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May 4, 2011

SENT VIA EMAIL (sbcob@co.santa-barbara.ca.us)

Santa Barbara County Board of Supervisors
c/o Clerk of the Santa Barbara County Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, California 93101-6054

**Re: May 10, 2011 Agenda Item: Leo Evans' Appeal Of Santa Barbara Planning
Commission Approval Of The Northpoint Development Plan**

Dear Members of the Board of Supervisors:

My office represents the Village of Northpoint Homeowners Association (hereafter, the "Association"). It is my understanding that Mr. Evans' protracted appeal of the Santa Barbara Planning Commission's (hereafter, the "Planning Commission") conditions of approval for the approved development plan has been put on the Santa Barbara County Board of Supervisor's (hereafter, the "Board of Supervisors") agenda for May 10, 2011.

The Association and the Northpoint community are opposed to the changes proposed by the applicant to condition 13 of the Conditions of Approval of the approved Development Plan.

A brief history is relevant to the current issues on this appeal. Attached hereto as Attachment 1, is a Timetable of Events chronicling the past history of the phased Project since its inception in 1982 and the more recent events related to the approved Development Plan.

Prior to the current approved Development Plan, each of the phased Northpoint Development plans required, as a condition of approval, that the underlying properties be annexed into the Association. The location of the proposed project is surrounded on three (3) sides by the existing Northpoint Project. The current President of the Association will present a Microsoft PowerPoint presentation at the Board of Supervisors hearing consisting of seven (7) photographs of the proposed development and the existing Northpoint Project. These photographs will illustrate the close proximity of the proposed development to the common areas and amenities of the Northpoint Project.

1998 - 2003

After acquiring the underlying property in 1998 and early on through 2002, Mr. Evans had several meetings with representatives of the Association to discuss annexation issues. *Mr. Evans chose not to proceed with the proposed development at that time.*

In November 2003, Mr. Evans first proposed to the County a stand-alone association for Phase 4 of the Project. From the beginning, his proposal for a stand-alone association was based on his contention that the residents of the new development have unrestricted legal access to use the private roads and water retention basin owned by the Association and serving the existing

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Northpoint Association, subject only to payment of a prorated share of the future repair, maintenance, and replacement costs of the roads and water retention basin. Notably, Mr. Evans did not propose a method for assuring the collection of these costs by the Association from the future residents or a practical means for the Association to control the usage of these common areas and amenities by the future residents and guests of his development. *Again, Mr. Evans chose not to proceed with the development for three years.*

2006 – 2007

In September 2006, Mr. Evans submitted his Development Plan to the Planning Commission to proceed with the development as a stand-alone association. The Planning Commission (responding to the Association's and its members' concerns regarding the future use of and control over the new project's future owners' use of the private roads and water retention basin) continued the hearing in order to allow the parties to attempt to resolve their differences.

Following the September 2006 Planning Commission meeting, the parties negotiated the language of the current revised condition of approval (No. 13). This revised wording gave Mr. Evans the option of either annexing his proposed development into the current Association *or* entering into an agreement with the Association for the "future control, management, maintenance and repair of all shared common areas and amenities," including the private roads and retention basin currently maintained by the Association. *Both the Association and Mr. Evans supported the wording of the revised condition.* The revised and agreed upon condition of approval No. 13 was considered, accepted by staff, and incorporated into the current development plan, and approved by the Planning Commission on October 11, 2006.

Mr. Evans, in a complete about face, filed an appeal of the decision to the Board of Supervisors ***based primarily on his opinion that the current financial condition of the Association would place a grossly unfair burden on the owners of the new units.***

On January 16, 2007, the Board of Supervisors heard the appeal, remanded the proposed development plan back to the Planning Commission, and requested that the parties participate in a facilitation meeting with County Counsel. At the facilitation meeting, the Association pointed out that the future residents of Mr. Evans' proposed stand-alone development will not only be using the private roads and water retention basin, but will have easy access to and the opportunity to use the existing Northpoint common-area open space and recreational facilities, including the volleyball courts, playground equipment, BBQ pit, and picnic tables. Mr. Evans was and continues to be unwilling to acknowledge the adverse affects of a stand-alone association on the existing Northpoint Project, and the facilitation was unsuccessful.

In June 2007, the Association and Mr. Evans (acting with legal counsel at that time) agreed to an outline of general terms for a mutual joint use and maintenance agreement for sharing common area and amenities (including the private roads, retention basin, and other recreational amenities to be identified in the agreement).

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2007 – Date

Between June 2007 and May 2009, Mr. Evans and the Association attempted to negotiate a mutual joint use and maintenance agreement for sharing common area and amenities of the existing Association. This included a meeting at the Northpoint Project to allow the Association to show Mr. Evans the existing Northpoint common-area open space and recreational facilities, including the volleyball courts, playground equipment, BBQ pit, and picnic tables, all of which would be easily accessible from his proposed development. Unfortunately, Mr. Evans chose to negotiate without legal counsel and the negotiations and communications were and have been sporadic ever since. Each time that it seemed an accord on some of the issues was close, Mr. Evans stepped back and reverted to his current position of ignoring the Association's concerns with no *consideration* of the physical impacts that his proposed development would have on the Association and the Northpoint Project. *In fact, Mr. Evans completely stopped negotiating with the Association after May 2009.*

In January 2010, County staff (namely, John Zorovich) contacted the Association to get an update on the status of the negotiations (apparently at Mr. Evans' request) and requested that the Association re-open the negotiations concentrating on the current and future costs associated with the common area and amenities to be shared between the Association and the residents of the future development as a stand alone association. In response, the Association and its current property management firm, undertook an investigation and research into those budgetary issues and tendered a letter to Mr. Evans with their estimates relating to the current maintenance costs, the impact fees and projected future maintenance costs and reserve allocations for each component of prospective shared common area and common amenities. *As in the past, Mr. Evans chose not to respond to the Association's efforts.*

Physical Location Of The Approved Development Within The Northpoint Project

The overriding factor in analyzing the impacts that the approved development will have on the Association and the existing community is its location in the middle of the Northpoint Project. Whether the proposed development is created as a stand-alone development or part of the Northpoint Project, the future residents will not only be using the private roads and water retention basin, but will have access to and the opportunity to use the existing Northpoint common-area open space and recreational facilities, including the volleyball courts, playground equipment, BBQ pit, and picnic tables, all of which are close to and easily accessible from the proposed development. The Association, in its negotiations regarding a common area and amenity sharing agreement, has asked Mr. Evans to recognize these impacts; but he has refused. The Association has been extremely reasonable in its valuation of those common areas and amenities and has spent considerable time and expense to estimate the current values of these items and the future maintenance and replacement costs of those items. *Mr. Evans has yet to even respond to the Association's good-faith efforts to provide him with these estimates.*

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Annexation Option

In Mr. Evan's own words, his position not to annex the approved development into the Association is *based primarily on his opinion that the current financial condition of the Association would place a grossly unfair burden on the owners of the new units*. Not only is Mr. Evan's opinion on the Association's financial condition exaggerated and distorted, but the fact that he raises those issues to rationalize a stand-alone association is out of place under these circumstances. First, it should be pointed out that the Association maintains a pro forma budget meeting all requirements of current common interest development law, including the adoption of a reasonable and legally-compliant reserve funding plan.

More importantly, Mr. Evans' opinion ignores the practical reality of the development process. The Department of Real Estate (hereafter, "DRE") will initially determine the amount of assessments to be paid by the future owners in the proposed development, whether the project is annexed into the Association or if it is developed as a stand-alone association. The amount of the assessments to be paid by the future owners will be based upon an estimated pro forma budget prepared and submitted by Mr. Evans to DRE. If the development is annexed, under current DRE regulations, and Mr. Evans' budget evidences that some units (existing units) of the combined association will derive as much as ten percent (10%) more than other units (new units) in the value of common goods and services supplied by the Association, DRE will consider variable assessments. If the percent of benefit is over twenty percent (20%), DRE will require variable assessments. Suffice it to say, DRE and Mr. Evans will negotiate the amount of the initial assessments for the new owners of the proposed development, taking into consideration the current financial and physical condition of the Association, its assets and its maintenance, repair and replacement responsibilities under the Declaration. Mr. Evan's opinion that a grossly unfair burden will be imposed on the owners of the new units if development is annexed, is erroneous.

Legal Rights To Share Common Areas And Amenities In The Absence Of Annexation

Mr. Evans contends that he has the legal right of access across the private roads owned by the Association, under the reference-to-a-map method creating an easement by implication.

The Association has never contended that Mr. Evans does not have legal access to his property across the private roads owned by the Association. Rather, the Association's contention is that the reference-to-a-map method does not give Mr. Evans the right to build out Phase 4 without annexing into the Association. Current case law holds that the reference-to-a-map method creates an implied easement in accordance with the intent of the grantor [see *Mikels vs. Rager* 232 Cal App. 3rd 334 (1991)]. The grantor, in this case, would be the original developer and his intent in creating the map (as well as the intent of the successor developers, the County, DRE, and all other agencies involved in the Northpoint Project) was to build out the Northpoint Project in phases and, in particular, to make Phase 4 part of this Association and subject to the underlying Declaration. This intent is further evidenced by the Pre-Annexation Agreement between the Association and the original developer, the stated purpose of which was to facilitate

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the annexation of the land upon which Phase 3B (already built out) and Phase 4 (which is this proposed development) after the initial annexation time frame under the Declaration had lapsed.

**Proposed Project Evaluations Based On Prior Development Plan
Requiring Annexation Are Flawed Unless Condition No. 13 Is Maintained As Is**

The proposed development plan has been evaluated by staff using the CEQA Findings and Administrative Findings that are based upon prior development plans that (1) required annexation of the proposed development into the existing Association, and (2) made the proposed development subject to the existing Declaration. We believe that the current rubber-stamp evaluations may be flawed and that the findings should be revisited in light of the current proposal to make the proposed development a stand-alone association because of the clear adverse impacts of this change on the existing Northpoint Project. Clearly, these adverse impacts will not be mitigated unless the impacts of this development on the existing Association and the Northpoint development are anticipated in the development plan. The language of the current condition No. 13 protects against the potential adverse affects and impacts on the current residents of the Northpoint Project if a stand-alone association is permitted in the middle of the Northpoint Project.

CONCLUSION

The Association's Board of Directors have consistently and continuously negotiated with Mr. Evans in good faith, as evidenced by their willingness to share common area and amenities with the future owners of units in the proposed development, whether it is a stand-alone association, or not. The Association and its members should be reasonably compensated for the impacts of this development on the Association and its residents, including protection from potential abuses by the future residents and guests of the proposed development. This can only be accomplished with some form of a joint-use and sharing agreement which must minimally include provisions (1) which allow the Association to practically and reasonably collect from the stand-alone association and/or its members the shared costs of the maintenance, repair, and replacement of the common area and amenities that will be used by the future residents and guests of the stand-alone association; and (2) which provide the Association with the right and practical ability to control and enforce reasonable rules regarding the use of the shared common area and amenities by the future residents and their guests of the stand-alone association.

If you have any questions or concerns prior to the hearing, please do not hesitate to call.

Very truly yours,

C. W. Guenther by Leslie Sands

CHRISTOPHER W. GUENTHER

CWG/lS

Enclosure

c: Client

John Zorovich

Leo Evans