Ravalli County Planning Board
Meeting Minutes for July 24, 2006
7:00 p.m.
First Interstate Center, Ravalli County Fairgrounds, 100 Old Corvallis Road
Hamilton, MT 59840

Continuation of Public Hearing
Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance Requests

1. **Call to order**

Dan called the meeting to order at 7:04 p.m.

2. **Roll Call** (See Attachment A, Roll Call Sheet)

(A) Members

Mary Lee Bailey (absent – excused)
Dale Brown (absent – excused)
Ben Hillicoss (present)
Dan Huls (present)
JR Iman (present)
Chip Pigman (present)
Les Rutledge (present)
Lori Schallenberger (present)
Gary Zebrowski (present)

Park Board Representative: Bob Cron (absent – excused)

(B) Staff

Benjamin Howell
Karen Hughes
James McCubbin
Renee Van Hoven
Jennifer De Groot

3. **Approval of Minutes**

Dan asked if there were any corrections or additions to the minutes from July 19, 2006. There were none. The minutes were approved.

4. **Amendments to the Agenda**

There were none.

5. **Correspondence**

Dan noted that the Board had received additional agency and public correspondence. (See Attachment B, Agency Comments received at or since the July 17 Public Hearing; Attachment C, Public Comments received at or since the July 17 Public Hearing; Attachment D, Letter

from Sarah Roubik; Attachment E, Letter from Andy Roubik; and Attachment F, Letter from Sheriff Chris Hoffman)

6. **Disclosure of Possible/Perceived Conflicts**

Dan said that it was not necessary to repeat the conflicts already stated at previous meetings.

7. **Public Hearing – Continued from July 17, 2006**

(A) **Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

(i) Three Minute Rule Waiver Requests

There were none.

(ii) Public Comment on the Subdivision

John Tabaracci said that James McCubbin asked his opinion on cumulative impacts at the last meeting and he has since reviewed a memorandum from Sarah McMillan and spoken with James. He said he concluded that the term "cumulative impacts" is a misnomer because it deals with additional or supporting evidence. He said that it is appropriate to look at past and present development, not just at Aspen Springs in isolation. However, he said the Board should not look at lands which could be subdivided in the future because that is too speculative. He said that this discussion stemmed from comments made by members of the development team about elk and potential developments surrounding Aspen Springs. He asked to withdraw those comments and said the better answer is that there is no evidence of elk on the property.

Dan said the Board will adhere to the 3-minute rule and will now accept public comment.

Jason Rice said he represented the newly formed Montana Land Alliance, which seeks to protect property rights. He contended that much of the evidence presented as public testimony has not been relevant, but the developer has submitted evidence supported by science and facts. (See Attachment G, Letter from Montana Land Alliance)

Steve Arno said he spoke at Florence and noted that the County is one of the fastest growing in the state. He explained that there is now a broad interest in the planning process, as witnessed by the Wal-Mart zoning and the Growth Policy. He said that the Sheriff and Florence-Carlton School Superintendent made it clear that they are impinged by the present state of affairs and to add an urban-style subdivision in a predominately rural area is a departure that the County cannot afford. He also noted that the highway cannot handle the traffic. He said that if this subdivision is approved, it opens the door to a lot of the same. He recommended a moratorium on these large-scale, high-impact subdivisions.

Margaret Hammerberg said she lives on Lower Eight Mile Creek Road and she expressed concerns about high-density subdivisions. She explained that historically, they become rental properties; rental properties have renters that have no ownership equity and investors attempt to do as little as possible to maintain the

houses. She suggested that in those situations, the subdivision will be composed of people with varying income levels and the owners cannot discriminate to rent or sell only to first-time homebuyers or lower-income families. She said that situation reduces everyone else's property values. She noted that the Sheriff mentioned problems providing service that goes along with high-density subdivisions and the entailing crime. She said that recently, a vehicle came down Eight Mile Creek Road, went into a ditch, hit her electric pole, and the occupant left the scene of the crime. She reported that it took an hour and a half for a highway patrol to arrive and no deputies were available. She said that law enforcement response time is bad and it will get worse. She contended that the subdivision will cost the county and the taxpayers far greater than the revenue received from property taxes. She noted that the Florence-Carlton School District cannot get bonds passed now to do routine maintenance on the schools because people cannot afford those taxes. She expressed the difficulty she has pulling out of her driveway now while the road is a 2-lane. She said the expansion will take part of her property as well. She said she does not have problems with the land being developed, but with the high-density housing that reduces surrounding property values. She asserted that quality homes on 10-acre lots will bring more money than 5 of the lesser homes in Aspen Springs would bring and that the larger lots are better for the developer, the community, and the County.

Sandy Frick said she owns 80 acres to the north of Aspen Springs and said that this proposed density is extreme and unacceptable. She said there is a possibility of the water tables lowering, extra traffic, school overcrowding, and lack of law enforcement. She stated that variances should not be allowed in a development of this magnitude, but the developer should have to meet all state and county requirements. She said that the first variance should not be granted because regulations change and the developer is trying to stick in his subdivision before they do change. She said that the second variance is for safety and asked why the developer does not want to connect with adjacent areas. She said that the third variance about the gas pipeline is a public health and safety issue. She said that the seventh variance is not necessary because Lower Woodchuck Road is fine the way it is. She said that the developer wants the public to bear the costs of Eight Mile Creek Road as requested in Variance 8. She alleged that the developer and his consultants would not support a development like this if they lived next door to it. She said that the hydrologist said the subdivision would not affect wells in surrounding areas, but she said there is no way that is guaranteed. She said approval of this subdivision will create negative impacts and legal battles. She noted that the Subdivision Regulations are in place to protect public safety and welfare. She asked the Board to strictly enforce the existing rules.

Sharon Schroeder said she lives on Lower Woodchuck Road and said that the subdivision makes no sense. She said Aspen Springs should be placed near public transportation, jobs, and municipal water and sewer. She announced that the eight requested variances are unreasonable. She commented that the developer will ask for variances during the next 22 years, which negates the planning process. She noted that the developer is proposing a fee to mitigate impacts to the schools, but that money spaced over time does not allow the school time to improve their facilities and the value of that donation in 20 years may decline. She said that the few families on Lower Woodchuck Road like the road as it is and the current residents should not have to pay for roads. She commented that the developer wants to avoid opposition of his neighbors by proposing Variance 2. She said that

building within 25 feet of a high-pressure gas line is disastrous. She asked the Board to deny the variances. She said that people need places to live, but a high-density subdivision does not belong in that area. (See Attachment H, Letter from Sharon Schroeder)

Jim Schroeder said he lives on Lower Woodchuck Road and he opposes the subdivision because it is detrimental to the Six Criteria. He said his biggest concerns are effects on the natural environment and public safety. (See Attachment I, Letter from Jim Schroeder)

Pamela Priem said she is new to the County and lives in the Hidden Valley area. She said that she formerly lived in Denver, which is overcrowded, and has dreamed about living here all her life. She asked someone to step up and put strict controls on growth. She said that the subdivision does not make any sense because it is in the wrong place and at the wrong time. She noted that there are no jobs to speak of in the Florence area and 10 homes to an acre is a travesty. She said she would rather see reasonable lot sizes of 2 to 5-acre parcels than smaller lots. She noted that if she wanted to live in a high-density neighborhood, she would live in Missoula. She said that the houses are not low-cost because the costs will be high to the people in the County and the costs will be passed on the people who purchase the homes. She noted that the future homeowners will have to pay for monitoring and upkeep of the water treatment system and trails. She asked the Board to consider the arguments made against this development, let reason prevail, and ask the subdivision to be built where it makes more sense.

Howard Newman said he is a hydrologist retained by the Florence Coalition Against Aspen Springs. He said that this subdivision reminds him of being invited to eat an apple pie, but upon arrival sees only some of the ingredients for the pie; at every meeting, there is new water information. He said that the geologist and driller hired by the applicant have done good work, but no one knows what the impacts will be to the Eight Mile wells. He remarked that a neighbor, Mr. Foss, lost his water twice during the testing and pumping of one well. He said although they are pulling water from the deep channel, if the water is connected to Eight Mile water, there will be drawdown effects. He said they might even end up with a trough, a cone of depression that might cause sewage to affect other wells in the area. He said that the developer abandoned wells, as he should have, but noted that it would have been better to continue monitoring the wells to see how they affect sewage. He asked Nick Kaufman how many times they submitted their non-degradation analysis and noted that all of them have been rejected. He said that the subdivision has not passed muster yet and area residents will have problems with water.

Marilyn Owns Medicine thanked the Board for reopening public comment and reiterated that the six criteria is not the only review criteria for subdivisions. She reminded the Board that the developer is not required to sign a full-disclosure statement and suggested that the consultants know things that they have not disclosed. She reminded the Board that they enforce the Subdivision Regulations and protect the people and their property rights. She said she was dismayed because she told people that public comment time was closed.

Linda Cardenas said she lives in the Lone Rock School Area and is concerned about diversion of groundwater and impacts of flow to the Bitterroot River. She asked if hydrological studies have been reviewed by an independent party. She

asked the Board to require Aspen Springs to have a municipal wastewater treatment plant. She remarked that allowing this subdivision and its variances is like playing a wild futures market with public resources. She asked what would happen if Montana decided to enact a groundwater use restriction and the developer ends up with a 500-household water use permit. She said that developers should look at what they could reasonably build in three years and not be granted blanket approval. She said she would rather see a new regional community college created by her taxes. She asked the Board to look at cumulative impacts and consider enacting interim zoning. (See Attachment J, Letter from Linda Cardenas)

Marcia Bloom said she lives in the Lone Rock area and has lived in the Valley for 25 years. She said that the location of Aspen Springs is inappropriate and that the crucial police protection needed cannot be provided. She also noted that traffic safety is an issue and added cars are dangerous. She said that the addition of new students will be a problem for the current school facility. She said that the density of housing will affect the elk. She commented that infrastructure necessary to support the subdivision is nonexistent and that Smart Growth should be adjacent to existing towns. She said that the County may or may not need low-income housing, but it does not need it here, since low-income families will not be able to afford gas prices to commute to Missoula. She explained that lower-income areas need public transportation, services, and jobs. She noted that residents of the Valley will have to suffer the consequences of governing mistakes. She asked the Board not to approve the subdivision. (See Attachment K, Letter from Marcia Bloom)

Cam Stringer from Geomatrix said that the only wells that were abandoned were deeper pilot wells being replaced by deep production wells. He said that the shallow test wells will be monitored when aquifer testing is done.

Jim Rokosch said he was from Stevensville and presented two documents to the Board for consideration. He noted that the County Commissioners recently approved interim zoning for large retail sales establishments and is considering zoning the Highway 93 corridor, demonstrating their concern for residential areas as well. He asked for development of growth management tools. He read from some sections of the Septic System handout. He noted that some of the decisions on this are in DEQ's hands, but said that a Total Maximum Daily Load will address cumulative impacts of septic systems in rural areas. He also alluded to a Montana Supreme Court decision in favor of Trout Unlimited. He noted that the Supreme Court recognized that there is an impact of pre-stream capture of groundwater. He said that on the Upper Missouri River, if there is an impact to surface water from groundwater depletion, surface rights will have to be purchased to mitigate impacts. (See Attachment L, Septic System Impact on Surface Waters: A Review for the Inland Northwest; and Attachment M, Appeal in Montana Trout Unlimited, et al. v. Montana DNRC and Riverside Ranch Co.)

Margaret Hammerberg said she lives on lower Eight Mile Creek Road and asked the Board to stop and think before they vote on the issue if they would want this subdivision in their backyard. She asked the Board not to allow the variances and asked the developer to voluntarily sign a full-disclosure agreement.

Dick Ellis said he lives south of Stevensville and although he could suggest the developers to go somewhere else to get rich, he will not. He reminded the Board that while their task is to follow rules, it is also to look out for the welfare of the

County, which includes the general quality of life, which might be impacted by this subdivision. He asked the Board to consider the quantity and quality of water available. He also asked the Board to consider the issue of tax monies that will be used to subsidize this subdivision and provide corporate welfare. He said that taxpayers in the County will pay for services needed to enhance the profits of the developer. He asked the Board to recommend interim zoning and a series of realistic impact fees like those used everywhere else that is rapidly developing in the United States.

Barbara Ellis said she had left the County for five years and recently returned. She said that 30 years ago, her professor trusted her with a complex experiment that required special protocol and thoughtful preparation and planning. She said her professor admonished her to take the experiment slow and not to rush the process. She said she failed to take his advice and she spoiled the experiment, which was costly for her and the lab, and she was not given a second chance. She said that Ravalli County is not an experiment and that if things are approved now, they cannot be rescinded later. She implored the Board to listen to the voices of a concerned community and adopt interim zoning. She asked the Board to give careful thought and preparation to any new subdivision in the County because the Board could potentially corrupt the nature of the place.

Curtis Cook said he is an attorney in Hamilton and Subdivision Regulations are established to create some semblance of order and intelligence. He noted that Subdivision Regulations are the result of careful thought and consideration of the public and the County Commissioners. He said that the Subdivision Regulations are meaningless when they are subverted by variances. He read from 76-3-506, MCA by stating that subdivision regulations may authorize the governing body to grant variances when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations. He also read from Section 1-e of 76-3-504, MCA that the subdivision regulations must provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques. He noted that the law does not say that the restrictions can be bypassed by variances; it says that they must be prohibited unless the hazards can be eliminated or overcome. He said that State and County regulations are not designed to allow the developer to subdivide in all areas, but to protect public welfare and prohibit subdivisions in inappropriate areas. He also noted that neither this proposed subdivision, nor any other proposed in the County, can be considered “cluster development” because the County has not adopted cluster development standards. He noted that if the roads are not improved, they will not be safe. He said that if the roads are left as they are, County residents will have to bring them up to standards. He said that the density of the proposed subdivision creates problems with water and sewage in the area; water is probably the main consideration in this valley with the number of subdivisions going in. He said he opposed Aspen Springs because it would have too much density and too much impact on our water supply.

Candi Jerke said she has been trying to keep the developer from overexaggerating and showing things to his benefit. She said that Gary asked the percentage of open land that does not have drain fields in Aspen Springs. She handed out two map

sets. (See Attachment N, Road Suitability [Natural Surface] Rating for Bitterroot Valley Area, Montana and Attachment O, Potential Erosion Hazard [Road, Trail] Rating for Bitterroot Valley Area, Montana) She said that if there is a rainstorm while the houses are being constructed on erosive soil, the materials will go down the drainage and could end up in the Bitterroot River. She noted that about a third of the property has severe slopes. She said that 2.5% of the total 393 acres will be parks, 10% will be drain fields, and 28% will be hillsides and drainage areas. She said that there were previously covenants on the property that limited one house to five acres, but they were removed. She said she believed wildlife corridors were important, although it would cost the developer $1 million to remove the upper lots. She said that it will cost the developer $18 million to develop this subdivision, but at just $66,000 per parcel, he will make $42 million, with $24 million of profit. She said that with 5,866 trips per day, that translates into 488 trips per hour and 40 trips per minute on Eight Mile Creek Road. She asked how all those cars will get onto Eastside Highway. She said she spoke with one of the bus drivers who said she thought she would have problems getting out of the school because she has problems turning out now. She said that Florence does not have a library district, but the developer's library and café are a pipedream. She also said that she does not want to see the natural gas line blow up anyone.

Sarah McMillan said she represents Bitterrooters for Planning and the Florence Coalition Against Aspen Springs. She said she wanted to address irregularities in the process. She said that Staff said they did not have enough information to make recommendations when the hearings were started. She said that Staff needs to require sufficient information in the beginning of the public process. She said that a cumulative impact is not a novel concept, but has been litigated at federal and state levels. She said that the Board cannot look at land and say there might be subdivision in the future, but they can look to see if what is proposed is appropriate.

Pam Merwyn from Hamilton said that Candi Jerke alluded that by removing five or six lots out of winter range area, the developers would lose $1 million. She said that Candi's figure of how much the developer could make was low. She noted that even the newspaper has come out with an editorial against approval of the subdivision. She said that cumulative impacts cannot be ignored with that many phases. She said that grandchildren will have to bear the burden of the subdivision. She noted that many children from the Valley leave, but they need to get out and see what it is to earn big bucks and then come back because they cannot find the same quality of life. She said that if developers build at this rate, that quality of life will not be here either. She remarked that no one will come back and no one here will be happy. She said that the subdivision application fees are a joke and other areas charge 3 to 15 times higher amounts than our County. She said it is no wonder the County is being deluged with subdivisions and the Board and County Commissioners have to review them. She said that the impact fees proposed were offered at ridiculous proportions and impact fees are usually based on square footage, with fees ranging from $50 to $250 per square foot. She explained that the County needs that assistance until the house comes into full taxable value.

Steve Hall said that the loss of natural habitat would not be insignificant as the developer suggested and noted that he has spoken with people who had elk die of starvation in their front yards. He said that the Board has heard pleas from the Sheriff and the schools. He remarked that the County is looking at tax increases and road demands. He said that when they started the opposition group to this

subdivision, they wanted to be honest with the public and the Board. He said he has spoken with clerks at the grocery store that say Wesmont will build Florence a new school. He said he spoke with a fireman who said Wesmont showed them colored pictures of the fire department Wesmont will build for Florence. He explained that neither of these items is in the proposal. He noted that he has not seen DEQ or DNRC approval and if they do receive it, they will have to prove their water usage does not affect stream flow. He asked if the Board can continue for another 6 to 10 months while the developer whittles down the proposal to something reasonable. He said that the Board should have received a complete submittal in the first place. He asked the Board if they will adhere to the Subdivision Regulations or continue allowing variances. He asked the Board to scale the subdivision down to see if high density housing works. He noted that in Los Angeles, where they have high density housing, it creates traffic that is not safe. He said he does not want the developer to start building towns. He noted that the County needs to offer firm guidelines so it does not have to come back and make amends for its actions.

Stuart Brandborg said he represents Bitterrooters for Planning and said he appreciates the work the Board does dealing with a complex proposal. He said that the Board is in a position of making an almost impossible decision in the absence of basic information. He said the County is in the jet age with Model T facts. He contended that the County's Planning Department is understaffed and has a severe shortage of technical competence. He noted that some 600 people in written and oral testimony have presented open questions about or against the development and he wants to know why an inordinate amount of time was given to the developer. He said that people here tonight have given the Board sound, hard data and data from the heart, as they are concerned with things we all value. He said that the winds of change are on the Bitterroot. He suggested interim zoning so the County can place procedures, develop regulations, let the County staff-up, and provide for standards to protect landowners. He said that interim zoning gives the County a way out and time to review the proposal. He said that if the subdivision is approved, it will open up a horrible precedent to three to five more subdivision and thousands of homes. He said that the Board is giving up the very opportunity to have new machinery in place to let the County have a fair chance of taking care of the Bitterroot. He asked the Board to listen to the people.

Howard Newman asked to address one issue that has not yet been brought before the Board: the proposal to drill deeper wells. He warned WGM and the Board that deeper wells might be detrimental to the Valley because when they pump that much water at 300 feet, they might set up a negative hydrologic gradient. He noted that some occur around the valley in fringes. He said that if there are three wells of differing depths in an area, it can create a negative vertical gradient and water will move up and down. He also noted that nitrates and nutrient concentration can increase if the developer pumps water from deeper wells. He noted that some wells might receive bacteria. He recommended that Cam Stringer monitor wells to see if a negative hydrologic gradient could occur because over a long term, there could be some real consequences.

Matthew Taylor said he was the President of the Eagle Watch Property Owner's Association. He noted that one of the most profound testimonies given tonight was a subtle one by John Tabaracci. He pointed out that the developer is asking the Board to disregard cumulative impacts because he knows that they will be

significant. He said that he advocates high-density housing, but the question before the Board is one of timing, degree, impact, and sustainability. He said he does not believe Aspen Springs should be approved at this time due to cumulative impacts. He said there will be significant impacts to the schools. He recommended implementation of interim zoning to give the County a chance to plan. He noted that the Board's decision will be far-reaching. He said that proposals like Aspen Springs can be part of the solution, but in the absence of significant protected open space, zoning regulations, and suitable infrastructure, these mega subdivisions exasperate the problem. He said that proposals like Aspen Springs degrade the valley and all the things that we all hold dear. He concluded that now is not the time for Aspen Springs. (See Attachment Q, Letter from Matthew Taylor)

James said that the Subdivision Regulations provide a time for the applicant to make a statement after the end of public comment.

Dan said that public comment is now closed and that the developer may make a closing statement.

(iii) Rebuttal

Nick Kaufman said the County needs to decide what to do with all the growth and suggested that Aspen Springs is a solution to the problem. He said that the County's own consultants noted that 400 new households are generated in the County a year – 300 of those in the Florence-Carlton School District. He said he has also heard testimony that the subdivision is too dense, in the wrong location, and lacking infrastructure. He noted that the Board approved 52 lots on 70 acres at last Wednesday's public hearing, with a lot size average of 1.32 acres. He said that it would only take 12 similar Board meetings to approve as many lots as Aspen Springs, but those smaller subdivisions create many more impacts than Aspen Springs.

He said that the average daily water demand for Aspen Springs is 280 gallons per minute. He noted that an individual does not need a water right to use less than 35 gallons per minute; those recently approved 52 lots, if using 34 gallons per minute, will consume 1,768 gallons per minute and could take water from the aquifer without water rights. He contended that Aspen Springs is much less consumptive of natural resources. He also noted that the lots created at last Wednesday's meeting will generate the same number of trips as an Aspen Springs lot and those subdivisions will not be clustered or leave open space; they will be a patchwork quilt of 1-acre lots.

He suggested that the County look at options to protect the aquifer and leave ridges open. He said that if they took the parcel of land where Aspen Springs is proposed and created 4-acre tracts, that would only create 100 lots, twice the 52 lots approved at the last Board meeting. He said that last week Karen said that the subdivision did not classify as a cluster development, but he noted that the Growth Policy has a definition of the term in the glossary. He read the definition of cluster development from Montana Senate Bill 479. He suggested that Aspen Springs meets cluster development requirements as described in the Growth Policy. He noted that of Aspen Springs' 393 acres, 42% is left as open space and 16 acres are parks. He explained that Subdivision Regulations require the park donation for lots

under .5 acres to be 11%. He asked the Board to consider the rural-urban interactions in Stevensville and noted that those two groups can co-exist peacefully.

Ryan Salisbury said that Sheryl Consort from DEQ did tell Howard Newman that Aspen Springs had been denied four times, but there was also new information submitted. He explained that the non-degradation process has been occurring since January 2005, although they have not had to resubmit fees. He noted that they have responded to all the letters from DEQ. He commented that the subdivision application is information required by the Subdivision Regulations and residents should be confident in the requirements of the County. He noted that all the submittals to authorities were prepared by licensed professionals who stake their careers on them. He said that tonight it is not the Board's responsibility to review engineering criteria. He said that the DEQ and DNRC will review the water issues.

He said that Page 18 of their traffic study shows the level of service analysis and shows how the intersections will operate. He admitted that the Montana Department of Transportations has identified that the intersection of Eight Mile Creek Road and Eastside Highway is a problem and there will be improvements made, possibly before the first lots in Aspen Springs are sold. He noted that all soils are erosive and the Subdivision Regulations prohibit development on slopes greater than 25%. He also noted that the soils on the property are free-draining. He noted that Lower Woodchuck Road is classified as severe soils, but it is in great shape and the surrounding slopes are not erosive.

He explained that the County has not shown support for the Florence-Carlton School District because they voted down three bond issues and noted that the current traffic problems are not the result of Aspen Springs. He said that those problems should not be placed on the back of the developer. He said that there were some subdivisions approved last week that could have contributed to traffic concerns, although this developer has volunteered $88,000 for the slip lane. He noted that Wesmont was the first applicant to propose money to the Sheriff and the first to up the school donation to $300 per lot.

Nick Kaufman said that the first variance for phasing should be approved because one tenet of land use planning is to look at the whole picture and potential impacts. He noted that the current Subdivision Regulations do not allow the Board to look at the entire picture. He noted that since the subdivision will be built over 10 to 20 years, it will only account for 10% of the housing demand in the Florence-Carlton area. He explained that each phase will be reviewed independently by the Ravalli County Environmental Health Department and DEQ under their current regulations. He also asserted that phasing is in line with the County's Growth Policy. He said that the neighbors in the Riverview Orchards subdivision did not want extra traffic on their streets, so the developer requested the second variance. He said that the access lacks a proper right-of-way but they will provide pedestrian access and an emergency barricade. He said the third variance to create the no-build zone over the natural gas pipeline brings the setback to current Subdivision Regulations. He contended that in regards to the fourth variance, it would allow for cluster development and affordable housing. He explained that only 40% of the homes in Aspen Springs will be affordable housing. He asserted that rural homes can live next to urban. He said that Perry Ashby will speak about the reason he requested the fifth variance for flag lots.

Perry Ashby said although he has Staff support on the fifth variance that he should not have been required to submit a variance for the requested flag lots because he is not trying to evade the regulations; if the variance is required, it should be approved.

Ryan Salisbury said that the sixth variance asks for the applicant to conform to the newest Subdivision Regulations because the roads have been reviewed and approved by the County's Road and Bridge Department under the newest rules and the applicant would need more variances if he was reviewed under the old regulations. He explained that the seventh variance requests that Lower Woodchuck Road be reviewed under AASHTO standards and the design exception be approved by the Road and Bridge Department. He noted that the County Commissioners recently decided that a design exception should be reviewed by the Road and Bridge Department. He said that the developer will bring up Lower Woodchuck Road and Eight Mile Creek Road to County standards if a latecomer's agreement can be arranged. He asked to defer road improvements, except paving of the gravel portion of Lower Woodchuck Road, to Phase 4. He said that the developer has been working with Laura Hendrix and Larry Schock and believed that the applicant has submitted enough information to refute the removal of Lots B147 through B149. He asked that the Notification of Storm Water Drainage Easements be modified to allow picnic shelters, which he thought would not be detrimental to storm water drainage flows. He requested a credit for improvements already paid for if a RSID/SID is later adopted for the same road improvements. He said that in the southwestern portion of the project, there are half-acre lots proposed that could use individual wells while still using the community sewer system. He asked permission to plat those lots without a beneficial use permit. He said he was worried that the preliminary plat approval for Phase 1 would expire before they received their beneficial water use permit and asked if it took longer to obtain it, that the preliminary plat approval period be automatically extended a year. He also asked for the half-acre lots to be platted without the receipt of the beneficial water use permit.

JR asked if the developer is requesting additional water rights than the subdivision has already requested.

Ryan explained that those lots are currently included in the water right application. He noted that lots with wells drawing less than 35 gallons per minute would not require water rights. He noted the applicant wants the option to make them individual wells.

JR asked how the applicant will follow Montana Law, which says that there cannot be a well and septic on the same parcel that is less than an acre.

Ryan explained that wastewater will go to the community system and the lots will have private wells or shared wells.

Nick said that John Tabaracci addressed the six remaining issues that Staff mentioned in the Staff Report. He noted that courage is important here: It takes courage to propose change for the development team, courage for those who spoke against the subdivision, and courage for the Board to sift through the testimony and make a decision.

Dan proposed a 5-minute recess.

James noted that the Board received some additional written comments and asked the Board if they wanted to review them before they reconvened.

Dan said the Board would address the correspondence after the break.

The Board took a 5-minute break.

(iv) Board Deliberation on the Subdivision

James said that two legal issues that go hand-in-hand arose: cumulative impacts and interim zoning. He said it was not permissible for the Board to consider other proposed subdivisions because they are speculative. He noted that in addition, the state statutes require the Board to look at "a" subdivision and "the" subdivision. He said that the Board has to review incremental impacts, taking everything existing into account, versus considering what will exist after subdivision is built. He said that the County can take impacts into account through varying types of zoning, including interim zoning and voluntary zoning districts, but this is neither the time nor place for zoning. He noted he recommends giving credit to a developer if there is a later development of the same kind that has already been paid. He said he is trying to come up with language along those lines and he will before the County Commissioner's meeting. He said he is not sure he understands the request regarding beneficial water use permits, but believes Ryan is asking for the County to wait to start the clock on final plat until the permits are acquired. He said that request might require a variance application, but the Board cannot grant it now without a variance request.

JR asked how the Board envisions this scenario: If the developer improves Eight Mile Creek Road and the roads leading from the subdivision to Eastside Highway, will 100% of that money go to those specific roads, and if so, where does the credit go? He asked if they pay pro-rata, will the money go to that road or to the grader district. He asked if the next person in the area puts in 50 lots and pays pro-rata, does the money goes to the grader district or to pave those specific roads. He noted that the applicant is asking to pay a pro-rata share although the Subdivision Regulations say that they have to upgrade the roads to the nearest State Highway.

Karen said that the applicant is required to improve the roads to meet County standards. She noted that they are proposing to pay the equivalent of a pro-rata share and the money would go where the County Commissioners saw fit. She explained that Staff recommended that the applicant meet County standards and not be granted the variance.

James explained that if the applicant meets the County requirements, there would not be the issue of an improvement district credit because there could not be an improvement district for the same improvements. He said that the issue can only arise if the County accepts payment for an item and there is an RSID for the same improvement. He said that it is not legally permissible to accept the payment twice.

Gary asked James if the County Commissioners enacted interim zoning if it would impede progress of subdivisions that are currently in-progress.

James said he did not think any zoning now would affect this subdivision proposal.

Ben asked James if Wesmont improves Lower Woodchuck Road to the subdivision entrance to county standards and someone farther up the road needed to improve another portion of the road for a subdivision, the later applicant would only have to improve the road from Aspen Springs to the new subdivision. He said that the developer is asking to be reimbursed for that money.

James said that he and Karen are working on proposed amendments to the Subdivision Regulations that would provide for an after-the-fact pro-rata payment. He noted that the County Commissioners asked them to pursue the changes, but he and Karen have been busy with other planning projects. He remarked that when an amendment is made, it is his hope that it would apply retroactively. He said that it would apply to any subdivision applicant, no matter when the improvement was made. He gave an example: If Aspen Springs is approved and the roads are improved by the end of 2006, but the Subdivision Regulations were not amended until June 2007, and a subdivision proposal comes in July 2007 that would involve taking advantage of the improved roads, the amendment would require the July 2007 applicant to pay.

Ben said he assumes there is a time limit. He said that if amendments to the Subdivision Regulations are approved, it would take care of this request and the Board would not have to deal with the issue. He commented that if the Regulations are amended, the developer will get a refund, but if they are not, granting a credit is beyond the Board's power.

James said that they are requesting binding future developers to something related to this subdivision decision. He explained that the County can only bind developers through the Subdivision Regulations. He noted that amendments to the Subdivision Regulations will go through the public process and through the Board and County Commissioners.

Ben said he assumes that this amendment or reimbursement would not apply to the pro-rata share.

James said that assumption is correct and the amendment would only apply for when the developer actually makes road improvements.

Curtis Cook said the reimbursement was asked for in case of a RSID or SID, which is different from a development cost. He noted that if people in the area want a SID to improve something, it would not cover work that had already been done; it would only look to the future. He remarked that it would not be proper to reimburse anyone unless it covers that particular improvement.

Dan noted that the Board has received several more pages of written comment and has not had time to review them. He asked the Board if they wanted to review them now and make a decision or extend the hearing.

Gary said he would like to understand to which variances the recent agency comments relate and then the Board could postpone addressing those variances

until the next meeting. He said that he would like to address some variances tonight.

Ben said that the bulk of comments received are pro or con, although there is a fairly extensive letter from John McGee, the Florence-Carlton School Superintendent and a letter from Sarah McMillan, which the Board has not been able to read yet. He asked to be able to read them before the Board deliberates.

Les said there was so much material submitted tonight that the Board cannot make a reasonable evaluation. He suggested delaying the decision-making until the next meeting.

JR said they can close verbal comment, but asked the Board to continue receiving written comment until the next meeting and then forward additional written comments to the County Commissioners.

Les said that the one problem has been that the Board comes to a hearing and is confronted with packets of additional written material. He suggested that any written materials should be sent to the Board so they receive it a day or two before the hearing.

Dan stated that all public oral and written comment is now closed. He said that the only communication the Board will have with the public is if they have questions for them or the developer and his agents. He asked to continue the hearing until August 2, 2006.

Ben asked to hold the meeting at the Ravalli County Fairgrounds again.

Dan said the Board will continue the public hearing at the Fairgrounds next Wednesday, August 2, 2006, at 7:00 p.m.

Chip said he had some questions about the Staff Report and asked for a revised report so it is easier to understand.

Karen said she can have a revised staff report mailed by Friday of this week.

8. **Suspend Public Hearing Until Next Meeting**

9. **Next Regularly Scheduled Meeting:** August 2 at 7:00 p.m.

   Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance Requests – Continuation of Public Hearing

10. **Adjournment**

Dan adjourned the meeting at 9:47 p.m.