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August 16, 2021

Planning Commission
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

Re: Reunion Ridge – Filing 1, Amendment 4 – Final Plat Approval

Dear Planning Commission Members,

On August 24, 2021, a Planning Commission public hearing will be held to consider the Reunion Ridge – Filing 1, Amendment 4 Final Plat Application (the “F1 Am 4 Final Plat Application” or “Application”). Spencer Fane LLP represents Clayton Properties II, Inc. dba Oakwood Homes (“Oakwood Homes”) regarding the F1 Am 4 Final Plat Application. As discussed below, it is Oakwood Homes’ position the F1, Am 4 Final Plat Application meets all final plat approval criteria contained in the Commerce City (“City”) Land Development Code (“LDC”) and therefore should be recommended for approval to the City Council.

Reunion Ridge Land Use Entitlement Background

In late 2017, Oakwood Homes became the master developer of the Reunion development (“Reunion”). At that time, approximately 1700 acres of land in Reunion, including Village 9, also known as Reunion Ridge, remained undeveloped. The development of Reunion Ridge and the other remaining Reunion parcels was subject to the requirements of the original PUD Zone Document, created in 2001 (the “Reunion PUD”)¹, and the 2001 development agreement between the City and the original Reunion developers (the “Development Agreement”)².

Prior to Oakwood Homes becoming the master developer, the Reunion PUD had been amended to add additional annexed property, adjust the sizes of various planning areas and school site locations, and revise allowed uses in Planning Areas 3, 8, and 10.³ Shortly after becoming the master developer, Oakwood Homes began working with the City on an amendment to the Reunion

¹ See, Buffalo Hills Ranch PUD Zone Document, recorded October 27, 2000 at Reception No. C0725646; Reunion PUD Zone Document Amendment #1, recorded December 9, 2002 at Reception No. C1064716, and December 17, 2002 at Reception No. C1068494.

² See, Consolidated Development Agreement for Buffalo Hills Ranch PUD, recorded January 23, 2002 at Reception No. C0917475.

³ See, Exhibit A – Staff Report – Planning Commission, pages 2-3.

PUD to acknowledge the changed economic conditions since approval⁴, and to implement Oakwood Homes’ desire to refresh and reinvigorate the vision for Reunion, while celebrating the site’s history of farming and ranching⁵ (the “Amended Reunion PUD Application”).

The primary changes to the layout of Village 9 proposed in the Amended Reunion PUD Application consisted of the realignment of Potomac Street and the relocation of a school site from the westernmost edge to a more centralized location, to provide greater connectivity to trails and the Bison Ridge Recreation Center.⁶ A change to the bulk standards to reduce the minimum floor area for cluster home lots from 1,100 sf to 900 sf, was also proposed to allow more attainable housing, such as the Oakwood Homes “American Dream” product line.⁷⁸

In the Amended Reunion PUD Application, Oakwood Homes addressed the compliance of the proposed changes in Village 9 with the Comprehensive Plan stating “Comprehensive Plan compliance has been discussed with staff and determined that overall the revisions put forth in this amendment meet the intent of the comprehensive plan.”⁹ Directly addressing the proposed changes in Village 9, Oakwood Homes stated, “Medium Density residential is proposed for the majority of Village 9. High density residential is shown on the comp plan along 96th; however due to the Wildlife Refuge directly to the south the intent would be to have higher density focused closer to 104th and transition to lower densities toward the wildlife refuge.”¹⁰

Compatibility of the revised school sites with the intent of the comprehensive plan was also addressed in the Amended Reunion PUD application.¹¹ As an outside review agency, Public School District 27J (“27J”) was made aware of the Amended Reunion PUD Application and stated 27J, “supports the needs for various school sites within the development.”, and “representatives from 27J have been meeting with members from Oakwood Homes during the last year to discuss issues related to school siting and contribution to the Capital Facilities Fee Foundation program¹².

In its report, City Staff found the Amended Reunion PUD Application (1) would not have any adverse impacts on the existing infrastructure or taxing authorities; (2) included development that continues to comply with the various land use designations shown on the Future Land Use Plan; and (3) met Goals LU1 and LU2 of the comprehensive plan.¹³ City Staff made specific findings the Amended Reunion PUD Application satisfied all approval criteria under LDC §21-3251 and recommended approval with one condition as to outdoor storage, to the City’s Planning Commission.¹⁴ On January 9, 2019, the Planning Commission held a public hearing on the

⁴ See, Exhibit B – Reunion PUD Narrative, page 1.

⁵ See, Planning Commission Draft Meeting Minutes, January 9, 2019.

⁶ See, Exhibit A – Staff Report – Planning Commission, pages 6-7.

⁷ See, Exhibit A – Staff Report – Planning Commission, page 8.

⁸ See, Planning Commission Draft Meeting Minutes, January 9, 2019, page 2.

⁹ See, Exhibit B – Reunion PUD Narrative, page 2.

¹⁰ See, Exhibit B – Reunion PUD Narrative, pages 2-3.

¹¹ See, Exhibit B – Reunion PUD Narrative, page 3.

¹² See, Exhibit A – Staff Report – Planning Commission, page 9.

¹³ See, Exhibit A – Staff Report – Planning Commission, page 9.

¹⁴ See, Exhibit A – Staff Report – Planning Commission, page 11.

Amended Reunion PUD Application, and unanimously recommended approval to the City Council, with no conditions.

On February 4, 2019, City Council held a public hearing on the Amended Reunion PUD Application. During the public hearing Oakwood Homes provided testimony regarding the driving force behind the Amended Reunion PUD Application, which was the need for increasing housing stock diversity in Reunion. Oakwood Homes further testified that the northern part of Village 9 was the planned location for Oakwood Homes' American Dream product line, which necessitated the requested change to the cluster home bulk standards. Oakwood Homes reiterated that while the mixed use land use designation, which allowed for commercial uses for portions of Village 9 along 104th remained the same, the intent was for this area to be primarily residential. Public testimony supported the need to provide more "attainable housing" and to move "affordable homes" away from the Rocky Mountain Arsenal Wildlife Refuge. The City Council voted 8-1 in favor of approving the Amended Reunion PUD Application.¹⁵ On March 4, 2019, City Council passed, on second and final reading, an ordinance approving the Amended Reunion PUD.¹⁶

Reunion Ridge Filing 1, Amendment 4 Final Plat Background

On August 18, 2020, Oakwood Homes submitted its application for administrative approval of a final plat for a portion of Village 9-A designated as Reunion Ridge, Filing 1, Parcel 1, Tract B (the "F1, Am 4 Final Plat Application" or the "Application"). City Staff provided comments from various City departments and referral agencies addressing the Application's compliance with the criteria for final plat approval contained in LDC §21-3241(3) (the "Approval Criteria") to which Oakwood Homes responded and provided revised and additional information on March 22, 2021. In this initial set of review comments, there were only two (2) comments addressing the zoning and land use criteria, and none addressing adequacy of schools.¹⁷

On May 20, 2021, in response to the City's second round of review comments, Oakwood Homes provided additional information addressing the Approval Criteria. There were no City comments after the second round of review addressing zoning and land use criteria or adequacy of schools.¹⁸ On June 22, 2021, Oakwood Homes was informed by City Staff the Application was scheduled for public comment, the last step prior to administrative approval of a final plat, with a comment deadline of July 12, 2021 for final administrative approval on July 13, 2021.

On July 10, 2021, comments from Mayor Benjamin Huseman were posted on the Reunion Facebook page as part of a discussion of school funding in Reunion and specifically Oakwood Homes' contributions to the 27J Capital Facilities Fee Foundation (the "27J CFFF").¹⁹ In the posts, Mayor Huseman stated "[e]very builder is required to pay a school impact fee, which usually translates to land being dedicated to the district, but that doesn't help with the construction of the

¹⁵ See, Exhibit C - City Council Meeting Minutes, page 5.

¹⁶ Ordinance No. Z-781-02-04-05-06-10-17-19, dated March 4, 2019 filed at Reception No. 2019000016880

¹⁷ See, Exhibit D - Oakwood First Round Comment Responses, page 2.

¹⁸ See, Exhibit E - Oakwood Second Round Comment Responses.

¹⁹ Facebook Private Messages between Benjamin Huseman and Kerstin Helsel (July 10, 2021, 21:03 MDT) (available upon request).

school.”²⁰ Mayor Huseman went on to address the Oakwood Homes history of contributions to the 27J CFFF, specifically as related to a new proposed elementary school in Reunion’s Southlawn area, stating “[t]he plat for these new Oakwood homes was set to be approved administratively. I have requested that the case be referred to the planning commission and the city council for public hearings.”²¹ In response to a question by another member of the Reunion Facebook page as to “[how] Oakwood is allowed to continue to build if they aren’t paying”, Mayor Huseman stated “the CFFF contributions are ‘voluntary’ ”²².

On July 12, 2021, at a special meeting of the City Council called by Mayor Huseman, the Application was considered for call up for public hearings by the Planning Commission and City Council. Despite the advisement of the City Attorney that the merits of the Application should not be discussed, Mayor Huseman stated on the record his reasons for moving to call-up the Application for public hearings, including “there’s about \$1 million, \$965,565 roughly, that has not been paid into the Capital Facility Fee Foundation [by Oakwood] that could have gone towards construction of that school” and “we have proposed development that could have gone commercial that is going to be residential”²³. The Mayor’s motion was seconded and approved 7-1 with one Councilmember absent.

Final Plat Approval Process

Section 21-3241(2)(a) of the LDC provides that “except where public hearings are required pursuant to paragraph 4, the director and DRT review applications for final plats and the director is authorized to approve, approve with conditions, or deny such applications based upon the approval criteria outlined below.” LDC §21-3241(4) addresses required public hearings for final plat approval. Subsection (4)(a) provides that a property owner within 300 feet of the property may submit a written objection that forms the basis for review of a final plat pursuant to the public hearing process, only if the objection is “directly related to the proposed subdivision”. Subsection (4)(a) goes on to state that “issues unrelated to the subdivision will not be considered valid objections”.

Contrary to subsection (4)(a), subsection (4)(d) allows City Council to request a final plat be reviewed through a public hearing process without providing any basis for the request, as long as the request is made before the date scheduled for department approval. When a final plat is called up for public hearings, the director provides a report to the Planning Commission, which makes a recommendation to City Council to approve, approve with conditions or deny an application based on the Approval Criteria, and the City Council becomes the final quasi-judicial decisionmaker as to whether an application meets the Approval Criteria.²⁴

²⁰ Facebook Private Messages between Benjamin Huseman and Kerstin Helsel (July 10, 2021, 21:03 MDT) (available upon request).

²¹ Facebook Private Messages between Benjamin Huseman and Kerstin Helsel (July 10, 2021, 21:03 MDT) (available upon request).

²² Facebook Private Messages between Benjamin Huseman and Kerstin Helsel (July 10, 2021, 21:03 MDT) (available upon request).

²³ See, Exhibit F - City Council Special Hearing Transcript, page 5, line 14 through page 7, line 9.

²⁴ LDC §21-3241(2)(b).

In the case of the F1, Am 4 Final Plat Application, the DRT had reviewed the Application and determined it met the Approval Criteria so the public notice period could begin. The public notice period was scheduled to end two days after Mayor Huseman’s Facebook exchanges and on the very day Mayor Huseman requested a special City Council meeting for the purposes of calling up the Application for the public hearing process.

It’s unknown whether the other Reunion Facebook page member lives within 300’ of the Reunion Ridge Filing 1, Amendment 4 parcel and could have objected. Further, LDC §21-3241(4)(d) does not require City Council to provide a reason for calling up a final plat for a public hearing process. However, while the timing of the call-up met the requirements of LDC §21-3241(4)(d), as discussed below, the reasons stated by Mayor Huseman for calling up the Application, are issues which are unrelated to the subdivision and are either not part of the Approval Criteria or a misapplication of the Approval Criteria.

Final Plat Approval Criteria

LDC §21-324(3) provides nine (9) criteria that must be met for final plat approval, including consistency with any approved rezoning, concept plan or PUD Zone Document and the intent of the specific zoning district in which the plat is located. To be approved a final plat cannot violate any state, federal, or local laws, regulations or requirements, and must comply with all applicable City standards regarding the creation of lots or patterns of lots.

A final plat must also provide a general layout of lots, roads, driveways, utilities, drainage facilities and other services in a way that minimizes the amount of land disturbance, maximizes the amount of open space, preserves existing trees, vegetation, and riparian areas; and must not result in a substantial or undue adverse effect on adjacent properties, traffic conditions, parking, or public improvements. To the extent there is an adverse effect, the applicant must show that any such effect has been or will be mitigated to the maximum extent feasible.

Finally, there must be adequate and sufficient public safety, transportation, utility facilities and services, recreation facilities, parks, and schools available to serve the final plat area, while maintaining sufficient levels of service to existing development. Prior to approval, a development agreement must be entered into between the City and the applicant which addresses the construction of all required public improvements, and any proposed phasing plan for development of the subdivision must be rational in terms of available infrastructure capacity.

The Application is consistent with the approved PUD Zone Document and the intent of the Specific Zone District.

The Amended Reunion PUD designated the area in the Application as a mixed use (“MU”) zone district and provided a land use table indicating the allowed uses in MU zone districts.²⁵ In the Application the plat area is denoted as a MU zone district, and the proposed Cluster Homes are an allowed use in this MU zone district. The Amended Reunion PUD also contains a Land Use Schedule providing the allowable densities of residential and non-residential development in each

²⁵ See, Exhibit G - Reunion PUD Zone Document.

Reunion Village.²⁶ The residential densities for the F1 Am 4 parcel contained in the Application are in compliance with the Amended Reunion PUD.

Finally, the Amended Reunion PUD contains residential and non-residential development standard matrixes. Appendix H contains a detailed Residential Land Use Development Standards Matrix showing a comparison of the Application with each of the bulk and performance standards set forth in the Amended Reunion PUD. The Application meets or exceeds each one of these standards, showing the F1 Am 4 Final Plat Application is clearly consistent with the approved Amended Reunion PUD.

The land use table contained in the Amended Reunion PUD contains a variety of residential and non-residential uses that are uses “allowed by right” in an MU zone district. It is important to note, however, the Amended Reunion PUD does not contain any requirements as to minimum or maximum *amounts* of residential or non-residential uses, only minimum and maximum densities of any residential or non-residential uses Oakwood Homes chooses to develop.

As discussed above, the Amended Reunion PUD was approved to allow exactly the type of attainable housing use Oakwood Homes is proposing in the Application. In its Amended Reunion PUD Application narrative, Oakwood Homes stated the high density residential shown on the comprehensive plan along 96th would be refocused closer to 104th due to the Wildlife Refuge directly to the south.²⁷ Further, in the testimony provided at the Amended Reunion PUD City Council hearing, which became part of the basis for City Council’s approval, Oakwood specifically stated Village 9 would be primarily residential despite the fact the MU zone district *allows* for commercial uses.

Since Cluster Homes are a “use by right” allowed in an MU zone district and since the Amended Reunion PUD requires no minimum amount of non-residential uses in the MU zone district, the F1 Am 4 Final Plat Application is consistent with and meets the intent of the MU zone district.

The Application does not violate any state, federal, or local laws, regulations or requirements, and complies with all applicable City standards regarding the creation of lots or patterns of lots.

There is no evidence to suggest the subdivision violates any state, federal, or local laws, regulations or requirements as evidenced by the City Staff approval of the subdivision. In addition, since call-up of the Application, the City’s Public Works department has approved the Grading, Erosion and Sediment Control plans, which contain drainage facilities that have been designed in accordance with City standards.

Construction documents for these drainage facilities and road construction have also been approved by the City. The wet utility design for the F1 Am 4 Plat area is under final review and approval by the South Adams Water and Sanitation District, and no referral agencies have provided

²⁶ See, Exhibit G - Reunion PUD Zone Document.

²⁷ See, Exhibit B – Reunion PUD Narrative, pages 2-3.

objections to the Application that remain unresolved. Finally, the final design of the lots and associated PUD Permit complies with City standards and does not create patterns of lots that make compliance with the standards difficult or infeasible.

The Application provides a general layout that minimizes land disturbance, maximizes open space, preserves existing trees, vegetation and riparian areas, and does not result in substantial or undue adverse effects.

The site contains no existing trees, shrubs, or riparian areas, and grading plans have been approved by the City which minimize the amount of earthwork required to adequately drain the site. Also, a buffer along E. 104th Avenue has been created which exceeds the arterial setback requirements set forth in the Amended Reunion PUD. Furthermore, Oakwood has improved the Reunion regional drainage system by agreeing to release stormwater at rates and volumes lower than the historical rates and volumes to help improve regional stormwater management efforts. The final design and engineering for these revisions is based on years of discussions and negotiations between Oakwood Homes, the City and the Mile High Flood District to alleviate downstream stormwater conditions northwest of the site. Specifically, Ragweed Draw, which is south of the parcel was constructed from the ground up to redefine the drainage area, including a geomorphic channel with landscaping and new riparian habitat areas. Planning Area 3, which is to the east of the parcel was also improved with additional regional drainage facilities to reduce the rate and volume of water leaving the site to further resolve downstream drainage concerns.

This parcel was originally platted as part of the Reunion Ridge Filing #1 subdivision. Traffic studies and reports were provided to, and approved by, the City at the time of approval of Reunion Ridge Filing #1. As part of the Reunion Ridge Filing #1 approval, traffic signals were added to the intersection of Vaughn Way and E. 104th Avenue and a turn lane on E. 104th Avenue was added for Tucson Street. A letter of compliance for this parcel was also provided as part of that process.

As noted above, the Amended Reunion PUD identified any potential negative impacts from the land uses approved for this parcel. Therefore, residential development at the proposed densities will not result in any substantial or undue adverse effect on adjacent properties that has not already been mitigated. In addition, the new traffic signal, road improvements, and regional drainage facilities discussed above will create a positive impact on the adjacent properties and a value to the public.

There are adequate and sufficient public safety, transportation, utility facilities and services, recreation facilities, parks, and schools available to serve the final plat area, while maintaining sufficient levels of service to existing development.

During the Amended Reunion PUD Application process, all appropriate referral agencies were notified of the proposed amendments to the Reunion PUD and provided input on that application. District 27J specifically stated it “supports the needs for *various school sites* within the development.” (*emphasis*, added). Further, the comprehensive plan provides for park and school dedications within walking distance of surrounding neighborhoods. To that end, the

Amended Reunion PUD contains 48.6 acres designated for a high school land use. Also, section 10.2 of the Development Agreement provides for payment of fees in lieu of land dedication for schools if the quantity of lands required by City ordinance are not dedicated.

During the City Staff review and referral process for this Application these same agencies were notified, of and provided comment on, the Application regarding the adequacy of infrastructure and schools. At the time of the public comment period there were no unresolved referral agency comments regarding infrastructure and during the review process City Staff provided no comments to Oakwood Homes regarding a lack of adequate schools. Therefore, City Staff found this criteria was met when the Application was scheduled for public comment. Mayor Huseman, however, apparently questions whether Oakwood Homes' designation of land for school use or payment of cash-in-lieu fees, without participation in the 27J CFFF, is sufficient to ensure the Application meets the criteria requiring adequacy of schools. As discussed below, it does.

LDC §21-9200(1) requires payment of a school fee for all new residential development located within the City. LDC §21-9200(2) provides the calculations for determining the land, in acreage required for dedication, and LDC §21-9200(3) provides the method for satisfaction of the school fee. Specifically, LDC §21-9200(3) provides the school district affected by the proposed development plan should at the earlier of a PUD Concept plan, PUD sketch plan or PUD zone document application indicate its preference for a land dedication for fee-in-lieu payment. If a land dedication is desired by the school district and City Staff determines a land dedication is appropriate, subsection (3)(a) requires the developer to designate on the final plat the land that will be dedicated for future school use. If fees-in-lieu are determined to be the appropriate means of satisfying the school fee, such fees are paid to the City at the time of a final plat.

In the case of the Amended Reunion PUD, land dedication for schools was determined to be the appropriate means of satisfying the school fee. The Application, however, contains no parcel designated for school use, therefore, no dedication of land to 27J is necessary for approval of the Application.

Public School Financing and the 27J CFFF

In his Facebook posts, Mayor Huseman attempts to link the adequacy of schools criterion to participation in the 27J CFFF. Such a linkage, however, is not permissible under the statutory funding scheme for public schools in Colorado or Colorado Supreme Court holdings on school impact fees.

The Public School Finance Act

In Colorado, financing of public schools is regulated by statute. Specifically, the Public School Finance Act of 1994 (the "Act") provides a formula for the State to determine the amount of funding each school district receives. The Act, held constitutional by the Colorado Supreme Court in the Lobato case, which addressed what constitutes a constitutionally adequate public education,²⁸ is funded by both local and state taxes. Generally, the local share is calculated first

²⁸ Lobato v. State, 304 P.3d 1132 (2013).

by combining property taxes and specific ownership taxes²⁹ and the State share is used to complete the remaining funding.³⁰

Additionally, the Act allows local districts the discretion to raise additional revenue at the local level to meet maintenance and capital construction needs in five different ways:³¹ (1) Bonded Indebtedness³², (2) Special Building & Technology Funds³³, (3) the Building Excellent Schools Today Program³⁴, (4) Loan Programs for Capital Improvements in “Growth Districts”³⁵ and (5) a Supplemental Capital Construction, Technology and Maintenance Fund.³⁶ It is important to note that Bond dollars cannot be used for general operations within a district.³⁷

Therefore, requiring mandatory participation in the 27J CFFF for purposes of determining adequacy of schools is unsupportable as it would run afoul of the Act’s limitations on authorized forms of school funding.

School Impact Fees

Not only does the Act not allow mandatory contributions to the 27J CFFF, if the City attempted require a contribution at final platting or building permitting, such a requirement would likely be deemed an improper school impact fee.

In analyzing a county’s authority to exact a school impact fee, the Colorado Supreme Court in *Bd. of Cty Comm’rs of Douglas Cty., Colo. v. Bainbridge, Inc.*, held that a school impact fee imposed by a county that went above and beyond the fee allowed in C.R.S. §30-28-133(4)(a)(I) and (II) was improper.³⁸ These sections allow for land dedication or payment in lieu of dedication for the fair market value of the land, or a combination of both not to exceed the fair market value. Douglas and Boulder Counties were imposing a second fee, characterized as a payment, which was a prerequisite to obtaining a building permit.

In that case, developers were paying a statutorily enacted school impact fee in the form of land dedication or payment in lieu at the time the development was approved, yet Douglas and Boulder Counties were imposing a second fee when building permits were applied for.

²⁹ C.R.S 22-54-106.

³⁰ *id.*

³¹ *Understanding Colorado School Finance*, *supra* note 16, at 8.

³² C.R.S. 22-42-102.

³³ C.R.S. 22-45-103(1)(d).

³⁴ C.R.S. 22-43.7.

³⁵ C.R.S. 22-2-125.

³⁶ C.R.S. 22-54-108.7.

³⁷ Colorado School Finance Project, *Colorado K-12 School Finance Information Packet*, 14 (Jan. 2021) <https://cosfp.org/wp-content/uploads/CSFP-K12-School-Finance-Packet.pdf> (last accessed Aug. 9, 2021).

³⁸ *Bd. of Cty. Comm’rs of Douglas Cty., Colo. v. Bainbridge, Inc.*, 929 P.2d 691, 695 (Colo. 1996), as modified on denial of reh’g (Jan. 13, 1997).

The Court ruled that this second fee was improper, holding “our prior cases do not support expanding upon the stated statutory exaction. *The legislature has selected subdivision approval as the trigger for payments made for the benefit of school districts.*”³⁹ (*emphasis, added*).

On the other hand, each school district in Colorado is required to operate pursuant to the Financial Policies and Procedures Handbook (the “Handbook”) that has been developed by the State Board of Education.

This handbook, in describing how revenues should be projected in setting a budget for a district, lists the following sources: revenues from the Finance Act; ownership tax revenues; state program funds; federal grants; *other local sources* such as interest income, tuition funds, *donations*, [...].⁴⁰

While indicating that mandated fees, also known as exactions, were improper if they exceeded the statutory limit of fair market value through a land dedication or cash in-lieu payment at the time of subdivision, the court made it clear that donations were not subject to such prohibition. To be abundantly clear, the court stated “[o]ur holding in this case prohibiting county enlargement of the statutorily prescribed school exaction in connection with approved subdivisions does not prevent the making of school construction or other school-related contributions at any time.”⁴¹

The 27J CFFF

The 27J School District Capital Facility Fee Foundation “was established in 2001 to collect contributions from developers and builders to help fund school expansion or new school construction”⁴² and to “address the shortfall between the cost of school capital construction needs and the impact of the negative factor to the District’s state funding.”⁴³ These contributions are voluntary.⁴⁴, and “Funding is provided by homebuilders and developers who have agreed to contribute per dwelling unit based on the current fee structure.”⁴⁵ That structure for 2021-22 is \$865 per single family unit and \$494 per multifamily unit. Donated funds must be used only for acquisition or construction of facilities for student capacity approved by the Board of Education.

Oakwood Homes initially participated in the 27J CFFF. However, after becoming the master developer in 2018, Oakwood Homes made the decision to create the Reunion Community Foundation (“RCF”), a Federally-approved 501(c)(3) organization, as a means of more directly advancing school planning and development efforts within the Reunion Community. Oakwood

³⁹ *Id.*, at 703.

⁴⁰ *Id.*, at 712 (*emphasis added*), citing Colorado Dep’t of Edu., *Financial Polies and Procedures Handbook*, D-7 to D-9), eff. July 1, 2020, <https://www.cde.state.co.us/cdefinance/fpphandbookfy20-21> (last accessed Aug. 8, 2021).

⁴¹ *Id.*, at 713.

⁴² School District 27J Capital Facility Fee Foundation, <https://www.sd27j.org/Page/131> (last accessed Aug. 9, 2021).

⁴³ *Informational Brochure*, School District 27J Capital Facility Fee Foundation, June 2021, https://www.sd27j.org/site/handlers/filedownload.ashx?moduleinstanceid=15373&dataid=24606&FileName=CFFF%20Trifold%20Brochure_Jun2021.pdf (last accessed Aug. 9, 2021).

⁴⁴ *Id.* (*emphasis added*).

⁴⁵ *Informational Brochure*, *supra* note 41.

Homes has been making contributions to the RCF in lieu of making contributions to the 27J CFFF since that time.

Like the 27J CFFF, the RCF is a permitted means of gathering donations for school capital expenditures. However, while the 27J CFFF accepts donations from builders in various communities and disburses funds based on district-wide needs, creation of the RCF has allowed Oakwood Homes to keep RCF donations by Oakwood Homes and its builder-partners in the Reunion Community. Some examples of the outsized positive impact of the RCF and its partnerships on the Reunion community include the dedication of ten (10) additional acres of land to Reunion school needs, valued at \$6 million; additional direct contributions by Oakwood Homes of \$243,000 to the early concept planning and land use entitlements for the STEAD School; and collaboration with BuildStrong to secure campaign pledges of \$224,375 towards a \$1 million fundraising effort for the STEAD School.

Based on the language found throughout both the School District 27J website as well as the informational pages linked therein, it is clear that the 27J CFFF is an allowed voluntary source of local revenue, as provided for in the Handbook. However, despite Mayor Huseman's statements to the contrary and pursuant to the Act, the City cannot make contributions to the 27J CFFF mandatory for purposes of approval of the Application. Based on the holding in *Bd. of Cty Comm'rs of Douglas Cty., Colo. v. Bainbridge, Inc.*, it's also unlikely the City could require a contribution to the 27J CFFF at building permitting as this would amount to the exactment of an improper school impact fee. Despite these limitations on the 27J CFFF, Oakwood Homes through the establishment, funding and partnerships generated by the RCF continues to evidence its commitment to Reunion and its residents regarding school funding.

A development agreement has been entered into between the City and Oakwood Homes' predecessors, which addresses the construction of all required public improvements for the F1 Am 4 Final Plat, which will be constructed in one phase.

On December 17, 2001, a development agreement was entered into between the City and the predecessors of Oakwood Homes.⁴⁶ The development agreement addresses construction of all required public improvements as well as school lands dedication. The phasing for the development will occur in one phase and as noted above, sufficient transportation, drainage, and utility infrastructure capacity exists to serve the subdivision.

Conclusion

As discussed above, the Application clearly meets the Approval Criteria. Further, the concerns expressed by Mayor Huseman at the special City Council hearing where the plat call-up was approved are either not part of the Approval Criteria or a misapplication of the Approval Criteria.

⁴⁶ See, Consolidated Development Agreement for Buffalo Hills Ranch PUD, recorded January 23, 2002 at Reception No. C0917475.

For the reasons discussed above, Oakwood Homes respectfully requests the Planning Commission recommend approval of the Application to the City Council. Oakwood Homes and I look forward to the public hearing on August 24th and answering any questions you may have at that time.

Very truly yours,

SPENCER FANE LLP

/s/ Michelle L. Berger

Michelle L. Berger

Cc: Charlie Leder, Esq. Spencer Fane LLP
Bruce Rau, President, Land, Oakwood Homes
Scott Thorson, Chief Operating Officer, Oakwood Homes
Jim Hayes, Director of Land Acquisition and Development, Land, Oakwood Homes