

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 30 2022

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2020-CP-40-03475

University Hill Neighborhood Association..... Plaintiff/Respondent,

v.

City of Columbia, City of Columbia Design and Development Review Committee and
Trinitas Ventures LLC Defendants/Appellants.

MOTION FOR EXPEDITED APPELLATE REVIEW

Pursuant to Rule 263(b) of the *South Carolina Appellate Court Rules*, Appellants City of Columbia (“City”), City of Columbia Design/Development Review Committee (“DDRC”), and Trinitas Ventures LLC (“Trinitas”) (collectively, “Appellants”) respectfully request an order from this Honorable Court expediting the above-captioned appeal for the following reasons.

BACKGROUND

This action began nearly two years ago as an appeal from two decisions of the City’s DDRC, a board of architectural review authorized by S.C. Code Ann. § 6-29-870. Trinitas proposes to demolish certain existing buildings and construct an apartment building at the southeast corner of Gervais Street and Pickens Street in Columbia, South Carolina, known as 1600-1620 Gervais Street (the “Proposed Construction”). On March 12, 2020, the DDRC granted Trinitas’ application for a Certificate of Site Plan Approval (the “Site Plan Approval Decision”) and on July 9, 2020, the

DDRC granted Trinitas’ application for a Certificate of Design Approval for New Construction (the “Design Approval Decision”). On July 23, 2020, an adjacent unincorporated neighborhood association, the University Hill Neighborhood Association (“Association”), which also challenged Trinitas’ applications before the DDRC, appealed the DDRC’s Design Approval Decision to the South Carolina Circuit Court.¹

Association’s notice of appeal (improperly captioned as a “Complaint”) acknowledges that this case is an appeal pursuant to S.C. Code Ann. § 6-29-900(A). Compl. at ¶ 3. Association asserts that its appeal includes an independent claim within the circuit court’s original subject matter jurisdiction, requesting that the DDRC’s Site Plan Approval Decision be vacated because City’s delegation of site plan review to the DDRC rather than City’s Planning Commission was *ultra vires*.

Association also argues the DDRC’s Design Approval Decision was based on mistaken legal interpretations and insufficient evidence to “justify reducing the requirements of a number of specific provisions” in City’s *City Center Design/Development Guidelines*, Final Report, September 1, 1998, LDR International, Inc. (“*Guidelines*”). See City Ordinance Section 17-253.

On August 24, 2020, Appellants filed Motions to Dismiss Association’s appeal. These parties argued, in part:

- (i) the circuit court lacked jurisdiction over the DDRC’s March 12, 2020 Site Plan Approval Decision because Association failed to timely appeal pursuant to S.C. Code Ann. § 5-29-900(A) (requiring an appeal to be filed within 30 days of actual notice of the decision);
- (ii) Association lacked standing to appeal under S.C. Code Ann. § 6-29-900(A) because Association did not have a “substantial interest” and could not establish standing or application of the public interest exception to the standing requirement; and
- (iii) Association failed to state an appeal as to the Site Plan Approval Decision entitling it to relief under S.C. Code Ann. § 6-29-930 (“[T]he court must determine only whether the decision of the board is correct as a matter of law.”).

On October 7, 2020, the circuit court denied Appellants’ Motions to Dismiss and appeared to

¹ It is undisputed Association did not appeal the DDRC’s Site Plan Approval Decision.

rule on the merits of the appeal on all issues raised by Association in its Complaint. The circuit court concluded: “[T]he position of the DDRC concerning height was a mistake of law and . . . the grant by . . . City of the power of site plan review . . . to the DDRC was *ultra vires*.” See October 7, 2020 Order at p. 32. On October 15, 2020, Trinitas and the DDRC filed a Motion to Alter or Amend the Order. City also filed a Motion to Alter or Amend. By order entered November 19, 2020, the circuit court denied Appellants’ reconsideration motions. Appellants now appeal these orders.²

Following the circuit court’s denial of Appellants’ reconsideration motions, the circuit court delayed the final hearing because of protections asserted by lawyer-legislator Richard A. Harpootlian, counsel for the Association. On September 13, 2021, the DDRC and Trinitas filed a Petition for Writ of Mandamus pursuant to 245(B), SCACR, or, in the alternative, Petition for Certification pursuant to Rule 245(A), SCACR. A final merits hearing was held by the circuit court on October 14, 2021 and an order reversing the DDRC’s decisions on all grounds asserted by Association was entered by the circuit court December 7, 2021. This order is substantially the same as the circuit court’s October 7, 2020 order denying Appellants’ Motions to Dismiss.

On December 17, 2021, Appellants filed a Motion to Reconsider the circuit court’s order. The circuit court denied the motion to reconsider on March 10, 2022. This appeal was filed on March 30, 2022, pursuant to Rule 203, SCACR.

² Appellants previously appealed these orders to this honorable Court on December 3, 2020, pursuant to Rule 203, SCACR. Despite substantive findings of fact and conclusions of law, this Court found that the circuit court’s orders were interlocutory and not immediately appealable. See January 14, 2021 Order.

ARGUMENTS

I. EXPEDITED REVIEW WOULD FURTHER CLEAR LEGISLATIVE INTENT.

This case presents, in predominant part, an appeal which has been pending for nearly two years, despite legislative directive for expedited judicial review of cases of this type.³ As set forth in Appellants' Motions to Dismiss and final appellate briefs considered by the circuit court, Association lacks standing to bring all claims. Granting expedited appellate review of this case would promote clear legislative intent that appeals from boards of architectural review, like the DDRC, be conducted expeditiously, so that development is not unnecessarily or unreasonably delayed or impeded, especially where the challenging party lacks standing in the first place.

The South Carolina Legislature enacted Article 5 of Chapter 29 of the South Carolina Code of Laws to administer local planning and zoning. Specifically, sections 6-29-870, *et seq.* apply to any

local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas[.]

S.C. Code Ann. § 6-29-870(A). To perform these functions, a local government “may provide for appointment of a board of architectural review or similar body.” *Id.* City established the DDRC pursuant to S.C. Code Ann. § 6-29-870, *et seq.* See City Ordinances at § 17-653.

“[A] board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. S.C. Code Ann. § 6-29-880. Section 17-653 of City’s ordinances empowers the DDRC to “[a]dminister the design guidelines for the . . . [design district (“DD”)] . . . area[.]” City Ordinances at § 17-653(b)(9). Further, City Ordinance §

³ See S.C. Code §6-29-930(A) as detailed in this Motion.

17-253 provides that “[d]evelopment within the –DD area must comply with design guidelines set forth in . . . [City’s] Code and [the *Guidelines*].” City Ordinances at § 17-253.

A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

S.C. Code Ann. § 6-29-900(A); *see also* City Code §§ 17-677, 17-655(f)(1).

After an appeal is filed,

At the next term of the circuit court or in chambers upon ten days’ notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.

S.C. Code Ann. § 6-29-930(A) (emphasis added).

In *Ward v. S.C. Dep’t of Soc. Servs.*, 427 S.C. 197, 829 S.E.2d 718 (2019), this Court considered legislative intent with respect to the undefined term “expedited” in the context of the family court’s remedy of removing names from the Central Registry of Child Abuse and Neglect pending an administrative hearing. *Id.* at 206, 827 S.E.2d at 723. This Court recognized: “the Legislature mandated an expedited review,” including an expedited hearing, and concluded that the family court correctly ruled that “eighty-two days did not satisfy that mandate.” *Id.* at 207, 827 S.E.2d at 723. Similarly, in *Chesapeake B & M, Inc. v. Hartford County, Md.*, 58 F. 3d 1005 (4th Cir. 1995), the U.S. Court of Appeals for the Fourth Circuit concluded that an applicable licensing law, which provided “for prompt judicial review,” requires not only “prompt access to the judiciary”

but also “a sufficiently prompt decision on the merits.” *Id.* at 1011-12.

Although the statute at issue does not use terms like “expedited” and “prompt judicial review,” the Legislature clearly intended appeals from a board of architectural review to be resolved speedily. First, the Legislature mandated an appeal to be filed within thirty (30) days of an aggrieved party’s actual notice of the decision. S.C. Code Ann. § 6-29-900(A). Second, the Legislature required that a hearing on the merits be made at the “next [available] term of the circuit court or in chambers upon ten days’ notice to the parties.” S.C. Code Ann. § 6-29-930(A).

Here, the circuit court pre-determined the merits of the action by purporting to decide all issues raised in Association’s appeal in its order denying Appellants’ Motion to Dismiss, filed October 7, 2020, and order denying reconsideration on November 19, 2020. An appeal of these orders was rejected by this honorable Court as premature and remanded to the circuit court. The circuit court delayed a merits hearing for nearly ten months after remand, despite Legislative directive that a merits hearing be made at the “next [available] term of the circuit court or in chambers upon ten days’ notice to the parties.” S.C. Code Ann. § 6-29-930(A).

After a hearing, the circuit court, again, erroneously determined the merits of the action in favor of Association on all issues raised in Association’s “Complaint.” The October 7, 2020 and December 7, 2021 orders from the circuit court in Association’s favor are nearly identical in terms of their findings of fact and conclusions of law. Appellants contend that both sets of orders in Association’s favor are erroneous on the primary ground that Association lacks standing to bring its challenges in the first instance. Further, Appellants assert that the circuit court misapplied South Carolina law in substantively ruling in Association’s favor. Granting expedited review would promote the legislative intent of a speedy review of an appeal in cases of this type. Otherwise, an appeal could take multiple years to work its way through the appellate process, frustrating the

legislature's clear intent and unreasonably delaying development or impeding it altogether.

There is authority for the requested expedited treatment of this matter. The Supreme Court has a standing order to expedite review of appeals involving termination of parental rights proceedings, adoption proceedings, and/or Department of Social Services actions involving custody of a minor child. *In re Expediting App. from Termination of Parental Rights Proceedings, Adoption Proceedings, and/or Dep't of Soc. Servs. Actions Involving Custody of a Minor Child*, S.C. Sup. Ct. Order dated October 20, 2011. Further, the Supreme Court has routinely expedited appeals in cases involving elections or qualifications of candidates. *See, e.g., Tempel v. S.C. State Elec. Com'n*, App. Case No. 2012-212729 (Aug. 17, 2012) (granting expedited appeal from order disqualifying candidate); *George v. Mun. Election Comm'n*, 335 S.C. 182, 516 S.E.2d 206 (1999) (granting expedited appeal where the validity of a referendum had bearing on upcoming elections).

In addition to the aforementioned classes of cases, the Supreme Court has also granted expedited appellate review in a recent case involving issues of standing and injunctive relief where public bodies and expenditure (or withholding) of public funds were at issue. *See, e.g., Richland County v. S.C. Dep't of Revenue*, No. 2016-001839 (Mar. 22, 2017) (granting petitioner's request for certification under Rule 204(b), SCACR, and expedited appellate review). Similarly, the case at bar presents issues of Association's standing to appeal the DDRC's decision and the DDRC's interpretation and application of City ordinances and guidelines. Moreover, this case involves issues of the circuit court's jurisdiction (appellate and subject matter) while sitting in an appellate capacity, the types of issues which constitute legal issues of major importance.

Our courts value efficiency and finality. *See State v. Hewins*, 409 S.C. 93, 109, 760 S.E.2d 814, 822 (2014) (“[T]he prompt resolution of claims and finality are desirable goals in civil litigation.”); *Davis v. Richland Cty. Council*, 372 S.C. 497, 503-04, 642 S.E.2d 740, 743 (2007)

(addressing issues “[i]n the interest of judicial economy”); *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 397, 390 (2050) (considering cross-appeal in the interest of judicial economy); *State v. Vick*, 384 S.C. 189, 202, 682 S.E.2d 275, 282 (Ct. App. 2009) (“[O]ur courts have at times considered an issue in the interest of judicial economy”); Rule 501, SCACR, Canon 3(B)(8) (“A judge shall dispose of all judicial matters promptly, efficiently and fairly.”).

In *Richland County v. S.C. Dep’t of Revenue*, No. 2016-001839, the Supreme Court granted Richland County’s Motion to Expedite the Appeal, thereby accepting Richland County’s argument that the order on appeal, which allegedly conflicted with extant legal opinions as to the South Carolina Department of Revenue’s (“SCDOR”) scope of authority, would lead to “the possible waste of judicial and legislative resources.” *See* Motion for Certification and to Expedite Appeal, No. 2016-001839 (Jan. 20, 2017). Richland County also argued it had its own “individualized and important need for an expeditious determination by th[e] Court.” *Id.*

Similarly, here, Appellants contend (i) the circuit court’s orders improperly and unnecessarily extend principles of standing in contradiction to the Supreme Court’s ruling in *Carnival Corp. v. Historic Ansonborough Homeowners Association*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014), (ii) place into doubt City’s delegation of site plan review which jeopardizes other applications currently pending before the DDRC, and (iii) negate or substantially undermine the DDRC’s ability to make discretionary decisions when applying City’s *Guidelines* to proposed construction within its jurisdiction. There is a substantial possibility that a further prolonged appeal in this case, which has already been under review on appeal for nearly two years, will detrimentally impact City and its board of architectural review, the DDRC, as to similar projects which come before the DDRC for review between now and a final resolution of this appeal. It will also jeopardize the project altogether as the delay in judicial review has caused substantial time and expense to Trinitas, the developer. *See*

Affidavit of Damian VanMatre. In addition, similar boards of architectural review throughout the state could be chilled by the circuit court's orders in this case. The result of such an impact on public boards of architectural review is to stymie private development and commerce in this State.

II. EXPEDITED REVIEW IS NECESSARY TO PREVENT SUBSTANTIAL FINANCIAL PREJUDICE TO TRINITAS.

In *Richland County v. S.C. Dep't of Revenue*, Richland County argued it had an “individualized and important need for an expeditious determination by th[e] Court.” *See* Motion for Certification and to Expedite Appeal, No. 2016-001839 (Jan. 20, 2017). The Supreme Court presumptively agreed by taking the case within its jurisdiction pursuant to Rule 204(b), SCACR, and granting an expedited review of the case. Here, there is also a significant likelihood of substantial prejudice to Trinitas if this appeal is not given expedited review. *See* Affidavit of Damian VanMatre.

The Proposed Construction has already been under review by City for more than two and a half years. On August 30, 2018, Trinitas entered into a contract for the purchase of the real property on which it wishes to locate the Proposed Construction (the “Site”). *See* Affidavit of Damian VanMatre at ¶ 3. Trinitas met with community stakeholders, including City and Association, to consider the site planning and design of the Proposed Construction as early as September 19, 2018. *Id.* at ¶4. Trinitas filed its applications for approval with the DDRC on December 3, 2019. *Id.* at ¶ 6.

From January to July 2020, Trinitas participated in four public meetings before the DDRC and one public work session in connection with the Proposed Construction. *Id.* at ¶ 7. During that seven-month period of time, Trinitas made significant substantive changes to the Proposed Construction's site plan and design based on changes demanded by Association and required by City to secure approvals for the project. *Id.* at ¶ 8. Trinitas has incurred more than \$1,000,000 in development costs, including engineering and architect costs, internal costs, and legal fees. *Id.*

Ultimately, Trinitas' Application for Site Plan Approval and Application for Design Approval were both granted by the DDRC, after a finding that Trinitas had substantially improved the project, having considered input and suggestions by community stakeholders, such as Association.

Association's appeal from the DDRC's twin decisions granting approval of the Proposed Construction has already been pending for nearly two years. Given the significant amount of time that has already passed in the DDRC's (and now circuit court's) review of the Proposed Construction, a denial of Trinitas' request for expedited review would cause substantial prejudice and financial hardship to Trinitas. Trinitas has already invested \$275,000 in nonrefundable deposits to the Owner of the Site and incurred \$1,000,000 in development costs associated with changes made to the Proposed Construction based on Association's demands and City's review of the project. *Id.* at ¶ 8. Over the nearly four-year period of time that Trinitas has been in development with respect to the Proposed Construction, material costs, labor shortages, and construction demands have risen exponentially. *Id.* at ¶ 10. Therefore, Trinitas has significant risk of additional price increases to the Proposed Construction the longer judicial review of the project lasts. *See id.*⁴

With respect to the future financial hardship which would result from a delay in this appeal, Trinitas estimates that an additional six-month time period could increase construction costs by \$3,000,000. *Id.* at ¶ 10. A further delay of two years or more would significantly increase these projected costs, expenses, and uncertainty. *Id.* This amount does not include the significant financial loss Trinitas will suffer if the contract is not renewed or if the appeal takes so long to conclude that

⁴ "Additional delays could result in additional non-refundable cash deposits to the Owner, extended construction durations due to missed cycles of construction delivery, and unpredictable construction interest carry. Delays may also affect the decision of our capital partners concerning the needed investment in the Proposed Construction. Based on our experience in this industry, Trinitas projects that these costs will continue to be volatile. The only way to control that volatility is to immediately enter the necessary agreements," which Trinitas cannot do while this appeal is pending. *Id.* at ¶ 10.

for business and other financial reasons the project has to be cancelled. *See id.* at ¶ 11.⁵

Should this appeal be given ordinary review pursuant to the timelines set forth in the *South Carolina Appellate Court Rules*, a resolution of the appeal authorized by S.C. Code Ann. § 6-29-900(A) will be significantly delayed, defeating the goal of expedited review set out in the statute. It is vital that the development of real estate in South Carolina proceed in an orderly, efficient, and economically sound fashion. Any other process discourages investment and chills development. The statute authorizing boards of architectural review recognizes that reality and provides for special and expedited handling of appeals like this one. Unreasonably burdening those who wish to invest in South Carolina with costly and indefinite appellate delays, especially when they prevailed before the municipal review board at issue, discourages investment and works against the purposes advanced by our state's statute.

The DDRC made decisions in Trinitas' favor after its extensive review of filings submitted by all interested parties, including the public, and after it secured Trinitas' consent to substantial changes to the construction plans. Those decisions should be given the deferential treatment mandated by S.C. Code Ann. § 6-29-930(A) and be provided expedited review on appeal as set forth in § 6-29-900(A). The fact that the Court may ultimately agree with Appellants that Association has no standing to bring any of the claims at issue in this case also necessitates expedited review. The Court's standard review period, which would potentially take two years or more, could result in a judicial finding that Association had no right to bring the case in the first place. It would be fundamentally unfair and a serious miscarriage of justice if a party which did not have a right to file

⁵ "Trinitas' contract with Owner will expire on April 1, 2022. Trinitas does not know if the Owner will extend the contract and does not know what the Owner may demand as payment for the contract extension. Further, if the appeal is further delayed for any significant period of time, Trinitas may decide that the economic benefit anticipated from the Proposed Construction is outweighed by the burden imposed by the uncertainty and cost of the planning process."

an appeal in the first place were to permanently impede a construction project and frustrate clear legislative intent by simply running out the clock. *See* VanMatre Aff. at ¶ 11.

CONCLUSION

Appellants respectfully request that this honorable Court grant an expedited review of this appeal. Therefore, Appellants seek an order setting forth an abbreviated and expedited briefing schedule and dates for judicial determination. A record on appeal has already been filed with the circuit court by DDRC, as required by statute. Final appellate briefs have already been prepared and filed by the parties. Updating these filings on this subsequent appeal would take *de minimus* time and cost. If Appellants' request for expedited review is denied, the judicial process will continue to unnecessarily and unreasonably delay a resolution of the issues in this case contrary to the express legislative intent and with significant prejudice to Trinitas. Appellants respectfully request the Court grant the relief requested in this motion.

March 30, 2022

Respectfully submitted,

s/Lyndey R. Z. Bryant
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Design/Development Review Commission

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APPEAL FROM RICHLAND COUNTY
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L. Casey Manning, Circuit Court Judge

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PROOF OF SERVICE

I certify that I caused to have served the **Motion for Expedited Appellate Review** on the Plaintiff/Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 30, 2022, addressed to its attorneys as follows:

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
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-and-

F. Patrick Hubbard, Esq.
1525 Senate Street
Columbia, SC 29208

Attorneys for University Hill Neighborhood Association

s/Lyndey R. Z. Bryant
Lyndey R. Z. Bryant, Esquire

STATE OF INDIANA)
)
COUNTY OF TIPPECANOE)

AFFIDAVIT OF DAMIAN VANMATRE

PERSONALLY appeared before me Damian VanMatre, who deposes and states that the following is based upon his own knowledge, except those matters stated upon information and belief, and as to those matters, he believes them to be true.

1. My name is Damian VanMatre. I am over the age of 18 years and am competent to make this affidavit.

2. I am employed by Trinitas Ventures LLC (“Trinitas”) as Vice President of Development Operations. I am authorized to make the following assertions on behalf of Trinitas.

3. Trinitas entered into a contract for the sale of certain real property located at 1600-1620 Gervais Street (the “Property”) with Capital Investments, LLC (“Owner”) on August 30, 2018.

4. From September 19, 2018, through July 2020, Trinitas met with community stakeholders, including City of Columbia (“City”) and the University Hill Neighborhood Association (“Association”), to consider the site planning and design of Trinitas’ anticipated apartment complex on the Property (the “Proposed Construction”).

5. On June 4, 2019, at the request of Trinitas and in pursuit of the development goals of Trinitas, Owner voluntarily rezoned the Property to make it part of City’s City Center Design/Development District.

6. On December 3, 2019, Trinitas filed two applications to the DDRC, including: (1) a Certificate of Site Plan Approval, and (2) a Certificate of Design Approval for New Construction, under a Letter of Agency from Owner.

7. From January to July 2020, Trinitas participated in four public meetings before the DDRC and one public working session in connection with the Proposed Construction.

8. Trinitas has paid Two Hundred Seventy-Five Thousand and 00/100 Dollars (\$275,000) in nonrefundable deposits to the Owner. Trinitas has also incurred more than One Million Dollars (\$1,000,000.00) in development costs associated with the Proposed Construction, including engineering and architect costs, as a result of changes made to the Proposed Construction's site plan and design based on changes demanded by the Association and required by the City to secure required approvals from the City. Trinitas has also incurred significant internal costs and legal fees related to the four public hearings held by the DDRC, one working session before the DDRC, and extended judicial proceedings over a nearly two-year appeal, all of which relate to challenges by the Association.

9. The cost of completing the Proposed Construction has increased because of the delay caused by the Association's challenges before the DDRC and judicial appeal of the decisions made by the DDRC. The cost of structural steel, lumber, copper, plumbing, and electrical materials have all increased during the period of delay. There is no uniform assessment as to the degree of increase in prices with lots of volatility; however, many increases have ranged from 25% for tariff-affected materials to more than 300% for lumber. Based on recent pricing and feedback from the subcontractor market, our project costs have risen by over Five Million Dollars (\$5,000,000.00) during the appeal filed by the Association.

10. As material costs, labor shortages, and construction demand continue to rise, Trinitas has significant risk of additional price increases to the Proposed Construction. The longer the delays, the more uncertain we are as to the viability of the Proposed Construction. Additional delays could result in additional non-refundable cash deposits to the Owner, extended construction durations due to missed cycles of construction delivery, and unpredictable construction interest carry. Delays may also affect the decision of our capital partners concerning the needed investment in the Proposed

Construction. Based on our experience in this industry, Trinitas projects that these costs will continue to be volatile. The only way to control that volatility is to immediately enter the necessary agreements. Trinitas estimates that an additional six (6) month delay could increase construction costs by an additional Three Million Dollars (\$3,000,000.00). A further delay of two or more years would significantly increase these projected costs, expenses, and uncertainty.

11. Trinitas' contract with Owner will expire on April 1, 2022. Trinitas does not know if the Owner will extend the contract and does not know what the Owner may demand as payment for the contract extension. Further, if the appeal is further delayed for any significant period of time, Trinitas may decide that the economic benefit anticipated from the Proposed Construction is outweighed by the burden imposed by the uncertainty and cost of the planning process

12. Delay of the appellate courts' review of the appeal filed by Association would significantly prejudice Trinitas and the Proposed Construction.

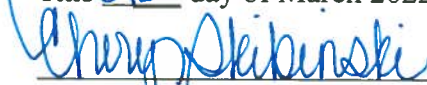
FURTHER AFFIANT SAYETH NOT.



Damian VanMatre
Vice President of Development Operations
Trinitas Ventures LLC

Sworn to and subscribed before me

This 23 day of March 2022.



Notary Public for Indiana

My Commission Expires: FEBRUARY 24, 2030

