



MILLEMANN PEMBERTON & HOLM LLP
ATTORNEYS AT LAW

Mailing Address: P.O. Box 1066, McCall, ID 83638
Physical Address: 706 North First St., McCall, ID 83638

STEVEN J. MILLEMANN (sjm@mpmplaw.com)
AMY N. PEMBERTON (amy@mpmplaw.com)
AMY K. HOLM (aholm@mpmplaw.com)

TELEPHONE (208) 634-7641
FACSIMILE (208) 634-4516

May 8, 2020

Mayor Judy Nissula
Members of Cascade City Council
PO Box 649
Cascade, ID 83611

Re: Cascade River Ranch/ ANNEX 19-01, PUD 19-01, SUB 19-01, ZONE 19-01

Dear Mayor Nissula and Council Members:

I am writing on behalf of the Friends of Kelly's Whitewater Park, Inc. and Mark and Kristina Pickard to offer further comment on materials which have been added to the public record since your January 27 Meeting. My clients' focus for the last year has been in trying to assure that the Applicant, and not the Cascade tax base, bear the full cost of the impacts of this Project. Unfortunately, I do not see evidence in the record that the Applicant is prepared to do so. The continued attacks on your staff and consultants, including in the Applicant's most recent letter to you, provide no encouragement that you are going to reach agreement with the Applicant on reasonable and responsible terms and conditions of annexation and approval of the other pending Applications. I think the time has come to offer the Applicant the terms under which you are prepared to annex this property, so that the Applicant can decide whether or not to proceed.

I would like to focus my comments on two documents: the Galena Engineering Fiscal Impact Analysis and the current Draft Development Agreement. As to the Fiscal Impact Analysis, the implication of the March letter from the Applicant is that Ms. Westcott, of Galena Engineering, thinks the Fiscal Impact Analysis answers all questions and anyone who doesn't get that lacks sufficient intellect. You are going to hear that the Analysis establishes that the Project is going to produce an annual "tax surplus". In fact, the Analysis does nothing of the kind.

The most critical and glaring failure of the Analysis is stated in the Analysis itself, in the Note at the bottom of page 2 and continuing on Page 3. The Note states:

"It should be noted that this analysis was conducted on the fiscal impact of the River District on the City of Cascade's annual operating budgets for the City's General Fund, Special Funds and Enterprises Funds. It does not take into consideration the cost of any offsite capital infrastructure that may be necessitated by the proposed development."

So, to the extent that the Project necessitates capital expenditures on the wastewater treatment facilities, which it clearly will, that cost is not factored into the Analysis. To the extent that the

Project necessitates capital expenditures on the City's potable water system, which it clearly will, that cost is not factored into the Analysis. To the extent that modeling reveals that the City's main wastewater collection line is not adequately sized, which modeling the Applicant is unwilling to provide, that cost is not factored into the Analysis. To the extent that modeling reveals that the City's main water delivery line is not adequately sized, which modeling the Applicant is unwilling to provide, that cost is not factored into the Analysis.

These glaring omissions notwithstanding, the Analysis is misleading even as to its conclusion that the tax revenue generated by the Project will exceed the incremental impacts on the City's operating costs. Note that the Analysis projects the tax revenue from the Project at **full sellout and buildout (i.e. every lot has sold and had its proposed structures fully constructed)**. The Analysis projects that this will occur in 20 years, a projection I would submit that no large-scale development in Valley County has come close to meeting. Moreover, the Analysis then projects that this tax revenue and the impacts of the Project will appear in 20 equal annual installments, which unquestionably will not happen.

A more careful examination of just one of the line items in the Analysis illustrates the danger of relying on these assumptions. The City's Special Streets Fund is projected to be impacted in the amount of approximately \$130,000 per year. Yet, the Applicant's position in the Development Agreement negotiations, regarding Section 5.2, a, is that the City will assume responsibility for snow clearing and maintenance of all of the Project's streets **once 35% of the lots in Phase 1 have sold**. In other words, the Fiscal Impact Analysis projects revenue based on a fully built out Project, but the Applicant's position would have the City assuming full responsibility for maintenance of the streets with tax revenue from only 35 bare lots.

All of this causes me to return to the position I offered at your January 27 meeting. If you conclude that you need and intend to rely on a Fiscal Impact Analysis, you should commission your own pursuant to an agreement with the Applicant that the Applicant will pay for it. If the Applicant is unwilling to do so, you should place no weight on the Galena Analysis.

Regarding the Development Agreement, I have reviewed the April 30, 2020 Draft which is being offered by your Staff for your consideration. I have compared that Draft with the prior versions offered by your Staff (January 21) and the Applicant (November 18, 2019 and January 24, 2020). It is noteworthy that, although the Applicant accuses the City Staff of changing their positions, it appears to me that it is the Applicant who has done so. In November, 2019, the Applicant was offering to fully fund the aeration improvements to the wastewater treatment facility. In January, this offer disappeared. In November, the Applicant's position was that if improvements to the City's potable water system were required by the Project the cost of which exceeded available SAF's the Applicant would cover those costs. By January, that commitment had disappeared.

Your Staff and consultants, on the other hand, appear to have accommodated the Applicant's positions as much as is reasonably possible. I would strongly recommend that you endorse the positions reflected in the April 30 Draft. The proposal to defer acceptance of responsibility for street maintenance until a critical mass of **improved lots** has been reached is prudent; and, given the Applicant's reliance on fully improved lots in its Fiscal Impact Analysis, this would appear to be consistent with the Applicant's methodology. The alternative would be to have the streets be private, but open to the public, as is the case with Jug Mountain Ranch and Tamarack, thereby eliminating this fiscal impact altogether.

The proposal to require some front end advance of money for both wastewater planning and

improvements and potable water system planning and improvements is prudent; and, your Staff's position has softened from an advance with every final plat to just one with the Phase 1 Final Plat. I am frankly not sure this is in the best interests of the Cascade tax base, but it demonstrates an effort to work with the Applicant. It is noteworthy that these payments would be credits against SAF's which the Applicant or its successors would have to pay in any event. This is frankly a good deal for the Applicant; and, if, as argued by the Applicant's attorney in January, this proposal is a "Project breaker" then perhaps the pro forma for this Project is too fragile. The proposal to have the Applicant perform and present the modeling of the wastewater main line and the potable water main line is reasonable and quite common with larger developments.

I would urge you to not be cajoled into retreating further from these positions. To do so places the Cascade tax base at a distinct risk of shouldering a significant share of the impacts of this Project. If the Applicant elects to not proceed based on these terms, then so be it. My experience tells me that will not happen.

Lastly, I note that, of the total of \$106,165.95 in legal and engineering fees incurred by the City on this Project, only \$26,632.83 has been reimbursed by the Applicant. The Application which was signed and accepted by the Applicant does not provide that the Applicant can pick and choose which fees to reimburse. It is a blanket obligation. If you elect to not enforce that contractual obligation, that is certainly your choice; but, that decision will have ramifications beyond this Project.

The overriding question is whether this Project is "good for Cascade". I would suggest that the answer is "yes", **provided that** the annexation and preliminary approvals are subject to reasonable terms and conditions which address the fiscal impacts of the Project on the City tax base. If the question is whether the Project is "good for Cascade" under the terms and conditions being offered by the Applicant, I would suggest the answer is "no".

Thank-you very much for your consideration of these comments and for your continuing diligence on these significant Applications.

Sincerely,

/s/

Steven J. Millemann

cc. Matthew Johnson