Recirculation Required 4-0**

MINUTES

2 . PLANNING COMMISSION MINUTES – Regular Meeting of February 10, 2010  
Approved as Amended

ADJOURNMENT    *At 9:10 PM*

PLANNING COMMISSION  
APPROVED MINUTES NO. 994  
February 24, 2010  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California

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**CALL TO ORDER AND ROLL CALL:**

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

**Present:** Chair Kunzweiler, Commissioners Corcoran, Frymier, and Tollini

**Absent:** Commissioner Doyle

**Staff Present:** Director of Community Development Anderson, Contract Planner Diane Henderson, Environmental Consultant Bob Berman and Minutes Clerk Levison

**ORAL COMMUNICATIONS:** None

**COMMISSION AND STAFF BRIEFING:**

Director of Community Development Anderson stated there are no items scheduled for the Commission's March 10<sup>th</sup> meeting, which will likely be cancelled.

**PUBLIC HEARING:**

- 1. VICINITY OF 3825 PARADISE DRIVE: DETERMINATION AS TO WHETHER RECIRCULATION IS REQUIRED FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE PROPOSED ALTA ROBLES RESIDENTIAL PROJECT; FILE #30701; Irving and Varda Rabin, et al, Owner and Applicants; Assessor Parcel Numbers 039-021-13 and 039-301-01 [SA]**

Contract Planner Diane Henderson presented the staff report, stating the Rabins made application to the Town for a planned development annexation and pre-zoning to develop 52 acres on Paradise Drive with 1 existing and 13 new homes. Staff reviewed the application, determined that an Environmental Impact Report (EIR) would be required, and retained the firm of Nichols-

Berman to prepare the EIR. The completed Draft EIR (DEIR) was released for a 45-day public review period ending on October 5, 2009. The Planning Commission held a public hearing to receive comments on the environmental document on September 23, 2009. At the close of the public review period, staff reviewed the comments received to determine whether a recommendation could be made to the Planning Commission to proceed with the final EIR and response to comments, or if recirculation would be necessary.

Ms. Henderson reviewed the DEIR findings, which focused on noise related to temporary construction, view impacts when the site is viewed from middle ridge open space, and 5 cumulative impacts resulting from build-out of the Tiburon Peninsula. Ms. Henderson provided a summary of the comments received, which related to the adequacy of analyzed alternatives, access to and circulation of the site itself, biological impacts, view impacts, tree removal, the proposed public trail, and how the project conforms to Town policies.

Ms. Henderson reviewed the project alternatives identified by the DEIR, noting that while the California Environmental Quality Act (CEQA) requires a reasonable range of alternatives, it does not specifically state what is considered reasonable. She highlighted the project site's constraints, particularly as they pertain to access, detailed possible alternative means of access, and concluded that the proposed entry along the existing fire road is the most feasible. The applicant presented supporting information to the environmental consultant, whose traffic consultant concurred that this is the most likely point of access.

Ms. Henderson explained that the Commission's role this evening is to determine whether or not, based on CEQA's thresholds, there is need to recirculate the DEIR. She outlined the 4 thresholds and provided the following response:

- *The EIR is inadequate in its conclusory* – The DEIR was prepared by Bob Berman of Nichols-Berman, a well-known and highly regarded environmental firm with many years experience. Staff has reviewed the DEIR and feels that it meets both CEQA requirements and the Town's environmental guidelines.
- *A new significant impact is identified* – There were no new significant impacts environmental impacts identified during the comment period.
- *The intensity of an impact has increased* – Although information was presented in writing and at the hearing on the DEIR, staff is not aware of any increased impacts.
- *A new project alternative or mitigation measure which lessens impacts is identified, but the applicant has refused to adopt it* – The applicant has developed a 4<sup>th</sup> alternative which reduces impacts and has adopted it as the proposed project.

Ms. Henderson stated that after reviewing the comments received on the DEIR, staff met with the applicant to discuss the development of a new alternative that would address concerns raised regarding grading, tree removal, and biological impacts. She reviewed the Town's Landslide Policy, noting there was a question as to whether the significant amount of grading required for the project was a result of the development itself or a virtue of the Town's policies. The applicant's geotechnical engineer, Miller Pacific, studied the site carefully and proposed several solutions that would minimize the amount of grading while still addressing the issue of landslide repair. Craig Herzog, the Town's geotechnical consultant, reviewed the Miller Pacific report and has determined that it does in fact meet the intent of the Town's Landslide Policy.

In addition, the applicant has redesigned the proposed roadway such that a bridge would be built to span the crevice created by the landforms, thereby eliminating the need for large retaining

walls and greatly reducing view impacts, grading, and impacts to biological resources. The applicant also made a number of changes to lots and the houses on those lots. Lots 13 and 14 have been redesigned and reshaped, with the home on Lot 14 reduced by 1800 square feet. Lots 5 and 6 have been shifted to relocate them outside of sensitive areas and the area of ridgeline impacts. Lot 4 has been reduced in size by 2500 square feet, although does still remain within the 50-foot vertical setback from the Tiburon Ridge. Lot 8 and the home on Lot 8 have also been redesigned to reduce impacts. She noted that, as the applicant has indicated in writing that this is now the proposed project, Alternative 4 can be analyzed in the response to comments without the need for recirculation.

Ms. Henderson said it is her belief that no CEQA thresholds are triggered and it is therefore appropriate to direct the environmental consultant to prepare a response to comments and final EIR. She noted that the scope of both documents is limited to environmental issues and not the merits or final approval of a project. She concluded that the DEIR has covered a full range of alternatives and impacts associated with the development of 0 to 14 units on the site and the Commission has the information necessary to determine the project's environmental impacts.

Commissioner Tollini confirmed with Ms. Henderson that, upon distribution of the Final EIR, there is chance for additional public review and comment. Mr. Anderson stated that the Commission would ultimately be asked to make a recommendation on certification of the Final EIR and merits of the project, which are typically considered in tandem at one or more public hearings.

Commissioner Corcoran noted that Alternative 2, labeled as the "No Project" alternative, carried a somewhat thorough analysis, although was not as thorough as that for Alternative 3. Ms. Henderson explained that the "No Project" alternative assumes the applicant would make no requests to the Town, but would in fact develop the S.O.D.A. parcel as allowed by the County's zoning guidelines.

Commissioner Corcoran inquired about the process going forward, should the Commission determine that no new substantial information has been identified.

Bob Berman, Nichols Berman, said he would begin by preparing a response to each comment received and, if in fact those comments result in changes to the text of the EIR, he would also make those revisions. He said the primary function is to determine if any information eliminates or significantly reduces the impacts previously identified and still meets the goals of the applicant.

Chair Kunzweiler asked if the comments received tonight would receive responses. Ms. Henderson said that only those comments received during the public review period that ended in October 2009 would have written responses.

Chair Kunzweiler opened the item to public comments.

#### Public Comments:

Scott Hochstrasser, planning consultant for the applicant, said he was initially taken aback by the Commission's concerns expressed at the September 2009 meeting regarding a reasonable range of alternatives. He said he later realized that the Commission did not have the same range of

information he had already gathered through two years of studying and planning development at this site. When the Town adopted the General Plan EIR in 2005, it contained specific information about this property that was generated out of information that he provided to the Town. He noted that the General Plan EIR identified this property as having opportunity for 20 units and he used two additional years of study to develop a project of only 14 units. He has been in this process since before 2005, has had a complete application with the Town since early 2007, and has spent the last two years on the EIR process. He has done everything he can and asked that the Commission direct staff to move forward with the project.

Chair Kunzweiler reviewed the density allowed for the entire site, noted that 14 units is actually the maximum for this parcel, and said he believed this choice was based more on the requirements and site constraints than a significant level of generosity on the part of the applicant. He thanked the applicant for Alternative 4, which tells him that changes to the original plan did in fact reduce the impacts and that these kinds of creative changes are good for the applicant, good for the hillside, and good for the surrounding area. He questioned and confirmed with Mr. Hochstrasser that it is still the intent of the applicant to construct these homes.

Chair Kunzweiler asked for a general idea of the construction timeline and whether the homes would be built on spec basis or all at once. Mr. Hochstrasser said that has not yet been determined.

Jack Scholl, Acacia Drive, said his property looks out on Lots 9 through 12 and the fire road ridge. He voiced concern with development on the ridge and said any development should cluster homes around the existing driveway. He acknowledged the owner's desire to develop his property but said that, as a neighbor, he has obvious objections to the size, scale, and placement of the homes.

Nona Dennis, Marin Conservation League, said she is concerned about the progressively increasing size of homes along Paradise Drive, the precedent set by past and future project approvals, and the changing character of the area. She is very familiar with CEQA criteria for recirculation of an EIR and that information received from new botanical surveys as well as from Alternative 4 could trigger that. She also noted that views of the site from San Francisco Bay have not been addressed well at all and that if addressed in the context of responses to comments, new significant impacts could be identified. Despite the improvements made by Alternative 4, she continues to feel that the extensive grading is due to excessively sized homes on excessively sized building envelopes.

Randy Greenburg concurred with Ms. Denis and asked the Commission to take her comments to heart. In her 16 years on the Planning Commission, she found that the best decision-making happens when the public has all the information it is entitled to. She said the CEQA process is a fairly objective way of getting this information and allows for peer, agency, and public review, which is why all information should come from EIR documents and not solely from the applicant. She acknowledged the applicant's offer to update biologic surveys and asked that they be overseen by the EIR consultant, not the applicant. She said the EIR alternatives analysis continues to be inadequate and does not offer an alternative that feasibly obtains the project objectives while avoiding or substantially lessening the significant effects of the project. She said the applicant's offer of Alternative 4 is not the same as having an EIR, without vested interests, create one for you and gives a skewed version of what is achievable in terms of impact reduction. She also noted that the DEIR lacks a view impact analysis from the bay, the largest and most

used public transit way and recreational open space in the area. CEQA intends an analysis of and mitigations for the impacts to views of these significant secondary ridgelines and that the Planning Commission deserves the benefit of this information. She said recirculation of specific aspects of the EIR are called for and include the updated biological study, an alternative that reduces the impacts in a meaningful way, and a view impact analysis from San Francisco Bay.

Commissioner Corcoran asked her to comment on how she might change Alternative 2. Ms. Greenburg said it seemed careless to have studied an alternative which inaccurately represented the densities that would be allowed under the County. She said a reasonable alternative should look closely at ways to reduce grading, increase clustering, decrease home sizes, and reduce view impacts.

Sandra Swanson concurred with Ms. Greenburg and said CEQA requirements clearly indicate that the EIR consultant should be directed to gather and analyze new data, and then made to re-circulate a revised DEIR.

Robert Swanson, Seafirth Road, said he raised concerns regarding views from San Francisco Bay at the last meeting and asked if those would be responded to in the DEIR. He believed it is significant enough to require re-circulation of at least that portion of the DEIR.

Chair Kunzweiler said those comments would be responded to but that it is too early to determine if it would trigger recirculation.

To comments regarding the character of Paradise Drive, Mr. Hochstrasser noted several significant estate type developments on the Town's zoning map. He said the die has been set, that this is an estate type residential development area and that this project is consistent with that. He noted that the General Plan requires developments to retain at least 50% of the land as open space and said this proposal allows for nearly 70%. He asked the Commission to support staff's recommendation and direct the EIR consultant to prepare a response to comments.

Chair Kunzweiler closed the public hearing.

Commissioner Corcoran asked how recirculation of only a portion of the DEIR would work. Mr. Anderson stated that CEQA does allow the option of re-circulating portions of a DEIR, provided the changes are not of a magnitude that would warrant revision and recirculation of the entire document. He said the EIR preparer would in that case be directed to make revisions to the document and the public review and comment period would be reopened. The Planning Commission would hold another public hearing on the re-circulated portions and then resume the process taking place this evening.

Commissioner Corcoran asked how it is determined whether to re-circulate all or a portion of the DEIR. Mr. Anderson said it is typically fairly clear to the Commission and staff and that significant revisions involving multiple topical sections typically warrant recirculation of the entire document.

Commissioner Corcoran said the consultant has done a good job of capturing an enormous project and the comments made at the last hearing. He found the comments regarding botanical surveys and views from the bay particularly helpful and said he would like to see Mr. Berman's reply to those comments. He agreed that more information would be helpful but did not think it

would be significant enough to require recirculation. He reviewed the criteria for recirculation and said he would prefer greater analysis on Alternative 2.

Commissioner Tollini asked how Alternative 4 was drafted. Ms. Henderson said she, Mr. Anderson, and Mr. Berman met with the applicant to review the concerns identified through the public and Commission comments. They informed the applicant that it would be wise to develop a new alternative that could be prepared by Mr. Berman or preferably, the applicant. The applicant prepared Alternative 4, returned to staff for review, and then accepted it as their proposed project.

Commissioner Tollini said she read through the CEQA documents and believes there to be a high threshold for recirculation in terms of new information and project alternatives. She said the comments raised are valid and will be addressed in the Final EIR. She recommended the Commission direct the EIR preparer to move forward with the response to comments.

Vice-Chair Frymier said the staff report successfully highlights the progress made on this project to date. She voiced continued concerns that the impacts on views from the bay have not been adequately addressed. She said she has a limited level of confidence that this Commission knows what this project will look like five years from now and that the environmental impacts of any project alternative have been appropriately emphasized. She said she tends to look at this project as a worst-case scenario of 14 homes built at the maximum FAR.

Chair Kunzweiler said the alternatives outlined in the DEIR illustrate a variety of environmental impacts that are possible with any number of variations of the project. He said the point is not to develop as many alternatives as possible but to ensure that the studied alternatives provide a useful illustration of all possible impacts. He noted that the project is not cast in stone and that based on the findings of the EIR, the Commission will have opportunity to make alterations to the project in the merits phase. He said the merits stage cannot begin without an understanding of the environmental dimensions of this property so the Commission can make sound determinations on what is ultimately the project.

Commissioner Corcoran asked if re-circulation would be necessary if the Commission was to direct additional biological surveys and analysis of view impacts from the bay. Mr. Berman said the applicant has already committed to conducting additional biological surveys, which will be subject to peer review by the EIR biologist. He said it is possible that through that process, new information will be identified which triggers the CEQA requirement for recirculation. Based on current information, however, he did not believe that would be the outcome, but conceded that it is possible.

Ms. Henderson stated that re-circulation would not be required prior to obtaining that information. If, in the process of following the Commission's direction, significant new information is identified, Mr. Berman would return to staff and the Commission for a determination.

Commissioner Corcoran asked if that analysis is ongoing, even past certification of the Final EIR. Mr. Berman explained that surveys would most likely continue through June because of the blooming period of the special status plant species. He noted that a peer review of the applicant's proposed surveys did recommend some additional clarification and surveys and said the

Commission would have an opportunity to review that information before making a final certification.

Commissioner Corcoran said he was reassured that surveys will be ongoing. Based on that premise and the direction regarding further analysis of views from the bay, he supported moving forward with the response to comments.

Chair Kunzweiler said he found this to be a very complete DEIR on an extraordinarily complicated and important piece of property. He said the current document identifies significant visual impacts which, per earlier comments and the Commission's direction, will be addressed and also identifies significant noise impacts associated with construction that are unavoidable and will have to be dealt with. He asked staff what the Commission could expect in terms of concerns raised about views from the bay.

Ms. Henderson said the issue was raised during circulation of the DEIR and will be analyzed and responded to by the EIR preparer. She said that if the analysis should determine that significant impacts would result, that portion of the document would require re-circulation.

Chair Kunzweiler noted that significant view impacts are already identified. Ms. Henderson clarified that no significant impacts on views from the bay have yet been identified; only impacts to views from the Middle Ridge open space area.

Chair Kunzweiler said that while he appreciates the identification of cumulative unavoidable impacts, it is not fair to penalize an applicant for the impacts created by others. Ms. Henderson explained that because of the identified significant impacts, the Commission would likely need to adopt a Statement of Overriding Considerations if it wishes to approve the project. She said the same pertains to the project's contribution to significant cumulative impacts.

Mr. Anderson noted that the General Plan EIR identified those same cumulative impacts and determined that, at build-out of the peninsula, those impacts would be unavoidable.

**ACTION:** It was M/S (Corcoran/Tollini) to find that no significant new information requiring re-circulation of the DEIR has arisen and, therefore, direct the EIR consultant to prepare the response to comments and Final EIR. Motion carried: 4-0

## **MINUTES:**

### **2. PLANNING COMMISSION MINUTES – Regular Meeting of February 10, 2010**

Chair Kunzweiler requested the following amendments to the minutes:

- Page 3 – Move “Chair Kunzweiler closed the public hearing.” to after the comments of Mr. Elias-Berg.
- Page 4, last paragraph – “Mr. Anderson said ~~he believed~~ that a stop bar is white painted...”
- Page 6, 5<sup>th</sup> paragraph – “He said it is important to do so in a way that minimizes visual impact but that it is not ~~necessarily~~ appropriate...”

ACTION: It was M/S (Corcoran/Frymier) to approve the minutes of February 10, 2010, as amended. Motion carried: 4-0.

**ADJOURNMENT:**

The Planning Commission adjourned the meeting at 9:00 p.m.

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JOHN KUNZWEILER, CHAIRMAN  
TIBURON PLANNING COMMISSION

ATTEST:

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SCOTT ANDERSON, SECRETARY