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April 30, 2011

Board of Supervisors, County of Santa Barbara
County Administration Building
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Re: Statement in support of my appeal of the Planning Commission's denial of my request for the removal of a condition to the issuance of a building permit for the construction of 32 units in the Northpoint Project.

Gentlemen:

The development known as Village of Northpoint was designed to be constructed in seven phases, designated as follows:

Phase 1 - 33 units
Phase 2 - 30 units
Phase 3a - 26 units
Phase 3b - 18 units
Phase 4 - 32 units
Phases 5/6 - 80 units

All of the phases have been constructed, and all units have been sold and occupied, except for Phase 4.

The owners of units in Phases 1, 2, 3a and 3b constitute the Village of Northpoint Homeowners Association (the "Association").

Units 5 and 6 consist of tenant-occupied apartment rental units, known as "Mariposa Homes." These phases, combined, are a "stand alone" entity completely separate from, and independent of, the Association. Their construction did not follow the original plans and elevations for the Northpoint project. The units are smaller and are more family-oriented in design.

Upon the completion of Phase 1, the Association was formed, as a California nonprofit corporation. A Declaration of Covenants, Conditions and Restrictions ("CC&R's") was executed by the developer on December 11, 1980 and recorded on January 12, 1981, embodying the 33 units comprising Phase 1.

Article XIII, Section 4, of the CC&R's provides that additional phases may be annexed within ten years of the date of the CC&R's, without the consent of the Association. By amendment recorded on May 23, 1990, the said Section 4 was restated to provide that phases could be annexed within twenty years after the recording of the CC&R's, but that such annexation could occur only with the approval of the Board of Directors and after compliance with the terms and conditions of a "Pre-Annexation Agreement." (See Attachments 1a and 1b.)

The CC&R's are a governing document. They apply to lands described therein and to the owners of those lands. It follows that, after the expiration of the period during which the CC&R's permit the developer to annex phases without the consent of the owners of the previously-developed phases, the homeowners association can adopt provisions that prevent or restrict further annexations. There appears to be no legal authority for the Northpoint Association's position that the power to reject annexation of subsequent phases is tantamount to the power to prevent the development of such phases. If CC&R's could so empower an association, that association could, at any point, cut off all future development, and occupy the entire tract by itself.

If, during the 10- and 20-year periods designated in the CC&R's, the owner of undeveloped land desires to build-out a phase, there has to be an alternative to annexation. If he cannot obtain, or does not seek, the Board's permission to annex, he must be able to build his units and adopt separate CC&R's and other governing documents for that phase. The CC&R's adopted by the Association are not a source of authority to derive a huge windfall from the development of the final phase as a price for either its annexation on one hand or establishing its own, separate, governing documents on the other.

The CC&R's, as the primary governing document of the Association, can, presumably, endow the Association with the power and authority to decide who can annex and under what conditions, during a prescribed, reasonable, period of time, such as twenty years. However, there is nothing in the nature of the CC&R's that would enable that document to confer upon the Association the power and right to impose conditions upon the issuance of a building permit, or to determine whether or not, and under what conditions, the Successor Declarant, as fee owner of undeveloped lands, might construct any additional phases that are described on the tract map.

I believe that the Association's contrary position is untenable. I believe, also, that the Planning Commission's empowerment of the Association by granting its request that annexation of Phase 4 be made a condition to the issuance of a building permit amounts to an unlawful or inappropriate delegation of its authority, is completely without any rational basis, and is an abuse of its discretion.

I acquired the land upon which Phase 4 was to be built in 1998, which was in the duration of the above mentioned 20-year period. That period has now expired. I believe that Section 4 of Article XIII is now ineffective, as to any power that it may have given to the Association, and that the Association's ability to impede the completion of the development by demanding extortionate payment for access to the land is now based solely on the Planning Commission's gratuitously imposing an unreasonable condition upon the issuance of a building permit.

As is customary in the construction of phased developments, all of the recreational facilities and similar or related amenities were built with the early phases and nothing of that sort remains to be built. The designers of the development considered those facilities to be sufficient for all seven phases. However, none of those facilities would be included in Phase 4, as a separate entity. They would all remain as part of the existing four phases, thereby reducing, rather than increasing, any possible "impact" that the completion of Phase 4 would have on the existing phases.

At the Planning Commission's meeting on September 5, 2010, each of the Commissioners cited "impacts" as his or her reason for voting "no" on my request that the annexation requirement be removed as a condition to issuance of a building permit. Northpoint Village is a phased development. Any impacts upon existing phases that might result from the construction of additional phases were surely contemplated by the designers of the development and, presumably, by the homeowners when they bought their units. In any event, I believe that it is improper for the Planning Commission to undertake to protect the homeowners from undefined impacts that may or may not occur in the future, by blocking development of a project that has met all legal requirements for a building permit.

The Association has indicated that it feels that Phase 4 must either pay a ransom for the privilege of annexing or buy an "equity interest" in the earlier phases in order to develop under separate governing documents. In addition, it demands a great degree of control over any separate entity and its members. Those demands, in addition to being absurd, would tend to render the project economically unfeasible, while making it extremely unattractive to potential home buyers and lenders.

The residences in a built-out Phase 4, whether as a separate entity or as an adjunct to Phases 1, 2, 3a and 3b, would not be an "easy sell." They would be a part of an aging community of 20- to 30-year-old homes, built to suit the tastes and preferences of the 1970's. The existing homes do have deferred maintenance needs and the monthly association dues are on the high side, which, when combined with a monthly mortgage loan installment, results in an unwieldy and inflated monthly cost of home ownership, all of which would affect the appeal and salability of the Phase 4 units.

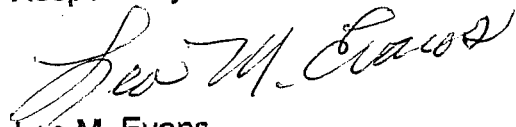
Giving the Association a payoff for the privilege of annexing, or "buying into" existing facilities that are not wanted or needed, while contractually granting the Association the right and power to control, and make assessments against, future homeowners, would burden the project with added and unjustifiable costs that would render it completely unviable. There is no comfort in knowing that I would not be the first Northpoint developer or contractor to suffer substantial loss, or even go into bankruptcy.

I am sure that the members of the Association are fine people and good citizens, who work hard, take care of their families, vote, and pay taxes. They are impressive when they appear in force and their power-point presentation is proof positive that they maintain a lovely community of homes, streets, and amenities. I would like to be their neighbor. However, I believe that the Planning Commission erred when it imposed the herein discussed condition to the issuance of a building permit and, again, when it refused to remove that condition.

As stated, the 20-year period during which the Association's consent is a prerequisite to annexation has expired. Neither the CC&R's nor—so far as I have been able to determine—any law or regulation prescribes an alternative to annexation, or bars the formation of a separate entity with its own governing documents.

In view of all of the matters stated above, I respectfully request that the said condition of annexation be deleted from the list of conditions for the issuance of a building permit for the construction of Phase 4 at Northpoint Village.

Respectfully submitted,


Leo M. Evans

ATTACHMENT 1a

Section 4 of Article XIII of the CC&R's, as originally constituted, provides as follows:

Article XIII - "Section 4. Annexation. Additional land within the area described in Tract 12414 as approved by the County of Santa Barbara, California may be annexed by the Declarant without the consent of members provided that the Federal Housing Administration and the Veterans Administration have determined that the proposed annexation is in accord with the general plan heretofore approved by them, and provided further that the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the California Real Estate Commissioner with the application for a public report for the first phase of development of the Properties. Said annexation may be effected at any time within ten (10) years of the date of this instrument but in no event later than the third anniversary of the original issuance of the most-recently-issued subdivision public report for a phase of the development."

ATTACHMENT 1b

Section 4 of Article XIII of the CC&R's, as amended, is restated as follows:

Article XIII - "Section 4. Annexation. Additional land within the area described in Tract 12414 as approved by the County of Santa Barbara, California may be annexed by the Declarant without the consent of members provided that the Federal Housing Administration and the Veterans Administration have determined that the proposed annexation is in accord with the general plan heretofore approved by them, and provided further that the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the California Real Estate Commissioner with the application for a public report for the first phase of development of the Properties. Said annexation may be effected at any time within twenty (20) years of the date of the original recordation of this declaration. No such annexation shall occur except upon approval of the Board of Directors of the Association and in accordance with the terms and conditions of a Pre-Annexation Agreement approval by the Board."