COMMISSIONERS APPROVAL

FOSS SF

CHILCOTT GC

IMAN JR

STOLTZ

BURROWS JB

Members Present.....Commissioner Suzy Foss, Commissioner Greg Chilcott, Commissioner J.R. Iman, Commissioner Ron Stoltz and Commissioner Jeff Burrows

Date.....September 20, 2012

►Minutes: Glenda Wiles

►The Board met at 9:00 a.m. with Clerk and Recorder Regina Plettenberg to review the document indexing research for Governmental Accounting Software. Also present was I.T. Director Joe Frohlich. Regina prepared the comparisons between Tyler and Black Mountain Software (see attached). Discussion included the loss of an employee in her office and the need to streamline the software which Regina believes will help compensate for that position. She also projects extra revenue from the use of this software. Her budget allows her to purchase this software. Joe indicated IT will host the server so he will make sure security issues are addressed. This software will also convert the records back to 1988. **Commissioner Burrows made a motion to purchase the software from Tyler Software in the amount of $66,110 which includes the conversion and maintenance for one year. Also to utilize $36,843 from the Records Preservation Fund leaving a balance of $35,843.00. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

►The Board met at 9:30 a.m. with Planning Administrator Terry Nelson for a request by Canyon Breeze Subdivision to change the material modification to non-material modification for mitigation fees. (See attached handout). Also present were Developers Mr. and Mrs. Kwapy. Terry noted this is a request by the Developer over a year ago. At that time based upon the amount of money being asked for the change was considered a material modification which would create the need to go back through the subdivision process. Terry stated the Commissioners have three options for decision: The changes are material and the developer is required to pay the $1,850 and it would go back through the regular subdivision process; It is Non material and it would go back through the process; or the Commissioners determine it is Non material and allow the request. Terry stated nothing in this subdivision changes, i.e., lot configuration, roads etc.

Commissioner Stoltz stated the fees should be an offer by the Developer, not a requirement since the County does not have any impact fees. Commissioner Iman indicated the financial piece is separate from the subdivision itself.

Commissioner Stoltz made a motion for the Commissioners to determine this request is Non material with mitigation fees offered by the Developer, and those fees to be paid on the same schedule as presented at the time of subdivision. Commissioner Burrows seconded the motion. Discussion: Commissioner Iman would like a discussion of the fees because this is an application for a reduction of fees. Commissioner Stoltz opposed this discussion as the fees are separate issue of Non material. **Commissioners Burrows, Stoltz and Foss voted "aye". Commissioner Iman voted "nay". (3-1)** Commissioner Greg Chilcott was not present for this meeting.

►The Board met with Fire Personnel for a Sawtooth fire update. The Fire Fighting Team, Forest Service Personnel and Law Enforcement were present. Irv Taylor Operations Manager presented a Progression Map of the fire noting the long term plan which identified the action points. He stated lines from the Grubstake Restaurant to Sawtooth Creek are well secured, but they are still seeing interior flames within those fire lines. The western side is rough terrain in the wilderness area. They do not want the fire to move north because of the fuels and houses. They do expect some creeping of the fire in the Sawtooth drainage. Discussion included the Roaring Lion drainage. On the North Fork of Owens Creek the fire burned very hot in that area so there is some ground sterilization. They are transitioning into a Type 2 team soon but they will still have ground crews, 2 helicopters and water tenders. They feel they will be sitting in good shape when they transition.

Greg Poncin, Incident Commander of the Fire agrees they are placing the Type 2 team in a good position. They are leaving an uncontained fire edge on the west side (into the wilderness) which will require monitoring with aircraft and ground crews. They are hoping for rain and snow in the next couple of weeks.

Hamilton Fire Chief Brad Mohn complemented the fire crews and agreed with Ravalli County Sheriff's Lieutenant Steve Holton that Stage 1 evacuation should remain in place for a few days.

Martha Smith, N. Rockies Liaison and Fire Commander Greg Poncin gave token of thanks to Commissioners due to their engagement in this fire.

►The Board met at 11:00 a.m. to continue their discussion on the development of a Natural Resource Policy with public input.

►The Board met at 3:00 p.m. for a discussion and decision on changes to the Delegation Agreement for 911 Dispatch Management with Sheriff Hoffman. Present for this meeting was Lt. Steve Holton, Deputy Zae Hudson and Sheriff's Administrative Assistant Trish Harrison. **Commissioner Chilcott made a motion to execute the Delegation Agreement between the Board of County Commissioners and the Sheriff with total budget expenditure of $590, 018.00 and the noted 60 day termination. Commissioner Burrows seconded the motion. Commissioner Iman was placed on speaker phone for this discussion and vote. All voted "aye". (5-0)**

	Tyler	BMT
Purchase	34,363	22,000
Web doc	-	867
Conversion	24,187	-
	58,550	22,867
Maintenance	7,560	4,400
	66,110	27,267
Already budgeted	(27,267)	-
	38,843	27,267
Public Access - Joe agreed	(3,000)	
From #2393	35,843	
Records Presv	**Fund #2393**	
Cash at 7/1/12	111,409.77	
Projected revenue	54,000.00	
Projected sal/ben	(52,897.00)	
	112,512.77	
Tyler purchase	(35,843.00)	
Projected cash at 6/30/13	76,669.77	

September 18, 2012

To; Ravalli County BCC

Hamilton Mt.

From; Canyon Breeze Subdivision

Robert C. Kwapy, mgr

Subject; Mitigation Fees, Canyon Breeze Subdivision

(current plat fee conditions: fire - $676; emergency services - $500; school - $720)

At the time of the original approval (September, 2008) there was a frenzied real estate boom so that developers, builders, buyers and bankers ignored increased costs and fees. We agreed to what was necessary to move the project to completion. At the September 2010 Canyon Breeze revision meeting, we did the same. (even though the demand for the school went from $500 to $1000 three days prior to the meeting, then to $1300 at the meeting). Costs must be contained to provide affordable housing. There is a real ceiling on what buyers will pay and what lenders will finance.

We are asking that fees be reduced and offer; (Fees for each phase paid upon first sale in that phase)

Stevensville Fire District - $676 (per the current agreement.)

Sheriff/ Emergency Services - $100 (2011 tax was less than $80.00) versus $500 current agreement

Stevensville School District - $100 versus $720 current agreement

Please consider:

only the fees to the Fire District are justified by sound arguments;

the sheriff/ emergency services did not respond to communications asking them about a fee request;

the initial response from the Stevensville School district talked about mitigation fees and suggested "$7500 per single family dwelling to equal other area schools' completed impact study findings." This was an effort to circumvent the "Enabling Act of Impact fees" and is thus illegal. By increasing the cost of a house with high fees the school district cuts out some families, thus negatively impacting enrollment.

From a developer's point of view, Ravalli County has used every opportunity to extract money from developers. Off record discussions have felt like extortion with an attitude of "If you want the approval, you will pay the fees we suggest".

Our initial request to the planning department was returned with the opinion that this was a request for a material revision - based on the fee totals rather than on any change to the subdivision details or final plat.

With all due respect, there are no changes being requested that affect the final plat, only the arbitrary fees being required. Since there are no changes to any configurations, easements, roads, lots, water, covenants, access, or waste water systems, only financial changes, the changes are non material.

Based on this, please revisit the Planning Department decision and reverse the material revision/non material revision decision.

If you are able to see this our way, then also make the decision to grant the fee reductions we are requesting for Canyon Breeze Subdivision.

Thank You for your consideration in this matter,

Robert C. Kwapy, mgr

Canyon Breeze Subdivision

RECEIVED
AUG 15 2011
IC-11-08-400
Ravalli County Planning Dept.

August 12, 2011

To: Ravalli County Planning Department
Ravalli County BCC
Hamilton, Mt

From: Canyon Breeze Subdivision
Robert C. Kwapy, Mgr
Cc: Territorial-Landworks, Inc.

Subject; Canyon Breeze Subdivision mitigation fees

The reasons for this application are rooted in the new financial and political reality resulting from the recession and a new set of commissioners who are taking an approach more in line with regulations. We are asking for a reduction of the fees.
We offer; $100 to Emergency Services and $720 to the Stevensville Fire District

In the frenzied real estate boom the developers, the builders and even the elected officials were able to ignore the effect of increasing costs. The costs were passed on and accepted by the buyers. The banks were happy to fund the higher purchase price.

In today's market, with a major percentage of homes having more debt than value, it is necessary to offer houses at prices significantly less than their prices two and three years ago. There is a real ceiling on what price a buyer is able and willing to pay. There is no room for a developer to pay unwarranted fees and survive financially.

History of this project:

A. Canyon Breeze Subdivision was subjected to the 1 per 2 emergency zoning, which set the project back two years.
B. Canyon Breeze received conditional approval for 14 each 2 acre lots in January 2008.
C. A revised application was submitted and brought to the commissioners in September, 2010 for 25 lots, phased over ten years.
D. Prior to the September 2010 hearing the developers were told to expect a $1,000 fee request (up from $500). At the hearing $1,300 was requested.

From a developer's point of view, Ravalli County has used every opportunity to extract money from developers. Off-record discussions have felt like extortion, with an attitude of "If you want the approval you will agree to the fees we suggest".

Does it not make better sense for the schools to support development (thus increased funding in the long term) rather than stifling it with higher costs from one-time fees?

MITIGATION FEE FACTS AND OBSERVATIONS

Mitigation fees are not part of state law.

Mitigation fees are not addressed in subdivision regulations.

Mitigation fees as applied/required in Ravalli County are impact fees by another name. It seems that the purpose of this renaming is to sidestep the mandated procedure required for impact fees.

The three commissioners making up the majority of the previous BCC ignored any arguments not supporting the mitigation fees.
What has been ignored are;

1. The fact that the recipients of these fees are supported by real estate taxes.
2 The taxes paid by the parent parcel since the inception of real estate taxes.
3. The tax contribution of vacant lots.
4. The positive impact of job creation and its effect on local business.
5. The negative impact of higher lot costs. (Less affordable housing)
6. The ongoing positive impact of increased housing availability and population growth.
7. Without growth our area schools face declining enrollment which means reduced funding, resulting in cutbacks.
8. Emergency services did not request mitigation fees. (And there is no evidence in the record to support such fees)

State law and subdivision regulations identify seven criteria that must be evaluated and mitigation applied to meet the requirements. This was done.
For this project the proper requested mitigation is;

For the school district:

A school bus stop sign at the cul-de-sac bordering Stevi River Road,
A 5' walkway on all subdivision interior roads,
A gate or opening in the fence to connect the walkway to Stevi River Road,
The option to require either or both a school bus turnout and shelter

For the Fire district:

A paved road, cul-de-sac and emergency access to Stevi River Rd
A contribution in lieu of a water supply for fire protection

For this project improper mitigation required is;

A contribution of $720 to the School District:

A contribution of $500 to emergency services:

RECEIVED
AUG 30 2011
IC-11-08-419
Ravalli County Planning Dept.

August 29, 2011

To: Ravalli County Planning Department
Ravalli County BCC
Hamilton, Mt

From: Canyon Breeze Subdivision
Robert C. Kwapy, Mgr
Cc: Territorial-Landworks, Inc.

Subject; Canyon Breeze Subdivision mitigation fees

The reasons for this application are rooted in the new financial and political reality resulting from the recession and a new set of commissioners who are taking an approach more in line with regulations. We are asking for a reduction of the fees.
We offer; $100 to Emergency Services, $676 to the Stevensville Fire District and $100 to the School District. These fees paid upon first sale in each phase.

In the frenzied real estate boom the developers, the builders and even the elected officials were able to ignore the effect of increasing costs. The costs were passed on and accepted by the buyers. The banks were happy to fund the higher purchase price.

In today's market, with a major percentage of homes having more debt than value, it is necessary to offer houses at prices significantly less than their prices two and three years ago. There is a real ceiling on what price a buyer is able and willing to pay. There is no room for a developer to pay unwarranted fees and survive financially.

History of this project:

A. Canyon Breeze Subdivision was subjected to the 1 per 2 emergency zoning, which set the project back two years.
B. Canyon Breeze received conditional approval for 14 each 2 acre lots in January 2008.
C. A revised application was submitted and brought to the commissioners in September, 2010 for 25 lots, phased over ten years.
D. Prior to the September 2010 hearing the developers were told to expect a $1,000 fee request (up from $500). At the hearing $1,300 was requested.

From a developer's point of view, Ravalli County has used every opportunity to extract money from developers. Off-record discussions have felt like extortion, with an attitude of "If you want the approval you will agree to the fees we suggest".

Does it not make better sense for the schools to support development (thus increased funding in the long term) rather than stifling it with higher costs from one-time fees?

MITIGATION FEE FACTS AND OBSERVATIONS

Mitigation fees are not part of state law.

Mitigation fees are not addressed in subdivision regulations.

Mitigation fees as applied/required in Ravalli County are impact fees by another name. It seems that the purpose of this renaming is to sidestep the mandated procedure required for impact fees.

The three commissioners making up the majority of the previous BCC ignored any arguments not supporting the mitigation fees.
What has been ignored are;

1. The fact that the recipients of these fees are supported by real estate taxes.
2. The taxes paid by the parent parcel since the inception of real estate taxes.
3. The tax contribution of vacant lots.
4. The positive impact of job creation and its effect on local business.
5. The negative impact of higher lot costs. (Less affordable housing)
6. The ongoing positive impact of increased housing availability and population growth.
7. Without growth our area schools face declining enrollment which means reduced funding, resulting in cutbacks.
8. Emergency services did not request mitigation fees. (And there is no evidence in the record to support such fees)

State law and subdivision regulations identify seven criteria that must be evaluated and mitigation applied to meet the requirements. This was done.
For this project the proper requested mitigation is;

For the school district:

A school bus stop sign at the cul-de-sac bordering Stevi River Road,
A 5' walkway on all subdivision interior roads,
A gate or opening in the fence to connect the walkway to Stevi River Road,
The option to require either or both a school bus turnout and shelter

For the Fire district:

A paved road, cul-de-sac and emergency access to Stevi River Rd
A contribution in lieu of a water supply for fire protection

For this project improper mitigation required is;

A contribution of $720 to the School District:

A contribution of $500 to emergency services:

Stevensville Public Schools

Superintendent
Dr. Kent Kultgen
Ext. 136

300 Park Avenue
Stevensville, MT 59870
Phone: 406-777-5481
Fax: 406-777-1381

Business Manager
Bill Schiele
Ext. 139

September 15, 2010

Ravalli County Commissioners
Chairman Mr. Greg Chilcott
215 S. 4th Street Suite A
Hamilton, MT 59840

Dear Chairman Chilcott:

At the September 14, 2010 Stevensville School Board meeting the Trustees negotiated mitigation fees for the Canyon Breeze sub-division with Robert Kwapy. The mutually agreed settlement called for $1,000 per lot for the additional 11 lots to be averaged with the original $500 per lot for the first 14 lots. The outcome is $720 per lot. Furthermore the Board specifically stated that this amount is for present and future phases of the Canyon Breeze development.

Please do not hesitate to contact me if you have any further questions.

Sincerely,

Kent Kultgen
Superintendent
Stevensville Schools

Cc: Robert C. Kwapy

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

OG-11-09-286

September 1, 2011

Canyon Breeze, LLC
PO Box 370
Stevensville, MT 59870

Dear Mr. Kwapy,

On August 15th, you submitted to us a request for a change to your Preliminary Plat Approval of September 20, 2010. You submitted an updated request on August 30th, 2011. The request is to look at the effects of the subdivision on the Schools, Fire Department and Public Safety Services and the conditioned mitigation fees from the previous Preliminary Plat Decision (PPD).

The process for a change to the PPD is outlined in Section 3-4-1 of the Ravalli County Subdivision Regulations (RCSR) as follows:

3-4-1. Amending Approved Preliminary Plats Before Final Plat Approval

a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the Planning Department for review.

   i. Within five (5) working-days of receiving the proposed changes, the Planning Department shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.

   ii. If the Planning Department determines the changes are material, the Planning Department may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.

   iii. If the Planning Department determines the changes are not material, the Planning Department shall accept the changes and notify the subdivider and the BCC of its decision and the BCC shall approve of these changes in a public meeting for which notice have been given of non material changes to the final plat.

b. The following changes, although not an exhaustive list, may be considered material:

   i. Configuration or number of lots;

   ii. Road layout;

   iii. Water and/or wastewater treatment system proposals;

   iv, Configuration of park land or open spaces;

   v. Easement provisions;

vi. Covenants;

vii, Designated access; or

viii. Change to conditions of approval.

c. **A subdivider whose proposed changes to the preliminary plat have been deemed material by the Planning Department may appeal the Planning Department's decision to the BCC by written notice received within ten (10) working-days.** The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

d. If the subdivider and Planning Department determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the BCC through a properly noticed public hearing in order to determine if the condition may be waived or amended.

Planning Staff looked at your proposed changes to determine whether they were *material* or *non material.* Our determination was that since the mitigation was agreed upon by the Board of County Commissioners (BCC) and the Applicant after looking at the individual criteria and weighing the applicable evidence, including comment letters from some of the affected agencies, any changes to the agreed upon mitigation would be considered material. In order to amend the PPD the BCC will have to hold a subsequent public hearing and once again look at the individual criteria and weigh the evidence presented before determining whether any identified potentially significant adverse impacts require mitigation.

Staff then looked at the RCSR concerning fees for an amended application. Our subdivision regulations are such that **"the Planning Department may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee."**

We have determined that since no physical changes have been proposed that the application, as reviewed, is still sufficient and no further information is required to proceed with your proposed changes, however, you are able to submit additional supporting information if you would like.

I have also included a copy of the adopted fee schedule for the county (adopted May 15, 2010) and highlighted the portion that deals with Section 3-4-1. There is no provision in the fee schedule for changing the fee based on individual circumstances. Further, the Planning Department will be required to prepare a new staff report, notify affected agencies for comments, notify adjoining land owners, hold a commissioner hearing, and prepare final documents generated following a BCC decision. The fee schedule was arrived at by averaging the time and costs associated with amended applications. As shown on the fee schedule, for the proposed material modification, the total review fee for a new 25 lot subdivision would be $3,700. The fee for a material modification is half of the review fee, or $1,850. If you do not agree with our determination, under Section 3-4-1(d), you may appeal the Planning Department's decision to the Board of County Commissioners within 10 working days.

Once we receive the application fee, the Planning Department will schedule a public meeting at which the BCC will review your proposed modification to the PPD.

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

Sincerely,

Terry Nelson

Cc: TLI
Subdivision 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-10-09-471

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,

Tristan Riddell

Enc: Preliminary Plat Decision
Cc: TLI
Subdivision File

September 9, 2011

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

RECEIVED
SEP 13 2011
JC-11-09-939
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

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)

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

OG-10-09-469

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

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

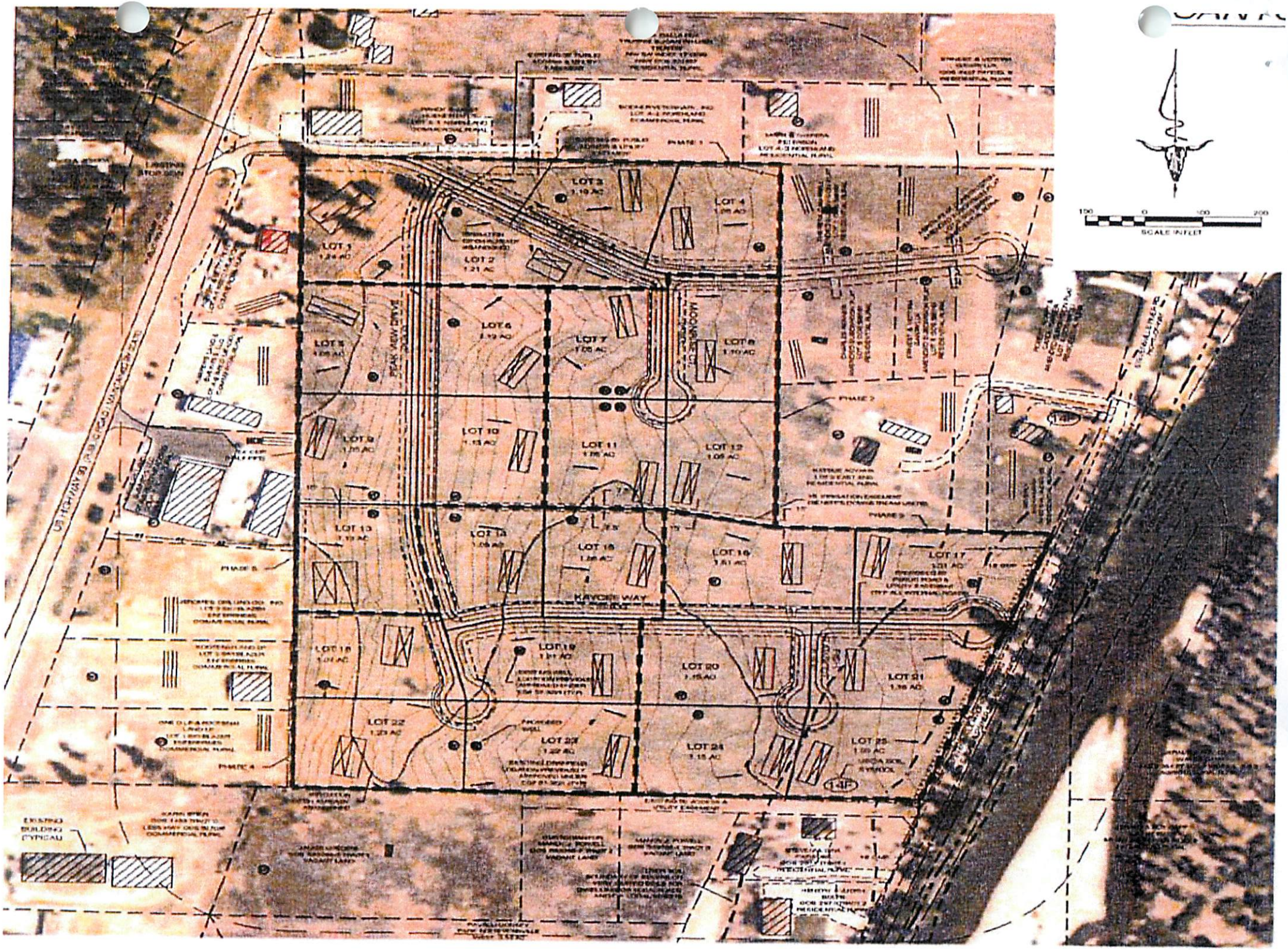
- Public Health & Safety: Phase 1 - $500.00/lot at 4 lots = $2,000.00
- Public Health & Safety: Phase 2 - $500.00/lot at 4 lots = $2,000.00
- Public Health & Safety: Phase 3 - $500.00/lot at 6 lots = $3,000.00
- Public Health & Safety: Phase 4 - $500.00/lot at 5 lots = $2,500.00
- Public Health & Safety: 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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LOT 25
PEAK VIEW DRIVE
KAYCEE WAY
PHASE 1
PHASE 2
PHASE 3
PHASE 4
PHASE 5
EXISTING BUILDING TYPICAL
SCALE IN FEET