



**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: P&D
Department No.: 053
For Agenda Of: 11/21/2006
Placement: Administrative
Estimate Time: 30 minutes on 12/12/06
Continued Item: NO
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director(s) John Baker, Director 568-2085
Contact Info: Zoraida Abresch, Deputy Director, 934-6585
SUBJECT: Set Hearing for December 12, 2006 to consider the appeal of the Northpoint Residential Project

County Counsel Concurrence:

As to form: Yes No N/A

Auditor-Controller Concurrence:

As to form: Yes No N/A

Other Concurrence: N/A

As to form: Yes No N/A

Recommended Action(s):

That the Board of Supervisors set a December 12, 2006 hearing to consider the Evans Appeal of the Planning Commission's approval of 98-DP-023 (06APL-00000-00039), Fourth Supervisorial District. At the December 12, 2006 hearing, the Board of Supervisors action should include the following:

1. Adopt the required findings for the project specified in the Planning Commission's action letter dated October 11, 2006 including CEQA findings, (Attachment B);
2. Accept the Environmental Impact Report 78-EIR-9 and Supplemental Document 92-SD-2 and Addendum as adequate for this project and adopt the mitigation monitoring program contained in the conditions of approval;
3. Deny the appeal and uphold the Planning Commission's October 11, 2006 approval of 98-DP-023; and,
4. Grant *de novo* approval of Case No. 98-DP-023 subject to the conditions included in the Planning Commission's action letter dated October 11, 2006.

Summary:

A. Planning Commission Action

The Planning Commission considered the Northpoint project (98-DP-023) on September 13, 2006 and October 11, 2006. The application involves AP Nos. 107-560-001 through 107-560-033 located east of Hummel Drive, south of Foster Road in the existing development of Northpoint Village. At the October 11, 2006 hearing, the Planning Commission voted 5-0 on a motion to approve the project as revised at the hearing. The major issue of the project was whether or not the project should be required (as a condition of approval) to annex to the existing Northpoint Homeowners Association (HOA) or form its own HOA. In response to this issue, condition of approval No. 13 was revised to give the applicant an option of either annexing his project into the existing HOA or enter into a mutually acceptable agreement with the existing HOA for maintenance and repair of all shared common areas and amenities between the applicant, future project occupants and the existing HOA. The project developer is appealing the Planning Commission's decision; therefore, no facilitation meeting was conducted.

B. Staff Response to Appeal Letter

The attached appellant letter, dated October 20, 2006, outlines his concern with the findings made by the Planning Commission to approve the project. In summary the appellant claims 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.*" As a result, the appellant has indicated a desire to: 1) form a separate HOA and 2) pay the existing Northpoint HOA for its pro-rata share of the repair and maintenance to Northpoint Circle and Parkview North (existing access roads) and the existing Northpoint retention basin.

The issue of whether the project should be required to annex to the existing Northpoint HOA has been ongoing since the project was considered by the Planning Commission in 1999. At the October 11, 2006 Planning Commission hearing, revised wording for condition of approval No. 13 was presented to the Planning Commission to resolve the annexation issue (see below).

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.

The revised wording had been provided to P&D staff by the applicant and the HOA after both the applicant and representatives from the existing Northpoint HOA had met (at the direction of the Planning Commission) to resolve the annexation issue. In summary, the revised wording allows the applicant to either: 1) Annex into the existing HOA or, 2) enter into an agreement with the existing HOA that includes, without limitation, mutually acceptable provisions for:

- Temporary construction access across the Association's private roadway; and,
- Future control, management, and maintenance and repair of all shared common areas and amenities between Owner and the future project occupants and the Association.

Prior to the Planning Commission's approval of the project, both the applicant and a Northpoint HOA representative stated their support for the new condition wording.

Background:

A. Tract Map (TM) 12,414/82-DP-03

The proposed 32 unit townhouse project was originally approved as Phase IV of a six phase, 219 unit condominium project under 82-DP-03. This is the last phase of the six phase development. Building footprints were recorded for each unit and the open space lot through TM 12,414 approved in July 1979 and recorded in 1982. All other phases have been developed. Other than Mariposa Townhouses, the earlier phases use a retention basin and an open space parcel required as a mitigation measure; portions of this parcel have been sold to Mariposa Townhouse project (which has been constructed) and the Orcutt Aqua Center (which is pending approval). The original Development Plan for unit III expired as did a Development Plan approved in 1992. The currently proposed project was previously considered by the Planning Commission in 1999. At that time the county required that the current owner annex to the existing HOA. The original CC&R's for the Northpoint project provided for a 10-year opportunity to annex without HOA approval, however, this period has elapsed and negotiations between the applicant and the HOA were not productive. Although this phase does not have access to the open space mitigation parcel it has provided the required 40% open space required by the DR zone district and the ordinance adopted at the time of original approval.

B. Infrastructure Requirements

Land Use Development Policy #4 (LUDP #4) requires that all projects have adequate facilities (i.e. roads, drainage facilities) prior to project approval. Phase IV must share the private roads and retention basin with the earlier phases. Owners of lots purchased by deed with reference to a subdivision map have a right to use the roads of the subdivision [Danielson v. Sykes (1910) 157 Cal. 686]; Mr. Evans' deed referenced TM 12,414. Therefore, the project has been conditioned to require future occupants to pay their fair share of fees for road maintenance. In addition, the project has been graded to naturally flow into the basin and the County Flood Control District has required the applicant pay its pro rata fees. Thus, the Phase IV project has legal rights to the roads and the basin without annexation to the existing HOA and the project would therefore be consistent with LUDP #4.

C. September 13 Planning Commission Hearing; HOA Issues

The Planning Commission again considered the proposed project on September 13, 2006. Staff, in consultation with county counsel, recommended that the project be required (as condition of approval No. 13) to either annex to the existing Northpoint HOA or form a new HOA and pay their pro-rata share for the repair and maintenance to Northpoint Circle and Parkview North (existing access roads) and the existing Northpoint retention basin. At the hearing considerable public testimony was provided with respect to the HOA annexation issue. The applicant stated his support for the condition requirement as he did not want to annex to the existing HOA, but wanted to form his own HOA. A representative of the

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existing Northpoint HOA stated that the proposed project should be required to annex to the existing HOA to avoid potential trespassing conflicts. At the September 13th hearing, the Planning Commission directed the applicant to work with the existing Northpoint Homeowner's Association to seek a possible solution to the HOA annexation issue. Prior to the October 11th hearing, the two parties met and came up with a mutually acceptable resolution in the form of proposed wording for condition of approval No. 13 (see above).

Fiscal and Facilities Impacts:

Budgeted: Yes No

Fiscal Analysis:

The costs for processing appeals are provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$300 to P&D. The estimated cost to P&D for processing this appeal is \$2,400. Costs beyond the \$300 fee will be absorbed by P&D. These funds are budgeted in the Permitting and Compliance Program of the Development Review North Division, as shown on page D-294 of the adopted 2006/2007 fiscal year budget.

Staffing Impact(s):

Legal Positions:

n/a

FTEs:

n/a

Special Instructions:

Clerk of the Board shall complete noticing in the Santa Barbara News-Press and shall complete the mailed noticing for the project at least ten (10) days prior to the December 12, 2006 hearing (mailing labels attached).

The Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Attention: Cintia Mendoza, Hearing Support.

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

Attachments:

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

Attachment B: Staff Memorandum dated September 13, 2006

Attachment C: Staff Memorandum dated September 29, 2006

Attachment D: Staff Memorandum dated October 11, 2006

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

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

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

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