



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning &
Development
Department No.: 053
For Agenda Of: 4/12/2011
Placement: Departmental
Estimated Time: 1.25 hours
Continued Item: Yes
If Yes, date from: 1/16/2007
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell, PhD., Director (568-2085)
Director(s) Planning and Development
Contact Info: Doug Anthony, Deputy Director, 568-2046
Development Review Division – North County

SUBJECT: Evans Appeal of Planning Commission Approval of the Northpoint Development Plan

County Counsel Concurrence

As to form: No

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: No

Recommended Actions:

That the Board of Supervisors consider the Evans Appeal of the Planning Commission's approval of 98-DP-023 (06APL-00000-00039); Assessor Parcel Nos. 107-560-001 through 107-560-033 located east of Hummel Drive, south of Foster Road in the existing development of Northpoint Village, Fourth Supervisorial District, and take the following actions:

1. Make the required findings for the project, including CEQA findings (Attachment 1);
2. Adopt the Addendum for the previously certified Environmental Impact Report 78-EIR-9 and Supplemental Document 92-SD-2 (all under Attachment 2) and adopt the mitigation monitoring program contained in the conditions of approval;
3. Uphold the appeal and approve the project with the recommended changes to Condition 13.
4. Grant *de novo* approval of Case No. 98-DP-023 subject to conditions in Attachment 3.

Summary Text:

The proposed 32-unit Northpoint Project is the final phase of the 219-unit Northpoint subdivision. The other phases were constructed during the 1980s and 1990s. In October 2006, the Planning Commission voted 5-0 to approve this Project. The applicant subsequently appealed the Commission's approval of his project due to condition no. 13, which requires the applicant and the homeowner's association for the

earlier portions of the subdivision, Northpoint Homeowners Association (Northpoint Village HOA), to reach a mutual agreement regarding the equitable sharing of maintenance and repair cost of certain facilities owned and maintained by the HOA.

The Board of Supervisor considered Mr. Evans' appeal (Attachment 9) in January of 2007. A copy of the Board Letter is attached (Attachment 10). At the Planning Commission's request and with the applicant's concurrence, the Board referred the case back to the Planning Commission for assistance with resolving issues between the applicant and the Northpoint Village HOA. After three subsequent hearings at the Planning Commission (March 14, April 11, and June 12, 2007), the project was dropped from the agenda with the expectation that the applicant could work directly with the HOA to reach an agreement. On September 8, 2010, after three years of unsuccessful negotiations, the Planning Commission reconsidered the appellant's request to modify condition no. 13.

The main point of disagreement between the applicant and Northpoint Village HOA during these three years has been whether or not the new development would be required to contribute to the ongoing repair and maintenance costs of the Northpoint Village open space amenities, which include playground equipment, BBQ pits, picnic tables, open grass areas, pathways, curbs, flatwork etc. The Northpoint Village HOA has expressed concern that, once the applicant completes construction of his proposed development and the new residents move in, they will use the existing Northpoint Village amenities. As a result, the Northpoint Village HOA believes that the occupants of the new homes should be required to assist with the upkeep of the amenities either by joining the HOA or entering into a cost-sharing agreement.

The applicant has indicated that he does not want to join the existing Northpoint Village HOA. He states that many of the costs that the Northpoint Village HOA pays for are expenses associated with upkeep of the existing, older units and are unrelated to the amenities at issue. He contends that requiring his project to participate in the HOA would place an unfair burden on future residents of his project. The applicant, however, is willing to pay his pro-rata share of the repair and maintenance costs of the project's existing detention basin and roads that provide access to his project. To ensure that future homeowners will not use the existing Northpoint Village amenities, the applicant has indicated that he will require all new homebuyers to sign a document at the point of sale informing them that they will be restricted to the use of only the amenities provided within their phase of development.

At the Planning Commission hearing, Mr. Evans stated that he believed his project should have its own separate HOA and not be tied to the existing Northpoint HOA. In summary he claimed that "*The financial condition of the homeowners association, with respect to upkeep and maintenance of the existing residences, is so bad that annexation would place a grossly unfair burden upon owners of the newly constructed units.*" He has indicated a desire to: 1) form a separate HOA, and 2) pay the existing Northpoint HOA for its pro-rata share of the cost for repairing and maintaining Northpoint Circle and Parkview North (existing access roads) and the existing Northpoint retention basin.

As such, the applicant requested a modification to condition no. 13, as set forth below in underline. This modification eliminates the requirement that his project either annex to the existing Northpoint HOA or enter into an agreement with the HOA regarding provisions for repair and maintenance of all open-space amenities.

13. Prior to land use clearance of the Development Plan, the applicant shall form a Homeowner's Association and record CC&R's that provide for shared maintenance responsibilities by parcels 107-560-001 through 107-560-032 for the private open space area (APN 107-560-033) appurtenant landscaping, subject to approvals from Flood Control, P&D and County Counsel. The CC&R's shall also include by reference responsibilities for all parcels to maintain property in compliance with all conditions of approval for the project. The Homeowner's Association shall pay the existing Northpoint HOA for its share of the repair and maintenance to Northpoint Circle and Parkview North (existing access roads) and the existing Northpoint retention basin used by Phases I-IV; the pro rata share shall be 23% of any such repairs and maintenance.

The staff memorandum dated August 2, 2010 (see Attachment 11) recommended that the Planning Commission uphold the appeal and approve the project with the applicant's recommended changes to condition no. 13. The recommendation was based on several reasons. First, the absence of evidence that the new homeowners will actually create a burden on the existing facilities or that the amount that they will be required to pay is proportional to the benefits they will receive. At this point, the only evidence that new homeowners would use the Northpoint Village recreational facilities is the proximity of their homes to the facilities and the assertions by existing Northpoint Village residents that the new residents would use the recreational facilities. Second, there is no guarantee that the existing owners will impose only reasonable conditions upon the applicant. Third, the County routinely avoids involvement in private HOA matters such as this. Therefore staff recommends your Board uphold the appeal and approve the permit as outlined in the recommended actions on page 1 of this report.

The Planning Commission voted 4-0 (Blough absent) to recommend that the Board of Supervisor's deny the appeal and approve the project, including condition no. 13, as originally approved by the Planning Commission, as follows:

13. Prior to issuance of any Land Use Permits, Owner shall provide Planning & Development with evidence of a written signed agreement between Owner and Village of Northpoint Homeowners' Association ("Association) providing for annexation of the project into the existing Association, or, alternatively evidence of an agreement between Owner and the Association which shall include, without limitation, the following:
 - a. Mutually acceptable provisions for temporary construction access across Association's private roadway (portions of Northpoint Circle) to Owner's contractors and suppliers during construction of the project.
 - b. Mutually acceptable provisions for the future control, management, maintenance, and repair of all shared common areas and amenities between Owner and the future Project occupants and the Association, including, without limitation, the private roads and retention basin currently owned and maintained by the Association.

There shall be no deviation from the above stated conditions without Planning & Development approval.

For the reasons stated above, staff is still recommending that your Board uphold the appeal.

Fiscal and Facilities Impacts:

Budgeted: Yes **Fiscal Analysis:**

Staff time to process the appeal and prepare for and attend both the Board of Supervisor's and Planning Commission hearings so far has been 195 hours for an approximate cost of \$32,864 not including County Counsel time. This cost is partially offset by the \$300 appeal fee paid by the appellant per the

Planning & Development Department fee schedule in effect on the date that the appeals were filed. The remaining cost of processing the appeal is an expense to the General Fund and is budgeted in the Permitting and Compliance Program of the Development Review Division – North on page D-334 of the adopted budget for Fiscal Year 2010/2011. There are no facilities impacts.

Special Instructions:

The Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Attention: David Villalobos.

Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

Attachments:

Attachment 1: Project Findings

Attachment 2: CEQA Documents

Attachment 3: Project Conditions

Attachment 4: Planning Commission Staff Report dated September 1, 2006

Attachment 5: Staff Memorandum dated September 13, 2006

Attachment 6: Staff Memorandum dated September 29, 2006

Attachment 7: Staff Memorandum dated October 11, 2006

Attachment 8: Planning Commission Action letter dated October 11, 2006

Attachment 9: Appeal to the Board of Supervisors dated October 20, 2006

Attachment 10 Board Letter dated November 21, 2006

Attachment 11: Staff Memorandum dated August 2, 2010

Attachment 12: Planning Commission Action letter dated September 8, 2010

Authored by: John Zorovich, Senior Planner, 934-6297

CC: County Counsel

