

Attachment 9:

APPEAL TO THE BOARD OF SUPERVISORS DATED OCTOBER 20, 2006

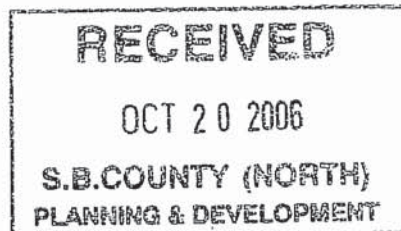
ATTACHMENT 9
APPEAL TO BOARD OF SUPERVISORS 10/20/2006

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October 20, 2006

County of Santa Barbara
Board of Supervisors
123 East Anapamu Street
Santa Barbara, California 93103



Re: Decision rendered by the Planning Commission in Case No. 98-DP-023.

Gentlemen:

The Northpoint project consists of 219 condominium units to be developed in seven phases. The project was approved by the County of Santa Barbara on July 7, 1979. The final tract map for all phases was recorded on July 30, 1982.

On August 18, 1989, development of all phases had been completed except for Phase IV of Unit III, consisting of 32 residences, and Phases V and VI of Unit IV, consisting of 26 and 54 residences, respectively. On that date, the then-owner of the undeveloped phases, Mr. Robert C. Wilks, filed a lawsuit against the county, contesting the county's denial of applications for extensions of time for development of the said four phases.

On December 12, 1989, Mr. Wilks and the county entered into a stipulation that allowed Mr. Wilks to complete development of the 18 residences in Unit III, Phase IIIb, and construct related improvements.

In December, 1991, Mr. Wilks and the county entered into a settlement agreement with regard to the aforementioned lawsuit. The agreement by its terms is binding upon the parties and their heirs, successors, executors, administrators and assigns, and runs with the land (Section 11.7).

Subsequently, development of Phase V, consisting of 26 residences, and Phase VI, consisting of 54 residences, was completed pursuant to the said settlement agreement without annexation to the original homeowners association.

In August 1998, Mid-State Bank, as Mr. Wilks' successor-in-interest, filed an application with the County Planning Commission to allow construction of the 32 residences comprising Unit III, Phase IV. The planning commission's staff report dated January 6, 1999, pertaining to the said application, included, in Section 7, under "Project Specific Conditions," the following:

“Prior to issuance of Land Use Permits for construction or grading, evidence that the project has been annexed into the existing Northpoint Homeowners Association shall be provided to Planning and Development.”

I subsequently purchased the land which comprises Unit III, Phase IV, with the intention of completing the final 32 units of the Northpoint development. I approached the Northpoint Homeowners Association, concerning annexation, and was advised that their approval of annexation would be conditioned upon demands for \$115,200, as an “annexation fee,” the construction of a 1,200 square foot open-beam clubhouse with restroom, kitchen area and utility area, a shade structure with windbreak, a Jacuzzi, concrete sunbathing deck, and a block wall along the eastern boundary of Phase IV, along with the association’s right of approval of final specifications and construction plans, reimbursement of all costs of expenses including but not limited to legal, administrative and permit fees incurred in pursuit of the annexation agreement, and resurfacing of all access streets to the construction site.

Clearly, the conditions imposed by the association upon annexation rendered development of Phase IV economically infeasible.

Near the end of 2001, I asked the Planning Commission to remove the above quoted condition requiring annexation, and to allow the project to be completed under separate governing documents.

The Planning Commission’s staff members made inquiries and conducted research, and, with input from County Counsel, determined that development of Phase IV could proceed under separate governing documents and with its own, separate homeowners association.

The Planning Commission’s Staff Report dated September 1, 2006, as presented to the Planning Commission at its meeting on September 13, 2006, deals with the “Homeowners Association Requirements” in Section 4.2 on page 3, and Section 5.5, on page 6.

In Section 4.2, it is stated that I was originally required to join the existing homeowners association, “so that Phase IV would have access to the retention basin, existing roadways, and the open space required as a mitigation measure that were all held by the existing HOA.” In succeeding paragraphs, it is stated that I have access to existing roadways and open space as a matter of right, and that I can gain access to the retention basin by contracting with the Flood Control District for maintenance responsibility.

Section 5.5 of the report includes the following statement: "As noted above in Section 4.0 of this staff report, County Counsel has now determined that the applicant does not need to annex to the existing HOA, but must form its own HOA and provide a reimbursement to the existing HOA to pay for its fair share of the operations and maintenance of the private roads and basin."

The condition attached to the staff report of January 6, 1999, requiring annexation to the existing HOA is replaced in the staff report of September 1, 2006, by the following language, at page B-6:

"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 107-560-32 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; the pro rata share shall be 15% of any such repairs and maintenance."

Notwithstanding the foregoing, the Planning Commission, at its meeting on September 13, 2006, rejected my request to be permitted to develop Phase IV separately from the existing homeowners association and its CC&R's, and instructed me to meet with the Northpoint Homeowners Association, again, in an effort to arrive at a mutually satisfactory arrangement for annexation.

I did meet with the association's representatives, and encountered considerably less hostility than had been the case when we last met. We arrived at an "agreement to agree," by which the above-quoted condition attached to the staff report of September 6, 2006, would be revised to provide for, either, annexation of Phase IV or its separate development after mutually-acceptable terms have been arrived at for (1) access during construction and (2) "future control management, maintenance of all shared common areas and amenities..." The Planning Commission approved the proposed revision on October 11, 2006.

It now appears 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.

The association's reserve fund has been depleted by the cost of replacing balconies. Extensive work will be required to repair or replace roof underlayment for all units. Apparently, construction defects and deterioration associated with the passage of

Board of Supervisors
October 20, 2006

time have brought about mounting costs of maintenance and repair. At the beginning of this year, the association's reserve cash balance stood at sixteen percent of the established "ideal" fund balance, which, in turn, was almost \$300,000 below estimated current replacement costs.

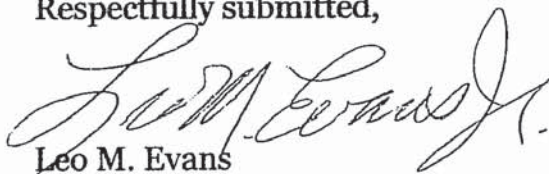
Phase IV's right of access to streets in the development is firmly established in the law, as was confirmed by county counsel. The retarding basin was constructed by my predecessor in interest, and will serve the entire tract, regardless of the nature and number of governing organizations, and the costs of its maintenance can easily be apportioned. I submit that the Planning Commission's decision was clearly inconsistent with applicable law.

The Planning Commission's Staff Report dated September 1, 2006 states unequivocally that "the applicant does not need to annex to the existing HOA," and states the legal and practical bases for that conclusion. No evidence was presented to contradict or challenge that conclusion. I submit that the Planning Commission's decision is not supported by the evidence presented for consideration.

Section 1094.5(b) of the Code of Civil Procedure provides that "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." I submit that, based upon the matters set forth above, the decision could be held to amount to abuse of discretion, under the said statute.

It is respectfully requested that the decision rendered by the Planning Commission in the referenced matter be reversed and that I be permitted to proceed with the development of Northpoint Village Unit III-Phase IV, in the manner set forth at page B-6 of the staff report dated September 1, 2006, quoted above.

Respectfully submitted,



Leo M. Evans