

AGENDA ITEM SUMMARY

DATE: 6/23/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Preliminary Plat and Floodplain Development Permit Applications for proposed Lots 15A and 15B, Birdwood Subdivision

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Following the Council's reconsideration of the decision denying the preliminary plat and floodplain development permit applications at the last meeting, I have learned of two issues. First, the Mayor mistakenly signed the findings of fact and conclusions of law which were prepared after the Council's decision to deny the applications. Since the Council decided to reconsider the decision, the findings of fact and conclusions of law should not have been signed. To correct this problem, I have drafted the enclosed Rescission.

Second, I have learned that the June 9, 2008, meeting was not taped. Idaho Code § 67-6536 requires a transcribable verbatim record when the Council deliberates toward a decision after compilation of the record. I do not know whether the motion for reconsideration on June 9, 2008, would necessarily be viewed as deliberation towards a decision. But, using an abundance of caution, I would suggest that we consider the motion to reconsideration again on the record.

If you have any questions, please contact me. Thanks.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Motion to approve the Rescission of Findings of Fact, Conclusions of Law and Decision and to make and vote on a motion for reconsideration of the Council's decision on May 19, 2008, denying the applications for a preliminary plat and floodplain development permit for Lots 15A and 15B of the Birdwood Subdivision.

FOLLOW-UP REMARKS:

**RESCISSION OF FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION**

On June 9, 2008, the Hailey City Council ("Council") considered proposed Findings of Fact, Conclusions of Law and Decision ("Findings"), a copy of which is hereby attached, for proposed Lots 15A and 15B of the Birdwood Subdivision. The Findings consisted of a proposed decision of the Council on May 19, 2008, denying applications for a preliminary plat and a floodplain development permit for the proposed Lots 15A and 15B of the Birdwood Subdivision.

On June 9, 2008, the Council voted unanimously to reconsider the applications for the preliminary plat and a floodplain development permit for the proposed Lots 15A and 15B of the Birdwood Subdivision. The Hailey Mayor earlier recused himself from the proceedings. The Mayor then mistakenly signed the Findings, which were then mailed to the applicant. The Council finds that the execution of the Findings was erroneous and that the Findings are hereby rescinded in their entirety. Further proceedings shall be heard by the Council during a duly noticed hearing before the Council.

Dated this ___ day of June, 2008.

Martha Burke

Don Keirn

Fritz X. Haemmerle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of June, 2008, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

<input type="checkbox"/>	U.S. Mail	Gary D. Slette
<input type="checkbox"/>	Via Facsimile	P.O. Box 1906
<input type="checkbox"/>	Hand Delivered	Twin Falls, Idaho 83303-1906

CITY OF HAILEY

By _____
Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 6/23/2008 DEPARTMENT: Executive DEPT. HEAD SIGNATURE: HD

SUBJECT

Old Cutters appeal of development impact fee administrator's denial of request for deferral of development impact fees until certificate of occupancy on community housing units.

AUTHORITY: ID Code IAR _____ City Ordinance/Code 15.16.070
Hailey Subdivision Ord 821-4.11.6.1

5.16.070 Collection and Administration of Impact Fees.

15.16.070.01 Payment of Fees. Development Impact Fees shall be paid to the City at the following times:

- A. If a Building Permit or Manufactured/Mobile Home installation permit is required, then at the time such permit is issued;
- B. If no Building Permit or Manufactured/Mobile Home installation permit is required, then at the time that construction commences; or
- C. At such other time as the Developer and the City have agreed upon in writing. (effective date June 20, 2007)

Ord 821 -

4.11.6 Developer Concessions. Developers providing Community Housing Units or alternatives as set forth within this Section shall be eligible for the following concessions:

4.11.6.1 Deferred fees. Developers may defer water and sewer hookup fees and building permit fees for the Community Housing Units only, until the time of issuance of a certificate of occupancy for the Community Housing Units.

(effective date December 21, 2005)

BACKGROUND:

Old Cutters requested deferred development impact fees along with their deferred water and sewer connection fees and building permit fees as authorized under Subdivision Ordinance 821 Section 4.11.6.1.

The development impact fee administrator decision to deny deferral of development impact fees until certificate of occupancy had been made pursuant to Municipal Code Section 15.16.070.0.A. The DIF Administrator's felt that if 15.16.070.01.C were to be applied, that should be accomplished at the city council level, rather than the administrative level.

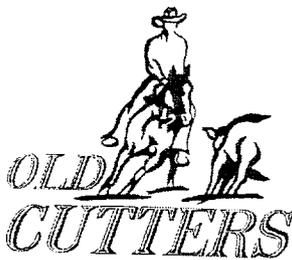
ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

City Attorney Administrator Engineer Mayor
 P & Z Commission Parks & Lands Board Public Works Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

If council allows deferral of fees on these community housing unites, we recommend that Ordinance 821 and sections of Municipal Code be amended such that they are not in conflict with one another.

FOLLOW UP NOTES



RECEIVED

JUN 12 2008

FILE HD MC BS RD CC N

P.O. Box 4944 Ketchum, ID 83340 • (208) 578-3636 • Fax (208) 578-3636

June 12, 2008

To Whom It May Concern:

Enclosed is our check payable to the City in the sum of \$13,145.00 for the development impact fees you are assessing against seven (7) community housing units we are required to build within the Old Cutters Subdivision. This payment is made under protest pursuant Hailey Municipal Code Section 15.16.090.02 for the reasons set forth below.

We requested that the City agree with us, as provided by Hailey Municipal Code Section 15.16.070.01.C, to defer payment of these development impact fees until the first to occur of the certificate of occupancy being issued for the particular community housing unit or the City amends its Development Impact Fee Ordinance to exempt community housing units from all development impact fees. Today, the City Clerk and City Treasurer, acting together as the designated Development Impact Fee Administrator, denied this request.

This letter is our written notice of appeal of this decision by the Development Impact Fee Administrator to the City Council pursuant to Hailey Municipal Code Section 15.16.090.01.B. We request the appeal be placed on the City Council agenda for the June 23, 2008 meeting. We understand this is the first instance of an assessment of these fees against community housing units, we believe that such fees are inappropriate for community housing constructed as a public benefit pursuant to a community housing ordinance that is presently of questionable validity, and a that we proposed and requested fair and equitable resolution of the issue which will allow the City to properly address a proposed amendment to the Development Impact Fee Ordinance for such an exemption which we will file next week.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com