



Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840
Phone 406-375-6530
Fax 406-375-6531
triddell@ravallicounty.mt.gov

OG-10-09-471

September 20, 2010

Canyon Breeze, LLC
PO Box 370
Stevensville, MT 59870

Dear Mr. Kwapy,

The Board of County Commissioners (BCC) approved the Canyon Breeze Subdivision subject to the conditions and requirements outlined within the enclosed Preliminary Plat Decision (PPD) and the phasing plan and schedule submitted with the Preliminary Plat Application. A copy of the PPD is required to be submitted with each phase along with the other paper work documented in the Final Plat Submittal section of the PPD.

Although your subdivision has been approved, you may not sell lots until the BCC have signed the final plat and it has been recorded with the County. However, you may enter into contracts to sell the lots. Staff recommends that any closings are scheduled after the subdivision has been recorded.

Please review the entire PPD carefully, especially the Final Plat Submittal section. The Final Plat Submittal section lists those items that are required to be submitted to the Planning Department as part of the final plat application for each phase. The final plat application for each phase must be submitted to the Planning Department at least **thirty (30) working-days** prior to the stated filing date as identified in the accepted phasing plan and schedule outlined within the PPD. The Planning Department will review the final plat application to ensure that all of the conditions and requirements have been met. Your careful preparation of the final plat application has a direct impact on how long it will take to have your final plat filed.

Once the final plat application has been deemed to contain all the required materials, the Planning Department will schedule a public meeting at which the BCC will review and sign the final plat. Following the signing of the final plat the final plat application will be forwarded to the Ravalli County Clerk and Recorder's Office for recording.

If you have any questions, please do not hesitate to call me at 375-6530.

Sincerely,

A handwritten signature in black ink, appearing to read "Tristan Riddell", is written over a horizontal line.

Tristan Riddell

Enc: Preliminary Plat Decision
Cc: TLI
Subdivision File

PLANNING DEPARTMENT

September 9, 2011

Canyon Breeze Subdivision
Robert C. Kwapy
PO Box 370
Stevensville, Mt. 59870

RECEIVED
SEP 13 2011
JC-11-09-439
Ravalli County Planning Dept.

Ravalli County Board of County Commissioners,
215 South 4th Street
Hamilton, Mt 59840

Dear Commissioners,

On August 29, 2011 I submitted a letter to the Planning Department requesting a change in mitigation fees on Canyon Breeze Subdivision. (Copy attached) A reduction from \$500 to \$100 to Emergency Services and a reduction from \$676 to \$100 to the Stevensville School District were requested. (Copy attached).

On September 1, 2011 the Planning Department responded. (Copy of letter attached) In that reply Planning stated that staff had determined that the requested changes to the mitigation were material. Their reply states that there are no physical changes to the subdivision, only to conditions (financial conditions).

I do not agree with the Planning Department's decision that the changes are material and hereby appeal to the BCC and request a hearing on this with them.

The Planning Department refers to Section 3-4-1 of the Ravalli County Subdivision Regulations (RCSR) which includes a list of changes (although not an exhaustive list) "which MAY be considered material" citing especially; b. viii. Change to conditions of approval. Planning states that the determination was made by "looking at the individual criteria and weighing applicable evidence..." No detail of that evidence is given, thus I am unable to refute it directly. Of greater importance and which has never been addressed is the legality of these fees. Mitigation fees, as used for the School District and Emergency Services, are actually impact fees. There is a process for them to be determined and applied but that process is skipped and justified by calling them mitigation fees. I believe this is illegal. This should be addressed and I am asking you to do so at this time.

Consider the \$500 fee for Emergency Services in the Conditional Approval of September 9, 2010, (particular on page 24, item 19). The important statement is "notification letters were sent to the Ravalli County Sheriff's Office requesting comments on September 30, 2009 and July 9, 2010 but NO COMMENTS (my caps) have been received to date." The Sheriff's Office did not ask mitigation. There is no way to interpret this except that the Sheriff's Office saw no impact. It was of such little significance to them that they did not bother to respond to either letter. The BCC, at least a majority of its members, ignored this and requested \$500 per lot - with no criteria of justification.

Searching for relevant financial information, I reviewed my personal residence Real Property Tax Statement. While my total property tax bill for 2010 was \$1422, Public Safety (Sheriff) receives \$75.72 and Search and Rescue receives \$3.76. The \$500 mitigation required by the BCC for Emergency Services is Six and one-half times the amount provided to Emergency Services by real estate taxes. This is an arbitrary and unsubstantiated figure. It can hardly be called a material part of a subdivision.

Below is some history of the School District requests that I have experienced.

In a letter dated July 5, 2006 the School District requested a \$5000 contribution. (See Preliminary Approval for East End Subdivision dated November 6, 2006.) A \$250 contribution was agreed on and made.

In a letter presented in December of 2006 as to the initial application of Canyon Breeze Subdivision, Stevensville School Superintendant Kent Kultgen says there is no impact study but he estimates that there is an impact on the Stevensville District of \$7500 per single family dwelling.

In a letter dated October 12, 2009 Kent Kultgen states that Stevensville schools can accommodate any students from the subdivision, wants a safe drop-off and pick-up zone. He asks for \$2500 per lot. With conditional approval of the 14 lot subdivision \$500 was asked for by the BCC and agreed to by Canyon Breeze.

On September 20, 2010 Canyon Breeze was granted Preliminary Plat Approval for an additional eleven lots – total of twenty five. About two weeks prior to the hearing I was told to expect a request for \$1000 per lot for the School District. At the hearing a Planning staff member introduced a letter from Ernie Jean, of the Ravalli County School Board. In that letter, he stated that the local tax levy is \$2711 per student and that there are 0.5 students per lot (single family residence). The BCC used this statement to set the \$1355.50 requested mitigation fee per lot as if each added student will attend and impact for a full school year.

(This \$2711 tax levy is a misleading figure because it includes personal residences, farm land, commercial property, mobile homes, personal property and business equipment.)

On September 14, 2010 the School Board agreed to accept \$1,000 each for the additional eleven lots and to average this with the original \$500 each for the first fourteen lots which then works out to \$720 per lot.

In summary, the criteria used by the BCC at the hearing to set the requested mitigation were flawed in that they were not clear and concise, but arbitrary, changeable and unpredictable as well as of questionable legality. Such criteria do not warrant being considered material, thus any mitigation based on them are not material.

While you are considering this subdivision please also consider this a request to change the deadline dates for the final plats of each phase. Presently the first phase is scheduled with a July 31, 2012 completion date. Subsequent phases are scheduled at two year intervals. This request is to set each phase back three years. Phase 1 would then have a July 31, 2015 completion date. Phase two on July 31, 2017 and on down the line.

Thank You for your consideration.



Robert C. Kwapy



Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840
Phone 406-375-6530
Fax 406-375-6531
planning@rc.mt.gov

August 22nd, 2012

Robert Kwapy
P.O. Box 370
Stevensville, MT 59870

RE: Canyon Breeze Request for appeal of Planning Department decision.

Dear Mr. Kwapy,

This letter is in response to your letter dated September 9, 2011 regarding your request for an appeal to our department's decision that your request for reduction and elimination of voluntary mitigation fees of your subdivision was a material change to the application. At that time we discussed that the new regulations required a meeting with the commissioner to appeal rather than a hearing, which would reduce your cost of appealing. You requested that our office wait until the new regulations were adopted to proceed with the appeal. The new regulations became effected June 4th of this year.

Our new regulations state:

9-1. APPEALS

- A. Appeal Submittal. An **applicant** whose **preliminary plat application** has been deemed materially changed by the **Planning Department** may **appeal** the **Planning Department's** determination to the **BCC** by submitting a written notice within ten (10) working days of the date of the **Planning Department's** determination. The **BCC** shall consider whether the proposed amendments are material at a public meeting. The **applicant** may request a public meeting before the **BCC**, and may submit additional information prior to the **BCC** meeting or hearing.
- B. Review Period. If a decision to approve, conditionally approve, or deny the **subdivision** has not yet been rendered by the **BCC**, the applicable thirty- five (35), sixty (60), or eighty (80) working day review period will continue to be suspended until the **BCC** renders a decision on the **appeal**. A decision on the **appeal** will be made within thirty (30) working days of receipt of the written notice from the **applicant**, unless a public hearing is requested.
- C. Non-Material Determination. If the **BCC** determines that the amendment(s) are non-material, the **BCC** shall either:
 1. Schedule the appropriate public meeting or hearing to continue with review of the amended **application**. The applicable thirty-five (35), sixty (60), or eighty (80) working day review period remains suspended until the **BCC** holds the public meeting or hearing; or
 2. Ensure that the amendment(s) are incorporated into the **final plat application** prior to **BCC** approval.

- D. **Material Determination.** If the **BCC** affirms the **Planning Department's** determination that the amendment(s) are material, the **BCC** shall notify the **applicant** that proceeding with the proposed amendments will require the **applicant** to either:
1. Submit the **final plat application** in accordance with the **PPD**; or
 2. Require the **applicant** to return to element or sufficiency review as detailed in Chapter 2 of these regulations, and require the **applicant** to pay fifty percent (50%) of the required review fee; or
 3. Require the **applicant** to start the **subdivision** review process over at the pre-**application** meeting as detailed in Chapter 2 of these regulations, and require the **applicant** to pay new review fees in whole.
- E. **Review Period Suspension.** By appealing the decision of the **Planning Department**, the **applicant** agrees to a suspension of the applicable thirty-five (35), sixty (60), or eighty (80) working day review period during consideration of the appeal.

Given these new regulations, I would ask you to contact our department so I can schedule a meeting with the County Commissioners.

If you have any questions, please feel free to contact our office.

Respectfully,



Terry Nelson
Planning Department Administrator

Cc: Correspondence File - General

bus children and that a \$2,500 per lot mitigation fee would be greatly appreciated as the monies would help offset the costs of additional students. (Exhibit A-3)

12. County School Superintendent, Ernie Jean, provided the Planning Department the Budget Per Pupil/Tax Levy Per Pupil information for Ravalli County. The budget is based approximately on the previous school years student enrollment figures and does not anticipate costs associated with the addition of new students. According to the document, the budget per pupil is \$9,083.50 for the Stevensville School District (averaging Stevensville High School and Stevensville Elementary) which includes capital needs and funds gathered from federal, state, and local sources. The local tax levy per pupil excluding capital, federal, and state funds would be \$2,711.00 for the Stevensville School District (averaging Stevensville High School and Stevensville Elementary). (Exhibit A-4)
13. Taxes from new residents may not be immediately available School Districts. There is currently no known available data on the average amount of time between when additional students from new residences will enroll in the School District and when School Districts receive tax money from the new residences. Because there may be a lag in the time services are provided and taxes are collected, the subdivider shall negotiate an adequate form of mitigation with the BCC. (Staff Determination)
14. Based on the currently available Census data (0.5 children per household) and available budget data, the expected taxes per household levied per pupil, excluding capital costs, within the Stevensville High School and Elementary School District would be \$1,355.50, which is half of the \$2,711.00 tax levy per public excluding capital budget allotment for the Stevensville School District (averaging Stevensville High School and Stevensville Elementary). This amount (\$1,355.50) should be taken into consideration and may be utilized as the basis for negotiating an adequate form of mitigation to offset any effects that this subdivision may have on the Stevensville High School and Elementary School Districts. Monetary contributions are not the only acceptable form of mitigation. (Staff Determination)
15. The County School Superintendent, Ernie Jean, sent a letter to the Ravalli County Commissioners stating that the Ravalli County Educational Transportation Committee has adopted a resolution requesting that the Commissioners establish a requirement that the developers of each subdivision establish a shelter at a bus stop and turnout, or turnaround, if appropriate, at each subdivision entrance that is off a County owned and maintained road. (Exhibit A-5)
16. The subdivider states that there will be a proportionate increase in service needs based on the addition of new homes. (Canyon Breeze Subdivision Application – Environmental Assessment)
17. The subdivider has proposed a \$500 per-lot contribution to mitigate the potential increase in enrollment within the Stevensville School District. (Canyon Breeze Subdivision Application – Element xli)

Public Safety Services

18. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Canyon Breeze Subdivision Application – Element i and xli)

19. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on September 30, 2009 and July 9, 2010, but no comments have been received to date. (Canyon Breeze Subdivision File)
20. The average number of people per household in Ravalli County is 2.5. This subdivision has the potential to add up to 63 additional residents to the County. (Census 2000)
21. Taxes from new residents may not be immediately available to law enforcement services, E-911, and Disaster & Emergency Services (DES). There is currently no known available data on the average amount of time between when public safety services begin to serve a new residence and when public safety services receive tax money from that residence. Because there may be a lag in the time services are provided and taxes are collected, the subdivider shall negotiate an adequate form of mitigation with the BCC. (Staff Determination)
22. The subdivider has not proposed to mitigate the potentially significant adverse impacts the subdivision may have on public safety services. (Canyon Breeze Subdivision Application – Element xli)

Emergency Services

23. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. Marcus Daly Hospital was contacted on September 30, 2009 and July 9, 2010, but no comments have been received to date. (Canyon Breeze Subdivision File)
24. Marcus Daly Memorial Hospital is not funded by local taxes. (Staff Determination)
25. The proposed emergency access onto Stevensville River Road will provide an additional access route to and from the subdivision, resulting in a potential increased service level for emergency service providers. (Staff Determination)

Roads

26. The property can be accessed via U.S. Highway 93, Canyon Breeze Court, and the internal roadway network. (Canyon Breeze Subdivision Application)
27. This subdivision is estimated to generate an additional 200 vehicular trips per day onto U.S. Highway 93. This estimation is based on the information contained in the Institute of Traffic Engineers – *Trip Generation* manual, which states that each lot will likely generate eight (8) vehicular trips per day. (Canyon Breeze Subdivision Application – Subdivision Questionnaire)
28. U.S. Highway 93 is a state-maintained roadway. (MDT)
29. Canyon Breeze Court is an existing County-standard privately-maintained roadway within a 60' public road and utility easement. (Canyon Breeze Preliminary Plat)
30. Canyon Breeze Court provides legal and physical access to the adjoining subdivision to the east: East End, Lot 1, AP. There is an existing Road Maintenance Agreement for Canyon Breeze Court that needs to be amended to include the lots created via this subdivision in addition to the lots already served. (Staff Determination, Canyon Breeze Preliminary Plat and Canyon Breeze Subdivision Application – Element xxxviii)



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triddell@ravallicounty.mt.gov

OG-10-09-469

September 20, 2010

Stevensville Rural Fire District
PO Box 667
Stevensville, MT 59870

To whom it may concern,

The Board of County Commissioners approved the Canyon Breeze Major Subdivision on September 2, 2010. The project was approved to be filed in five phases over the course of the next ten years. The subdivision is located within the Stevensville Rural Fire District (SRFD). During the public hearing process the developer agreed to make a voluntary contribution in-lieu of installing an on-site water supply, to the Fire District in the amount of \$676 per lot, as agreed upon by the SRFD in a letter dated August 12, 2010. Contributions shall be paid to the SRFD prior to the filing of each phase. The phasing plan and schedule was approved as follows:

- Phase 1: 4 lots to be filed by July 31, 2012
- Phase 2: 4 Lots to be filed by July 31, 2014
- Phase 3: 6 Lots to be filed by July 31, 2016
- Phase 4: 5 Lots to be filed by July 31, 2018
- Phase 5: 6 Lots to be filed by July 31, 2020

If you have any further questions please feel free to contact the Ravalli County Planning Department.

Thank You,

Tristan Riddell
Senior Planner

cc: Canyon Breeze, LLC
TLI
Correspondence File
Project File



Planning Department
215 South 4th Street; Suite F
Hamilton, MT 59840
Phone 406.375.6530
Fax 406.375.6531
triddell@ravallicounty.mt.gov

OG-10-09-468

September 20, 2010

Stevensville School District
Kent Kultgen
300 Park Street
Stevensville, MT 59870

Dear Mr. Kultgen,

The Board of County Commissioners approved the Canyon Breeze Major Subdivision on September 2, 2010. The project was approved to be filed in five phases over the course of the next ten years. The phasing plan and schedule was approved as follows:

- Phase 1: 4 lots to be filed by July 31, 2012
- Phase 2: 4 Lots to be filed by July 31, 2014
- Phase 3: 6 Lots to be filed by July 31, 2016
- Phase 4: 5 Lots to be filed by July 31, 2018
- Phase 5: 6 Lots to be filed by July 31, 2020

Following discussion with the subdivider, the Board of County Commissioners imposed the following condition to offset the effects of the subdivision on the school district:

Prior to final plat approval of each phase, the subdivider shall submit a letter or receipt from the Stevensville School District showing that the agreed upon mitigation fee has been paid or that an alternative form of mitigation has been reached between the subdivider and the Stevensville School Board subject to acceptance by the Board of County Commissioners. The per lot mitigation fee (X) shall be calculated using the following formulas:

$$\text{PHASE 1: } \frac{14(\$500) + 11(\$1,355)}{25} = X = \$876 \text{ per lot}$$

$$\text{PHASES 2-5: } \frac{14(\$500) + 11(\text{Budget Amount at Filing})}{25} = X$$

If you have any further questions please feel free to contact the Ravalli County Planning Department.

Thank You,

Tristan Riddell

cc: Canyon Breeze, LLC
TLI
Correspondence File/Project File



Planning Department
215 South 4th Street; Suite F
Hamilton, MT 59840
Phone 406.375.6530
Fax 406.375.6531
triddell@ravallcounty.mt.gov

OG-10-09-470

September 20, 2010

Canyon Breeze, LLC
Attn: Robert Kwapy
PO Box 370
Stevensville, MT 59870

Subject: Mitigation Fees for the Canyon Breeze Major Subdivision

Dear Mr. Kwapy,

Below are the subdivision mitigation fees required to be paid to Ravalli County as part of the Preliminary Plat Decision for the Canyon Breeze Subdivision. Please bring or mail the following payments to the Ravalli County Treasurer's Office, which is located at 215 South 4th Street, Suite H in the basement of the Ravalli County Administrative Center in Hamilton. Payments are required to accompany the final plat of each phase. Please instruct the Treasurer's staff to deposit the money into the Subdivision Mitigation Account (2450).

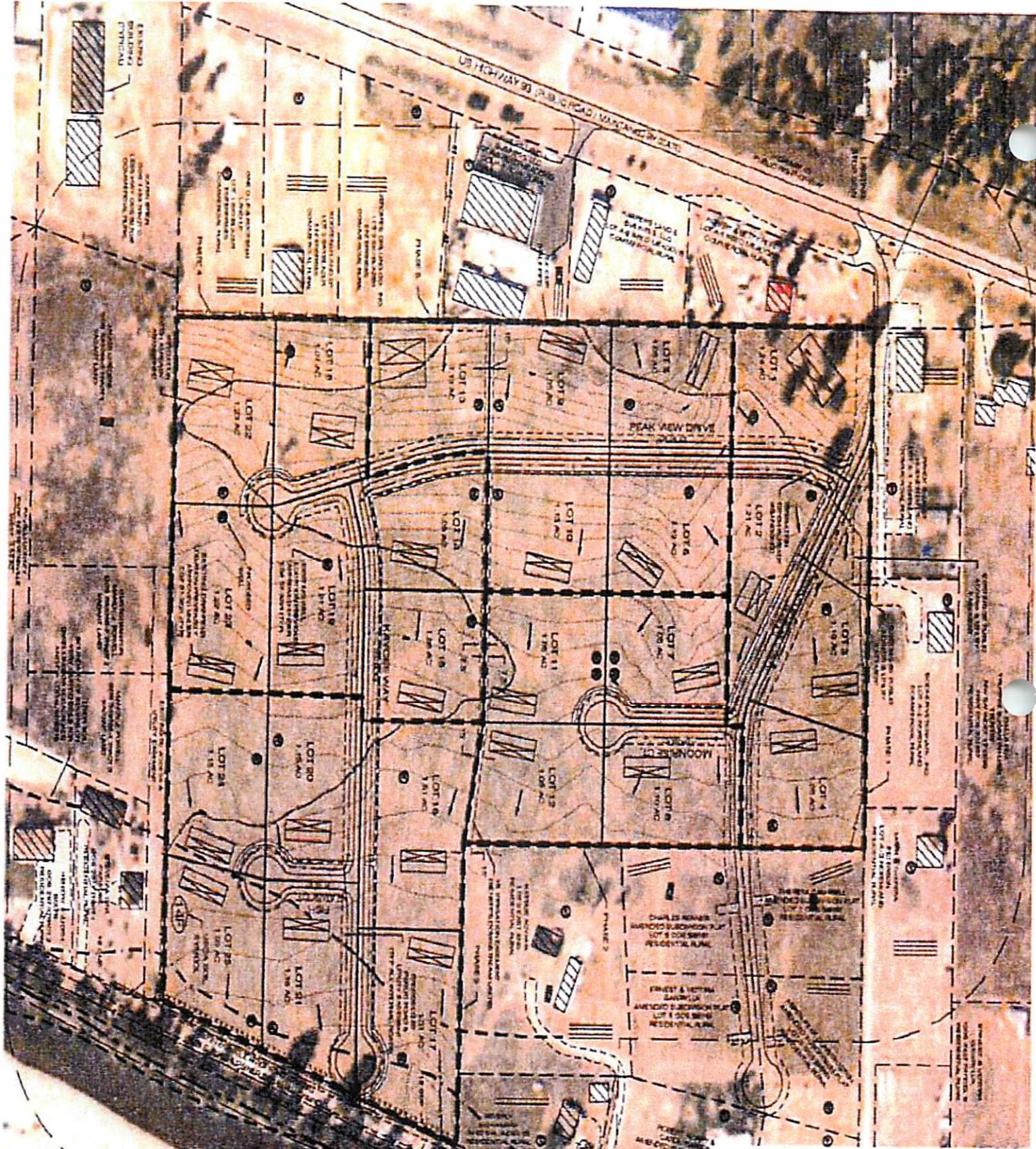
- Public Health & Safety: Phase 1 - \$500.00/lot at 4 lots = \$2,000.00
- Public Health & Safety: Phase 2 - \$500.00/lot at 4 lots = \$2,000.00
- Public Health & Safety: Phase 3 - \$500.00/lot at 6 lots = \$3,000.00
- Public Health & Safety: Phase 4 - \$500.00/lot at 5 lots = \$2,500.00
- Public Health & Safety: Phase 5 - \$500.00/lot at 6 lots = \$3,000.00

This letter is being provided to help facilitate payment of these fees. Please note that the recorded Preliminary Plat Decision is the official decision of the County and if any information in this letter conflicts with the Preliminary Plat Decision, the Preliminary Plat Decision controls. Please feel free to contact the Planning Department with any questions regarding this letter.

Sincerely,

Tristan Riddell
Senior Planner

Cc: TLI
Ravalli County Treasurer's Office
Outgoing correspondence file
Subdivision file



DATE: 11/11/11
DRAWN BY: [illegible]
CHECKED BY: [illegible]
SCALE: AS SHOWN