# ASPEN SPRINGS
## 643-LOT MAJOR SUBDIVISION AND EIGHT VARIANCE REQUESTS
### STAFF REPORT FOR SECOND PUBLIC HEARING ON NEW INFORMATION

**CASE PLANNER:** Renee Van Hoven RVH

**REVIEWED/ APPROVED BY:** Karen Hughes

**PUBLIC HEARINGS/ MEETINGS:**

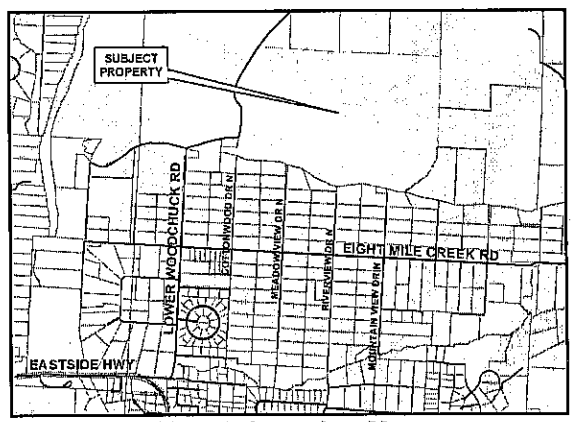
| | |
|---|---|
| RCPB Plat Evaluation: | June 7, 2006 |
| RCPB First Public Hearing: | July 5, July 12, July 17, July 24, and August 2, 2006 |
| BCC First Public Meeting: | August 22, 2006 and August 23, 2006 |
| RCPB Second Public Hearing: | September 27, 2006 |
| Deadline for PB recommendation to BCC: | October 4, 2006 |
| BCC Second Public Hearing: | 6:00 p.m. October 16, 2006 |
| Deadline for BCC action (60 working days, which resumes after BCC public hearing): | October 24, 2006 |

**OWNER:** Stanley C. and Ellen Hendricksen
PO Box 267
Lolo, MT 59847

**APPLICANT:** Wesmont Builders/Developers, Inc.
PO Box 17437
Missoula, MT 59808

**REPRESENTATIVE:** WGM Group, Inc., 728-4611
PO Box 16027
Missoula, MT 59808-6027

**LOCATION OF REQUEST:** The property is located northeast of Florence off Lower Woodchuck Road (Map 1).




**Map 1: Location Map**
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION OF PROPERTY:**

Tract 3 of Certificate of Survey No. 472577-R, Tract 1 of Certificate of Survey No. 538102-ED, Tract 1 of Certificate of Survey No. 473719-R, located in Section 6, T10N, R19W, and Tract 2 of Certificate of Survey No. 484300-R, located in Section 5, T10N, R19W, and the S2 of the NW4 of the SW4, and a portion of the SW4 of the SW4 of Section 5, T10N, R19W, P.M.M., Ravalli County, Montana.

**NEW INFORMATION:**

The Board of County Commissioners (BCC) reviewed the public comments submitted after the first public hearing for the Aspen Springs Subdivision and found that some of the public comments constituted information under MCA 76-3-615(2)(b), which is new information that has never been submitted or considered during a public hearing. At the August 23, 2006 public meeting, the BCC determined that a second public hearing was required. Five agency comments were submitted after the first public hearing, which included the following:

- A letter from the Montana Board of Housing dated June, 2006 (Exhibit A-33) that contained no new information.
- An email from Professional Consultants, Inc. (PCI) dated August 2, 2006 (Exhibit A-34) regarding the flood hazard area that contained no new information.
- The *Draft of Impact Fees to Fund Growth-Related Capital Improvements* by TischlerBise (Exhibit A-35), which included demographic data considered new information by the BCC.
- An email from David Ohnstad dated August 17, 2006, which was also considered new information (Exhibit A-36).
- A letter from PCI dated August 20, 2006 (Exhibit A-37) regarding the flood hazard area that contained no new information.

The new information, which included Exhibits A-35 and A-36 and test well statistics submitted by the developer, were already attached to a Memorandum to the Planning Board from the Planning Department dated September 6, 2006. Agencies were notified of the new information and no new comments from agencies were submitted after the notifications were mailed.

**LEGAL NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on September 12, 2006. Notice of the project was posted on the property and property owners adjacent to the property were notified by certified mail postmarked September 11, 2006. No public comments on the new information have been received to date. Public comments received by the Planning Department after the first public hearing that do not pertain to new information are Exhibits B-1 (Public comment submitted after the close of public comment at the first public hearing before the Planning Board Meeting, but before the close of the public comment period at the August 22, 2006 BCC

Meeting) and B-2 (public comments received after the close of public comment at the August 22, 2006 BCC Meeting) of the staff report.

**DEVELOPMENT PATTERN:**

| | |
|---|---|
| Subject property | Vacant/Agriculture |
| North | Vacant/Agriculture |
| South | Residential |
| East | Vacant/Agriculture |
| West | Agriculture |

## RAVALLI COUNTY PLANNING BOARD
### SECOND PUBLIC HEARING ON NEW INFORMATION

## ASPEN SPRINGS
## 643-LOT MAJOR SUBDIVISION AND EIGHT VARIANCE REQUESTS

### INTRODUCTION

Aspen Springs is a 643-lot (671 maximum units including condominiums) subdivision of approximately 392 acres located northeast of Florence off Lower Woodchuck Road near the border of Ravalli County with Missoula County. The project is proposed to be completed in 33 phases over 10 to 20 years. The proposed density at build-out is one unit per 0.58 acres and, according to the application, the average lot size of the residential lots is 10,466 square feet, or 0.24 acres. A total of 163 acres are proposed to be open space.

During the first public hearing for the Aspen Springs Subdivision on August 2, 2006, the Planning Board made recommendations regarding the subdivision and variance requests (Exhibits C-1 through C-5 are Planning Board meeting minutes for Aspen Springs). The results were forwarded to the BCC and are listed in the Request for Commission Action under Planning Board Recommendations (Exhibit C-6). The BCC reviewed the public comments submitted after the first public hearing for the Aspen Springs Subdivision and found that some of the public comments constituted information under (2)(b) of Section 76-3-615, MCA, which is new information that has never been submitted or considered during a public hearing. They also determined that some of the new information was both relevant and credible, requiring a subsequent public hearing for public review of the new information. The following pieces of information were determined to be new information, relevant, and credible by the BCC and were distributed to the Planning Board with a Memorandum dated September 6, 2006 (Exhibits C-7 and C-8 are the BCC meeting minutes for Aspen Springs):

1. Test well statistics submitted during the applicant's presentation at the BCC Meeting on August 22, 2006.

2. An email between David Ohnstad, Ravalli County Road Superintendent, and Ryan Salisbury, WGM Group, Inc. dated August 17, 2006 (Exhibit A-36).

3. Demographic data within the *Draft of Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District* by TischlerBise dated August 8, 2006 (Exhibit A-35).

The purpose of the second public hearing is to collect public comment on the new information and for the Planning Board to make a recommendation on whether or not the new information affects the recommended findings and conclusions that the BCC will rely upon in making its decision on the proposed subdivision and variance requests.

This staff report outlines the Planning Department's analysis of how the new information impacts the findings, conclusions, and recommendations of the Planning Department. Since the Planning Board had some different recommendations than the Planning Department, a careful review of both the staff report and the Request for Commission Action (Exhibit C-1), which outlines the recommendations of the Planning Board, is important.

In regards to the variance requests, for this version of the staff report we have only changed our recommendations for Variance #2, the requirement for a road connection. Staff now recommends approval of this variance, subject to Conditions 5, 6, and 7.

In regards to the subdivision proposal, the staff report has consistently noted the need for outstanding issues to be addressed since it was originally issued prior to the first public hearing. At this time, staff maintains that the following three negative impacts to wildlife and wildlife habitat, local services, and public health and safety have not been adequately mitigated:

1. Impacts resulting from the location of Lots E124-E151 and Lots B147 and B149 within the subdivision, such as removal or relocation of the lots. *(Effects on Wildlife and Wildlife Habitat)*
2. Impacts of the subdivision on the intersection of Eastside Highway and US Highway 93. *(Effects on Local Services and Public Health and Safety)*
3. Impacts of the subdivision on the Ravalli County Sheriff's Office. *(Effects on Local Services and Public Health and Safety)*

MCA 76-3-615 states that after the subsequent hearing, no new information can be submitted. In order to mitigate the above impacts, the developer would most likely have to submit new information, which is not permitted after the subsequent hearing. Consequently, staff is now recommending denial of the subdivision proposal.

**RECOMMENDED MOTIONS**

1. That the variance request from Section 3-2-21 of the Ravalli County Subdivision Regulations to allow the developer to complete the project in 33 phases over 22 years with a phasing plan instead of two phases to be completed within four years, be ***approved,*** based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

2. That the variance request from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow, be ***approved,*** based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

3. That the variance request from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations to allow a no-build zone of 50 feet centered on the high pressure gas line traversing the property instead of a 200-foot no-build zone, be ***approved,*** based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

4. That the variance request from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, which requires that each lot has a building site of at least 7,500 square feet, be ***approved,*** based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

5. That the variance request from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for six flag lots, be ***approved,*** based on the findings of fact and conclusions of law in the staff report.

6. That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the on-site roads to be reviewed under the new road standards, as

amended August 4, 2005, be ***approved,*** based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

7. That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the developers to improve the graveled portion of Lower Woodchuck Road to meet the new road standards and to pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet the new standards, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

8. That the variance request from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that the portion of Eight Mile Creek Road leading to the property is improved to meet county standards, be ***denied,*** based on the findings of fact and conclusions of law in the staff report.

9. That the Aspen Springs Major Subdivision, be ***denied,*** based on the findings of fact and conclusions of law in the staff report.

**MITIGATING CONDITIONS OF APPROVAL FOR THE VARIANCES**

1. The applicant shall construct temporary turnarounds with a turning radius of 50 feet and a compacted all weather travel surface that can accommodate emergency services vehicles for the internal roads prior to the final plat approval for each phase, unless a permanent cul-de-sac or through-road is constructed. *(Variance #1)*

2. The proposed phasing plan shall be accepted and any changes to the order and dates of filing shall be submitted as a revised phasing plan(s) to the Board of County Commissioners for review and approval prior to the final plat approval of each phase. (*Variance #1*)

3. Easements for infrastructure necessary for each phase shall be provided for on the final plat of each phase. (*Variance #1*)

4. Infrastructure necessary for each phase shall be completed prior to filing each phase even if it is not scheduled to be finished until a future phase. (*Variance #1*)

5. Prior to the final plat of each phase, the applicant shall submit the Level of Service (LOS) for Lower Woodchuck Road. If the LOS has decreased below LOS "A", the internal subdivision roads leading to Mountain View Drive and Mountain View Drive shall be improved to meet the new road standards, as amended August 4, 2005, to provide for an emergency route prior to the final plat of the phase filed after the LOS has decreased below LOS "A". An emergency access only barricade shall be installed and approved by the Ravalli County Road and Bridge Department prior to the final plat approval of the phase when road improvements for the emergency route are required. (*Variance #2*)

6. The emergency access through Mountain View Drive shall become a primary route prior to the final plat approval of Phase 19 or the first phase east of the main drainage to be filed. Mountain View Drive and Eight Mile Creek from Lower Woodchuck Road to Mountain View Drive shall be improved to meet the new road standards, as adopted August 4, 2005, and the emergency access only barricade shall be removed prior to the final plat approval of Phase 19. *(Variance #2)*

7. The internal subdivision road connecting to Mountain View Drive shall be named Mountain View Drive on all applicable final plats. *(Variance #2)*

8. A 50-foot wide no-build zone centered on the high pressure gas line traversing the western portion of Aspen Springs shall be shown on the final plat of each phase, as applicable. *(Variance #3)*

9. The applicant shall submit a letter from NorthWestern Energy (NWE) stating that the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity to the gas line, will not pose a greater risk to public health and safety than what existed on the property prior to development and that the Right-of-Way Development Provisions have been signed by the developer prior to the final plat approval of the first phase. *(Variance #3)*

10. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments that will apply to the entire subdivision shall be included in the submittal of the final plat for the first phase to the Planning Department and filed with the final plat:

    ***Notification of Proximity to Natural Gas Supply Line, Easement and No-Build Zone.*** An 8" diameter natural gas main supply line is buried within a 50-foot wide easement and traverses the western portion of Aspen Springs, as shown on the filed subdivision plat. The final subdivision plat identifies a 50-foot wide no-build zone centered on the gas line, which applies to residential, commercial and/or industrial structures. Northwestern Energy has the authority and jurisdiction to install, operate and maintain the existing natural gas pipeline traversing this subdivision in accordance with the Department of Transportation's Code of Federal Regulations and the standards within the Gas Transmission Right-of-Way Development Provisions. For further information regarding the gas line, please contact the Northwestern Energy Company, 1140 South First Street, Hamilton, Montana, 59840, (406) 542-5970. *(Variance #3)*

11. Protective covenants for the entire Aspen Springs Subdivision shall be submitted with the final plat for the first phase that include the following provisions:

    ***Side Yard Setbacks.*** To prevent the spread of fire, structures shall be set back a minimum of five feet from side yard property boundaries. (*Variance #4*)

    ***Amendment.*** The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval.

12. The applicant shall construct all internal roads to meet the County road standards, as amended August 4, 2005, (*Variance #6*)

13. The developer shall reconstruct Lower Woodchuck Road from Eight Mile Creek Road north to the last northern access of the subdivision to meet County Standards, as amended August 4, 2005, prior to final plat approval of the first phase. *(Variance #7)*

## SUBDIVISION REPORT

## COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA

### CRITERION 1: EFFECTS ON AGRICULTURE

*(Staff Note on New Information: Staff determined that the new information does not affect agriculture; therefore, no changes have been made to Effects on Agriculture.)*

Findings of Fact:

1. The property is located approximately three miles northeast of the Town of Florence.
2. The proposal is 643 lots on a total of approximately 392 acres (approximately 161 acres of lots, 68 acres of streets, and 163 acres of open space). Seven of the lots are proposed to have mixed use condominiums for a maximum project total of 671 units. The average lot size of Aspen Springs is 0.25 acres and the proposed density at build-out is approximately one unit per 0.58 acres.
3. The density of the Riverview Orchards Subdivision to the south of Aspen Springs is one unit per five acres. If the Aspen Springs Subdivision was a proposed subdivision of similar density to the Riverview Orchards Subdivision, 671 units would consume 3,355 acres of land, which is about 8 times the total acreage of the currently proposed Aspen Springs.
4. There are no soils on the property that are listed as Prime Farmland Soils or Farmland of Statewide Importance by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).
5. The property is located in an area of mixed residential and agricultural uses. To mitigate impacts on agriculture, a notification of proximity to agricultural operations could be included in the Notifications Document filed with the first phase. The protective covenants, also filed with the first phase, could include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel.
6. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on agriculture. (Variance #1)

Conclusions of Law:

1. With conditions of approval, impacts on surrounding agriculture could be mitigated.
2. Aspen Springs will provide increased housing density while consuming less land. Encouraging development in this area may protect other areas in Ravalli County that are more conducive to agriculture.
3. The proposal could benefit agriculture in Ravalli County.

### CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

*(Staff Note on New Information: Staff determined that the test well statistics do affect the findings of fact under Effects on Agricultural Water User Facilities, but do not alter the conclusion and recommendations on this criterion.)*

Findings of Fact:

1. There are no water rights or irrigation infrastructure currently associated with this property.
2. There is a natural drainage that traverses the southeastern corner of the property. Water flows through the natural drainage during spring run-off. It does not appear that downstream properties have water rights, but this has not been confirmed. The applicant has proposed a 20-foot wide drainage easement centered on the natural drainage.
3. To ensure that the drainage remains clear and to mitigate any possible impacts on agricultural water user facilities, the applicant could provide for a 20-foot wide drainage easement centered on the natural drainage on the final plat of Phase 26. A notification of the stormwater drainage easement could be included in the Notifications Document filed with the final plat.

4. A public water system that will require a water right is proposed to serve all the lots. The developer is in the process of obtaining a water right from DNRC.
5. During the August 22, 2006 BCC public meeting on Aspen Springs, the applicant presented test well statistics, which the BCC considered new information (Exhibit C-7). Staff does not have the expertise to review the test well statistics, but is relying on DNRC to review the water right application to ensure that the public water system will not affect agricultural water user facilities. To mitigate impacts on agricultural water user facilities, the applicant could submit a Beneficial Water Use Permit from DNRC prior to the final plat approval of the first phase. (*Effects on Natural Environment*)
6. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on agricultural water user facilities. (Variance #1)

Conclusion of Law:

With conditions of approval, agricultural water user facilities would not be affected by this proposal.

**CRITERION 3: EFFECTS ON LOCAL SERVICES**

Findings of Fact:

Road Access

*(Staff Note on New Information: Based on comments from David Ohnstad that were considered new information by the BCC (Exhibit A-36), staff is recommending conditional approval of Variance #2, which would allow for a temporary emergency access and that prior to final plat approval of Phase 19, the emergency access shall be improved to be a primary access. Since impacts on the intersection of Eastside Highway and US Highway 93 and law enforcement have not been identified and mitigated, staff is recommending denial of the subdivision.)*

1. MDT has jurisdiction over US Highway 93 and Eastside Highway and is planning to reconstruct the intersection of Eastside Highway and Eight Mile Creek Road in January of 2008. In a letter dated June 14, 2006, Dwane E. Kailey (Exhibit A-2), the District Administrator for MDT stated that Aspen Springs would impact the intersections of Eight Mile Creek Road with Eastside Highway and Eastside Highway with US Highway 93. Specifically, two lanes would need to be added to the round-about proposed at the intersection of Eight Mile Creek Road with Eastside Highway, which would cost $88,182.00.
2. In a letter dated June 27, 2006 (Exhibit A-27), Jim Lynch, the Director of MDT states: "MDT does not have the authority to require either Legacy or Aspen Springs developments to provide improvements at the intersection of S-204 (Eastside Highway) and US93. MDT only has jurisdiction to require improvements from a development at their point of access. However, we are working with the county to try and identify additional funding sources for future improvements at this intersection." The developer is proposing to contribute $2,000.00 to Ravalli County to be forwarded to MDT for a traffic study at the intersection of Eastside Highway with US Highway 93 prior to the final plat of Phase 1. MDT has not indicated that this donation would mitigate impacts of Aspen Springs to the intersection.
3. The applicant is required to improve the portion of Eight Mile Creek Road leading to the subdivision to meet County standards. The applicant has requested a variance from improving the road and is proposing to either pay a proportionate share of the cost to improve Eight Mile Creek Road or improve the portion of Eight Mile Creek from Eastside Highway to Lower Woodchuck Road if there is a reimbursement program in place. The developer did not specify the phase in which the road improvement would take place. Staff is recommending denial. (Variance #8)
4. The applicant is required to improve the portion of Lower Woodchuck Road leading to the subdivision to meet County standards. The applicant has requested a variance from improving

the road and is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards, as amended August 4, 2005, and pay a proportionate share of the cost to improve the paved portion of Lower Woodchuck Road. If a reimbursement program is in place, the developer is willing to improve the entire length of Lower Woodchuck Road leading to the subdivision to meet the new road standards. The developer did not specify the phase in which the improvement would take place. Staff recommends conditional approval of the variance, with the condition that the entire length of the portion of Lower Woodchuck Road leading to the subdivision meets the road standards, as amended August 4, 2005, prior to the final plat approval of the first phase (Condition 13). (Variance #7)

5. To mitigate impacts on local services, a no ingress/egress zone could be placed along the Lower Woodchuck Road frontage of the subdivision, excepting the approaches approved by the Ravalli County Road and Bridge Department, on the final plat of each phase with Lower Woodchuck frontage. A notification of the limitation of access could be filed with the Notifications Document prior to final plat approval of the first phase.
6. The applicant is proposing three entrances to Aspen Springs off Lower Woodchuck Road and an emergency access off Mountain View Drive. All traffic from Aspen Springs is proposed to be funneled onto Lower Woodchuck Road to the intersection with Eight Mile Creek Road. According to the application, 5,866 average daily trips will originate from Aspen Springs and are proposed to enter the public road system via Lower Woodchuck Road.
7. Section 5-4-4(d) of the Ravalli County Subdivision Regulations requires that roads in a new development be connected to a right-of-way or easement in adjacent platted areas to allow for proper neighborhood traffic flow. Since Riverview Orchards Subdivision is a single platted area adjacent to the south of Aspen Springs, a connection to <u>one</u> of the roads south of Aspen Springs is required. The proposed emergency access on Mountain View Drive would not allow for proper neighborhood traffic flow because it would only be used in emergency situations. The applicant is requesting a variance from this requirement. (Variance #2)
8. In an email dated August 17, 2006 (Exhibit A-36), David Ohnstad stated that the Road and Bridge Department approves of the emergency access, but that Mountain View Drive should be constructed to meet AASHTO road standards. He also states that when the Level of Service (LOS) on Lower Woodchuck Road decreases below LOS "A", the emergency access route should be constructed, which would include the internal roads to Mountain View Drive and Mountain View Drive. He also noted that if the portions of Eight Mile Creek Road and Lower Woodchuck Road providing primary access were improved to meet the new road standards prior to the first phase, the portion of Eight Mile Creek Road providing emergency access would not need to be improved.
9. Staff is recommending that Variance #2 be conditionally approved to allow Mountain View Drive to be classified as an emergency access until the final plat approval for Phase 19 or the first phase east of the main drainage. To mitigate impacts on local services, the applicant could submit the LOS for Lower Woodchuck Road prior to the final plat of each phase. When the LOS for Lower Woodchuck Road falls below LOS "A", the emergency route, which includes the internal roads leading to Mountain View Drive and Mountain View Drive, could be improved to meet the new road standards, as amended August 4, 2005, prior to the final plat approval of the next phase to be approved after the LOS has decreased below LOS "A" (Condition 5).
10. To further mitigate impacts to local services, the emergency route could be improved to be a primary route prior to the final plat approval of Phase 19 or the first phase east of the main drainage. The applicant could improve Mountain View Drive (the change from emergency access to primary access may require more improvements than are required with Condition 5) and Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet County standards and remove the emergency access only barricade prior to the final plat approval of Phase 19 or the first phase east of the main drainage (Condition 6). Phase 19 was chosen because it is currently the first phase on the east side of the main drainage traversing the property. If the sequence of the phasing is modified, the condition would be required prior

to the final plat approval of the first phase east of the main drainage. This portion of the property is located relatively far away from the Lower Woodchuck Road accesses and includes about half of the proposed lots. Since Mountain View Drive is a private road, a Road Maintenance Agreement for this road would be required prior to the final plat approval of Phase 19.

11. To mitigate impacts on local services and for street naming and E-911 purposes, the internal subdivision road proposed to connect to Mountain View Drive, which is now named Madison Drive, could be named Mountain View Drive on the final plats of each applicable phase
12. Section 5-4-4(d) also states that if adjacent lands are vacant or un-platted, the road right-of-way or easement shall be extended and the street developed to the property line of the adjacent parcel, where appropriate to allow for proper inter-neighborhood traffic flow. The words "where appropriate" make this part of the section a guideline and not a requirement.
13. There is potential for development in adjacent un-platted areas to the north and there is an existing 60-foot wide private access easement between Lots E146 and E147 connecting to the north. Since there is Elk Winter Range in the northeast corner of the property and to the north of the property, staff does not encourage a future road connection to the north *(Effects on Wildlife and Wildlife Habitat)*.
14. There is also potential for development in adjacent un-platted areas to the east of Aspen Springs. There is an existing 60-foot wide private road and utility easement connecting the proposed emergency access to the southeastern corner of the Aspen Springs property. To mitigate impacts on local services, specifically the road system, and to provide for future road connectivity in two locations, in addition to the existing 60-foot wide private easement in the southeastern corner of Aspen Springs, the applicant could also provide for a conditional public road and utility easement over the same area and provide for a conditional public road and utility easement connecting the proposed cul-de-sac of Ruby Court to the property to the east. Future owners of the property to the east should be able to utilize the easements if they develop the roads within the conditional easements to meet County standards and join the Road Maintenance Agreement for the internal roads of the Aspen Springs Subdivision. To avoid duplication of road maintenance between the two groups of property owners and to further mitigate impacts on local services, the Road Maintenance Agreement filed with the final plat could allow for other properties that will have beneficial use of the internal subdivision roads, once connecting roads are actually developed, to be included as parties to this agreement without the consent of the property owners within the Aspen Springs Subdivision.
15. The subdivision was submitted under the previous road standards, which were amended August 4, 2005. The applicant is requesting a variance from the previous road standards and is proposing to build all internal roads to meet the amended road standards. The Ravalli County Road and Bridge Department has approved the preliminary road plans (Exhibit A-3). Staff is recommending conditional approval of the variance based on the recommendation of the Ravalli County Road and Bridge Department. (Variance #6)
16. A preliminary Road Maintenance Agreement was submitted in the application and would be required to be filed with the final plat of the first phase. To mitigate impacts on local services, a notification of the Road Maintenance Agreement could be included in the Notifications Document.
17. To mitigate impacts on local services and to ensure traffic flow, internal road easements could be labeled as "public road and utility easements" on the final plat of each phase.
18. To mitigate impacts on the road system and public health and safety, the proposed stop signs and road name signs could be installed prior to the final plat approval of each phase.
19. A General Discharge Permit for Stormwater Associated with Construction Activity from the Montana Department of Environmental Quality, approach permits approved by the Ravalli County Road and Bridge Department for the accesses off Lower Woodchuck Road, road name petitions approved by the Ravalli County GIS Department for all internal roads, final road plans approved by the Ravalli County Road and Bridge Department, and engineer certification that

all road improvements meet County Standards or the specifications approved with variances would be submitted with the final plat application for each phase. All improvements would be required to be completed prior to the final plat approval of each phase, unless a subdivision improvements guarantee with adequate security is accepted by the Board of County Commissioners.

20. There are stormwater drainage easements throughout the property. To mitigate impacts on local services, a notification of the stormwater drainage easements could be included in the Notifications Document filed with the final plat.

Water and Sewer

21. All of the lots will be served by a public water system (Exhibit C-5: Planning Board Meeting Minutes August 2, 2006). All lots will be served by a public wastewater treatment system with community drainfields (application). The public water system and wastewater treatment system proposals will be reviewed by the Montana Department of Environmental Quality (DEQ) and the Certificate of Subdivision Plat Approval from DEQ is a requirement of the final plat approval of each phase. *(Effects on Natural Environment)*
22. To mitigate potential impacts of this subdivision on any possible future public water and/or sewer systems that are created for the Eight Mile Creek Road area or improvements to the road system, an RSID/SID waiver filed with the final plat of each phase could address these services/facilities.
23. A maintenance road is proposed off Sweet Grass Hills Road to service the water tank located up on the hill along the northern boundary of Aspen Springs. To mitigate impacts to local services, the maintenance road could be constructed to have a minimum 12-foot wide, compacted gravel travel surface prior to the final plat of the phase when the water tank is constructed and the maintenance road could be included in the Road Maintenance Agreement filed with the final plat of the first phase.

Solid Waste

24. Bitterroot Disposal provides services to this site.

Schools

*(Staff Note on New Information: Staff determined that the demographic information within the Draft of Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District by TischlerBise, which was deemed new information by the BCC, does affect the findings of fact under Effects on Local Services, but does not alter the conclusion and recommendations on the subdivision in regards to impacts on schools.)*

25. Correspondence between the applicant and the Florence-Carlton School District is documented in the application packet. The School District originally requested $5,312.50 per lot and the developer is proposing $300 per lot to be paid prior to the final plat approval of each phase.
26. In a letter dated July 17, 2006 (Exhibit A-25), the Florence-Carlton School District Superintendent, John C. McGee, stated that the School District recommends that the Planning Board make no decision until the developer works with the School District to identify and mitigate impacts to the School District. If this is not possible, Mr. McGee recommends that $5,312.50 per lot, which is based on preliminary estimates from an impact fee study not yet completed by TishlerBise, be paid to the School District. His letter also stated that the assessment of capital facilities are included in the impact fee study.
27. MCA 76-3-510 states: "A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education." Staff recommends that the amount the School District is proposing, which is based on a preliminary impact fee study that includes the assessment of capital facilities, is not used to determine the School District contribution to mitigate impacts from Aspen Springs.

28. The draft of *Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District* by TischlerBise was issued August 8, 2006 (Exhibit A-35). While most of the data within the draft report cannot be used to support a school contribution by the developer because it relates to capital improvements, the BCC found that the demographic data within the report was new information. The report states that in the 2005/2006 school year, the Florence-Carlton School District averaged 0.42 public school students per housing unit.
29. To mitigate impacts on the Florence-Carlton School District, the applicant could contribute an amount per lot (to be recommended by the Planning Board and approved by the Board of County Commissioners in consultation with the subdivider and the School District) for each phase prior to the final plat approval of each phase. This contribution could not be utilized for extension of capital facilities related to education.

Fire

30. According to the application, the developer is proposing to donate Lot C4 to the Florence Rural Fire District and to provide fire hydrants, water flow, and water storage that will meet the standards of the Florence Rural Fire District. A letter from WGM to the Florence Rural Fire District dated April 27, 2005, documents a meeting with the Fire District (application).
31. The Florence Rural Fire District has provided the County with their general policy recommendations. In an email to WGM dated June 26, 2006, Dan Martin, Chief of the Florence Rural Fire District, states that the District is interested in a land donation (Exhibits A-8 and A-9). In an email dated July 13, 2006 (Exhibit A-28), Dan Martin states that the Fire District will be able to provide service to Aspen Springs.
32. The water tank will not be constructed for the first few phases; therefore, water supply and flow for fire protection will not be available to the subdivision. To mitigate impacts on local services, specifically the Fire District, the applicant could either meet the water supply requirements of the Fire District for each phase or provide a $500 per lot contribution for each phase. In lieu of the $500 per lot donation, the Fire District could accept a land donation. To further mitigate impacts on local services, provisions in the covenants could address the posting of addresses and access requirements of the Fire District.

Law Enforcement

33. The Ravalli County Sheriff's Office provides law enforcement services to this area. In a letter dated June 17, 2005, Sheriff Hoffman stated that he is concerned about being able to provide adequate service to the citizens of Ravalli County (application). The Sheriff's Office provides the same comment for most proposed subdivisions in Ravalli County.
34. In response to the Sheriff's letter, the applicant is proposing that the 0.5-acre lot being donated to the Florence Rural Fire District also be used for a satellite Sheriff's Office and that $100 per lot be donated to the Sheriff's Office prior to the final plat of each phase.
35. In a letter dated July 24, 2006 (Exhibit A-29), Sheriff Chris Hoffman states that the proposed contribution by the developer will not mitigate the impacts of Aspen Springs on law enforcement.

Parks and Trails

36. Approximately 16.11 acres of parkland are required to be dedicated for this proposal. The applicant is proposing to dedicate 163.45 acres.
37. The Park Board commented in two letters that they acknowledge a need for parks in the Eight Mile Creek area, but do not think that parks on steep slopes or drainfields will provide recreational opportunities for the community (application). In a letter dated July 2, 2006 (Exhibit A-22), the Ravalli County Park Board states that they met on-site with the developer of Aspen Springs and are hopeful that two parks and trails will be proposed. In a subsequent letter dated July 16, 2006 (Exhibit A-26), the Park Board states that a proposed park in the

southeastern corner of the property should be a flattened area with grade suitable for playing fields.

38. The developer submitted a revised lot layout relocating Lots 167 through 174 to expand the common area proposed in the southeast corner of the subdivision. Staff understands that the common area is proposed as a park dedicated to the Homeowners' Association, but available to the public unless there is vandalism. To mitigate impacts on local services, the applicant could grade and vegetate the proposed park to be suitable for playing fields and provide a letter from the Park Board stating that the grade and vegetation are acceptable prior to the final plat approval of Phase 20. The park could be dedicated to and maintained by the Homeowners' Association, but the Homeowners' Association documents should state that if the Park Board agrees to maintain the Park, then the park shall be dedicated to Ravalli County. To further mitigate impacts on local services and to provide efficient public access to the park, the access through Mountain View Drive should be improved to be a primary access prior to the final plat approval of Phase 19 or the first phase east of the main drainage.
39. On-site trails will be primitive, dirt trails established by use. The applicant submitted a layout and cross section of the proposed off-site trails (application). Off-site trails will be 6.0-foot wide gravel pathways located along Lower Woodchuck Road from Aspen Springs Boulevard to Eight Mile Creek Road and along Mountain View Drive from the Aspen Springs property boundary to Eight Mile Creek Road. The applicant is proposing that the off-site trails along Lower Woodchuck Road and Mountain View Drive be built when a bicycle/pedestrian pathway is constructed along Eight Mile Creek Road from Eastside Highway by another entity. A pathway along Eight Mile Creek Road is in the early stages of planning and there is no way to know if the pathway will actually be constructed. To mitigate impacts on local services and public health and safety, the applicant could construct the proposed trails along Lower Woodchuck Road and Mountain View Drive, as proposed, prior to the final plat approval of the first phase.
40. Through the development proposal, the applicant is satisfying the parkland dedication requirement per MCA 76-3-621(6).

Miscellaneous

41. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on local services. (Variance #1)

Conclusions of Law:

1. Some of the impacts of the Aspen Springs Subdivision on local services could be adequately mitigated, but there are still two major impacts that have not been mitigated.
2. Impacts from the Aspen Springs Subdivision on the intersection of Eastside Highway and US Highway 93 have been identified by MDT, but have not been adequately mitigated. While these highways are maintained by MDT, they are part of the local road system and local services.
3. Impacts from the Aspen Springs Subdivision on law enforcement have been identified by the Ravalli County Sheriff's Office, but have not been adequately mitigated.

**CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT**

Findings of Fact:

Surface Water

*(Staff Note on New Information: After the public hearing before the Planning Board, a map of the flood hazard area associated with the main drainage traversing the property was submitted by the developer. This was not considered new information because the map was based on data already included in the record for the original public hearing.)*

1. The property is located 300 feet east of the mapped floodplain of the Bitterroot River.

2. There is a natural drainage that traverses from the northeast corner of the property to the southwest portion of the property and another natural drainage that traverses the southeastern corner of the property. The Environmental Assessment indicated that water only flows through these natural drainages during spring runoff and heavy rainstorms or because of excess irrigation water flowing from upstream properties.
3. In an email dated July 18, 2006 (Exhibit A-31), Larry Schock, DNRC, recommended that 2.0 feet of depth/elevation be added to the Manning's calculation and that the new depth/elevation figure be used to approximate the flood hazard area. He also recommends that no fences, deck supports, debris, fill, or other alterations take place within the flood hazard area.
4. The applicant is proposing a drainage easement and no-build area over the main drainage traversing the property (application). The proposed no-build area includes the following restrictions:
   - No structures with walls shall be constructed within this area.
   - Any improvements, including utility crossings, trails, fences, road crossings or recreational improvements, such as a picnic shelter without walls, shall be located and designed so as not to impede the passage of runoff from a 100-year recurrence storm event.
   - Any benches or picnic tables shall be anchored to the ground.
5. The Road and Bridge Department's Consulting Engineer, Professional Consultants, Inc., reviewed the flood hazard area determination and the no-build area proposal and approved the proposal with the following recommendations (Exhibits A-34 and A-37):
   - Any fill placed in this area should be designed against erosion and should not increase the velocity or water depth in the flood hazard area.
   - Designs for fill should be completed by a licenses engineer.
   - All culverts should be designed to carry the 10 year storm with a minimum culvert size of 18". If the 100 year peak flow overtops a road, and that road is the only ingress/egress route for a lot or lots, the culvert should be designed to convey the 50 year storm without overtopping the roadway. This standard should not be applicable to driveway approaches.
6. To mitigate impacts on the natural environment and public health and safety, the proposed flood hazard/no-build area could be shown on the final plat of each applicable phase and the legend on the applicable final plats could state the developer proposed restrictions and the restrictions recommended by the County's Consulting Engineer. To further mitigate impacts on the natural environment, a notification of the flood hazard/no-build area could be included in the Notifications Document filed with Phase 1.
7. To mitigate impacts on the natural environment, the applicant could provide for a 20-foot wide drainage easement centered on the natural drainage traversing the southeast portion of the property and Lot B227. The final plat could state that no structures are allowed within the drainage easement unless required for stormwater management. A notification of the stormwater drainage easement could be included in the Notifications Document.

Groundwater

*(Staff Note on New Information: Staff determined that the test well statistics do affect the findings of fact under Effects on Natural Environment, but do not alter the conclusions and recommendations under the Effects on Natural Environment.)*

8. A hydro-pneumatic system with two wells will serve the first few phases of the subdivision. A public water system with up to six wells and a 600,000-gallon water tank is proposed to serve the subdivision after the first few phases.
9. In a memo dated January 24, 2006, the Ravalli County Environmental Health Department stated they received adequate information for local subdivision review to occur (application).
10. All lots will be served by a public wastewater treatment system with community drainfields and septic tanks. DEQ will review the public wastewater treatment system and a Certificate of

Subdivision Plat Approval from DEQ for each phase is a requirement of final plat approval for each phase.

11. DEQ will review the public water system and a Certificate of Subdivision Plat Approval from DEQ is required to be filed for each phase with the final plat of each phase.
12. Water rights are required for the wells that will supply the public water system. The applicant has submitted a Source Water Delineation and Assessment Report by Maxim Technologies stating there is adequate water for the public water system (application). A report from Howard Newman, a hydrogeologist hired by the Florence Coalition Against Aspen Springs states that there may not be enough water (Exhibit A-12). There are several comments from DNRC stating that they have concerns about water supply (application and Exhibits A-10 and A-11).
13. During the August 22, 2006 BCC public meeting on Aspen Springs, the applicant presented test well statistics, which the BCC considered new information. Staff does not have the expertise to review the test well statistics, but relies on DNRC to review the water right application to ensure that the public water system will not affect the natural environment. To mitigate impacts on the natural environment, the applicant could submit a Beneficial Water Use Permit from DNRC prior to the final plat approval of the first phase.

Plant Species of Concern

14. The Montana Natural Heritage Program has identified that the sensitive species toothcup (*Rotala ramosior*), chaffweed (*Centunculus minimus*), and shining flatsedge (*Cyperus rivularis*) may be located in the sections that Aspen Springs is located within. The Environmental Assessment states that these plants grow on wet soils, usually around water bodies, and that field studies confirmed that these species are not present on the property or within 300 feet of the property (application).

Miscellaneous

15. To mitigate air pollution resulting from home heating emissions, the protective covenants filed with the final plat could state that the primary heat source for any newly constructed residences must be at least 75% efficient.
16. An approved noxious weed and vegetation control plan is required to be filed with the final plat for each phase. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation with in a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. The applicant has proposed a provision in the covenants that the owners of each lot control noxious weeds. To mitigate impacts on the natural environment, a noxious weed control provision could be included in the protective covenants filed with the final plat for this subdivision.
17. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on the natural environment. (Variance #1)

<u>Conclusion of Law:</u>

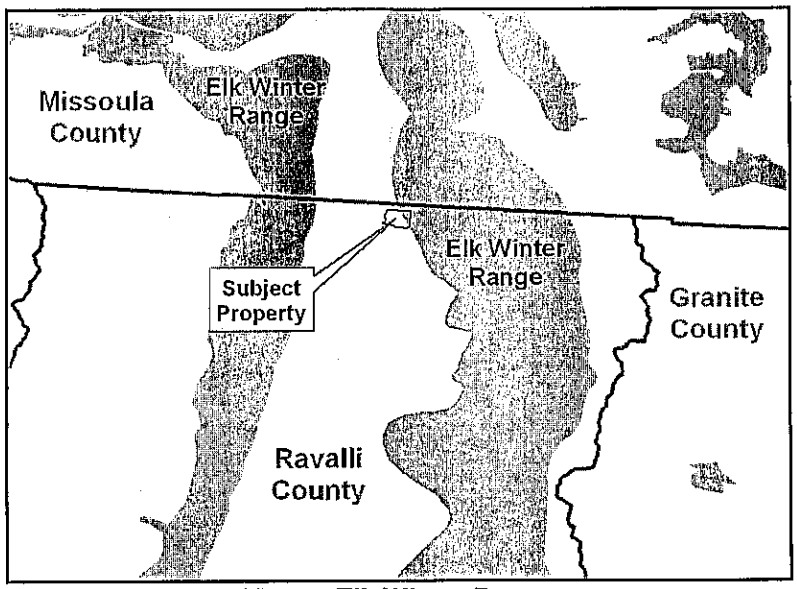
With conditions and the requirements of final plat approval, impacts from this subdivision on the natural environment would be mitigated.

**CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT**

*(Staff Note on New Information: Staff determined the new information does affect the findings and conclusions regarding wildlife and wildlife habitat because the developer cannot submit a revised lot layout after the subsequent public hearing.)*

Findings of Fact:

1. Map 2 shows Elk Winter Range boundaries in relation to Aspen Springs at a scale of 1:250,000. The data was created by FWP and the Rocky Mountain Elk Foundation at a scale of 1:250,000 and cannot be used at a larger scale (zoomed in closer to Aspen Springs). At this scale, it appears that a portion of the northwest corner of Aspen Springs is Elk Winter Range, but the boundary is coarse and should only be used for general planning purposes.




**Map 2: Elk Winter Range**
(Source Data: FWP)

2. Recommendations and comments from FWP from five letters dated March 9, 2005 (application), July 19, 2005 (Exhibit A-13), June 20, 2006 (Exhibit A-14), June 22, 2006 (Exhibit A-15), and July 21, 2006 (Exhibit A-30) are summarized as follows:
   a. The general recommendation throughout all the letters is that there should be less density in the higher elevations in the northern and eastern portions of the property and more density in the southern and western portions of the property.
   b. Common areas that are proposed on the ridges, hillsides, and along natural drainages were appreciated, as they would provide for wildlife corridors.
   c. FWP highest concern was the lots in the northeast corner of the property and they specifically recommend that Lots E124 through E151 and associated roads be removed to mitigate impacts on important deer and elk winter range.
   d. FWP is concerned about the lots in the eastern portion of the property (portions of Phases 30 through 33).
   e. FWP is also concerned about the lots in the northwestern corner of the property (Phase 18).
   f. FWP noted that natural drainages traverse Lots B147 through B149 and Lot B227 and that there should not be lots platted over natural drainages because they provide for wildlife corridors and habitat.
   g. "Living with wildlife" provisions attached to the July 19, 2005 letter should be included in covenants.
3. In the application, the developer notes that the proposed project would remove about 45 acres

of Elk Winter Range from Hunting District 204, which represents a 0.05% loss of the total amount of winter range available in the hunting district.

4. The Environmental Assessment states that the westslope cutthroat trout (*Oncorhynchus clarkii lewisi*) has been identified as a species of special concern by the Montana Natural Heritage Program. It also states that there are no westslope cutthroat trout in the project area (application). In the letter dated July 21, 2006 (Exhibit A-30), FWP states that pellets and a burrow complex of the pygmy rabbit, a species of special concern, were found on-site, but that the presence of the pygmy rabbit could not be verified without more field investigation. The Montana Natural Heritage Program has not documented the pygmy rabbit as a species of special concern for this subdivision, so no further field investigation is required by the Subdivision Regulations.
5. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on wildlife and wildlife habitat. (Variance #1)

Conclusion of Law:

Based on the comments from FWP, this subdivision will cause negative impacts on wildlife and wildlife habitat.

**CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

Flood-prone Areas

*(Staff Note on New Information: After the public hearing before the Planning Board, a map of the flood hazard area associated with the main drainage traversing the property was submitted by the developer. This was not considered new information because the map was based on data already included in the record prior to the public hearing.)*

1. The Bitterroot River floodplain does not affect this property.
2. Two natural drainages traverse the property. The Environmental Assessment indicated that water only flows through these natural drainages during spring runoff and heavy rainstorms or because of excess irrigation water flowing off-site from upstream properties.
3. In an email dated July 18, 2006 (Exhibit A-31), Larry Schock, DNRC, recommended that 2.0 feet of depth/elevation be added to the Manning's calculation and that the new depth/elevation figure be used to approximate the flood hazard area. He also recommends that no fences, deck supports, debris, fill, or other alterations take place within the flood hazard area.
4. To mitigate impacts on the natural environment and public health and safety, the proposed flood hazard/no-build area could be shown on the final plat of each applicable phase and the legend on the applicable final plats could state the developer proposed restrictions and the restrictions recommended by the County's Consulting Engineer. To further mitigate impacts on the natural environment, a notification of the flood hazard/no-build area could be included in the Notifications Document filed with Phase 1. *(Effects on Natural Environment)*
5. To mitigate impacts on public health and safety, the applicant could provide for a 20-foot wide drainage easement centered on the natural drainage traversing the southeast portion of the property and Lot B227 on the final plat for Phase 26. The final plat for Phase 26 could state that no structures are allowed within the drainage easement unless required for stormwater management. A notification of the stormwater drainage easement could be included in the Notifications Document filed with Phase 1.

High Pressure Gas Line

6. An 8.0-inch buried high pressure gas line maintained by Northwestern Energy traverses the property. The applicant is requesting a variance from the requirement that a no-build zone is placed on land within 100 feet of the high pressure gas line and is instead proposing 25-foot

setbacks on either side of the gas line (Variance Request #3). The Northwestern Energy Right-of-Way Development Provisions (Exhibit A-20) state: "No permanent structure will be built within 25 feet of [Northwestern Energy] pipeline without prior approval from [Northwestern Energy]." This subdivision was submitted under the old regulations, which have since been amended to require 25-foot setbacks from the high pressure gas line.

7. In a letter dated April 28, 2006 (application), NorthWestern Energy states that the street crossings proposed over the high pressure gas line may be a problem and that they were going to conduct a survey to find the depth of the pipeline. In a letter dated July 3, 2006, Greg Darkenwald states additional concerns over street and utility crossings and drainfields in close proximity to the gas line (Exhibit A-23). In an email dated July 12, 2006 (Exhibit A-32), Mr. Darkenwald states that after his concerns are met he will submit a letter stating that Aspen Springs will not pose a greater risk to public health and safety than what existed prior to development. To mitigate impacts on public health and safety, the applicant could submit a letter from NorthWestern Energy stating that the development, including all street and utility crossings and drainfields in close proximity to the gas line, will not pose a greater risk to public health and safety than what existed on the property prior to development prior to the final plat approval of Phase 1. The letter could also state that the Right-of-Way Development Provisions document has been signed by the developer.
8. To further mitigate impacts on public health and safety due to the location of the high pressure gas line, a no-build zone within 25 feet of both sides of the high pressure gas line, as shown on the preliminary plat, could be shown on the final plat of each applicable phase and a notification of the high pressure gas line could be included in the Notifications Document filed with the final plat. (Variance #3)

Access

*(Staff Note on New Information: Based on comments from David Ohnstad, staff is recommending conditional approval of Variance #2, which would allow for a temporary emergency access via Mountain View Drive until Phase 19. Prior to final plat approval of Phase 19, the emergency access should be improved to be a primary access.)*

9. MDT has commented that Aspen Springs will affect the intersections of Eight Mile Creek Road with Eastside Highway and Eastside Highway with US Highway 93 (Exhibits A-2 and A-27). To mitigate impacts on public health and safety, the developer could contribute $88,182.00 to the County to be paid to MDT for improvements to the intersection of Eight Mile Creek Road and Eastside Highway prior to the final plat approval of the first phase. The developer has mitigated impacts to the intersection of Eastside Highway with US Highway 93. *(Effects on Local Services)*
10. Three accesses are proposed off Lower Woodchuck Road and an emergency access is proposed off Mountain View Drive. While the emergency access will likely provide for adequate access for public health and safety in the event of an emergency, it may not provide for efficient traffic flow and road connectivity at project build-out, which could lend to congestion within the subdivision and on Lower Woodchuck Road (*Effects on Local Services*). The applicant is requesting variances from improving the paved portion of Lower Woodchuck Road and Eight Mile Creek Road and from a road connection to the south and staff is recommending that both roads are constructed to meet County Standards and that Mountain View Drive is improved as a primary access prior to the final plat of Phase 19 or the first phase east of the main drainage. All internal roads are proposed to meet the new road standards, as amended August 4, 2005. (Variances #2, #6, #7, and #8)
11. Up to three phases are proposed to be filed each year over the next 10 to 20 years and turnarounds or through-roads will not necessarily be available for emergency vehicles until build-out. To mitigate impacts on public health and safety, temporary turnarounds with a turning radius of 50 feet and a compacted all weather travel surface that can accommodate

emergency services vehicles could be constructed for internal roads with each phase, when necessary to ensure emergency vehicles can easily access the subdivision.

12. On-site trails are proposed to be primitive, dirt trails established by use. The applicant submitted a layout and cross section of the proposed off-site trails. Off-site trails will be 6.0-foot wide gravel pathways located along Lower Woodchuck Road from Aspen Springs Boulevard to Eight Mile Creek Road and along Mountain View Drive from the Aspen Springs property boundary to Eight Mile Creek Road. The applicant is proposing that the off-site trails along Lower Woodchuck Road and Mountain View Drive be built when a bicycle/pedestrian pathway is constructed along Eight Mile Creek Road from Eastside Highway by another entity. It is not known when a pathway will be constructed along Eight Mile Creek Road. To mitigate impacts on local services and public health and safety, the applicant could construct the proposed trails along Lower Woodchuck Road and Mountain View Drive, as proposed, prior to the final plat approval of the first phase.

Slopes Greater Than 25%

13. The shaded areas on the preliminary plat depict slopes greater than 25%. Section 5-2-2(a)(11) of the Ravalli County Subdivision Regulations requires no-build/alteration zones on slopes greater than 25% unless site design and building layout plans are submitted to address site constraints.
14. No-build/alteration zones are proposed on the slopes greater than 25% on Lots E67, E68, E141, E149, E150, and E196. Development on Lots E141, E149, and E150 will have negative impacts on wildlife and wildlife habitat (*Effects on Wildlife and Wildlife Habitat*). To mitigate impacts on public health and safety, no-build/alteration zones on the slopes greater than 25% in Lots E67, E68, and E196 could be shown on the final plat of each applicable phase and a notification of these no-build/alteration zones could be included in the Notifications Document.
15. The applicant has submitted site design and building layout plans for the slopes greater than 25% on Lots E124 through E131, Lot E135, Lot E140, Lot E141, Lot E144, and Lots B147 through B149. The steep slopes are part of natural drainages and wildlife and wildlife habitat. Site design and building layout plans have also been submitted for Lots B103, C7, E86, E108, E229, and E230, which show that the steep slopes, which are not part of any natural drainage, will be graded to provide for adequate homesites.
16. The developer is also proposing to construct roads and utilities and allow for trails over slopes greater than 25%. Site designs showing existing and proposed contours have been submitted with the application and are acceptable to staff.

Fire

17. Mitigation could address the Florence Rural Fire District's general recommendations to mitigate impacts on public health and safety.

Law Enforcement

18. The Ravalli County Sheriff's Office provides law enforcement services to this area and in a letter dated June 17, 2005, Sheriff Hoffman stated that he is concerned about being able to provide adequate service to the citizens of Ravalli County (application). The Sheriff's Office provides the same comment for most proposed subdivisions in Ravalli County.
19. In response to the Sheriff's letter, the applicant is proposing that the 0.5-acre lot being donated to the Florence Rural Fire District also be used for a satellite Sheriff's Office and that $100 per lot be donated to the Sheriff's Office prior to the final plat of each phase.
20. In a letter dated July 24, 2006 (Exhibit A-29), Sheriff Chris Hoffman states that the proposed contribution by the developer will not mitigate the impacts of Aspen Springs on law enforcement.

Miscellaneous

21. A public water system and public wastewater system are proposed to serve the lots within the subdivision. *(Natural Environment)*
22. The preliminary plat and soils map indicate that about 50% of this subdivision may have soils rated as severe for road and building construction. To educate property owners and to mitigate potential impacts of this subdivision on public health and safety, a notification of the potential for severe soils could be included in the Notifications Document filed with the final plat. A reduced plat showing the approximate locations of soils rated as severe for roads and building construction and descriptions of the severe soils in question could be attached to the Notifications Document as an exhibit.
23. To mitigate impacts on public health and safety, the subdivider could apply for County-issued addresses prior to the final plat of each phase and a provision requiring property owners to post County-issued addresses at their driveways could be in the covenants.
24. To mitigate the impacts of light pollution stemming from new construction, the protective covenants could include a provision requiring full cut-off lighting with the exception of flag poles.
25. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants could include a statement regarding radon exposure.
26. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on public health and safety. (Variance #1)

Conclusions of Law:

1. Some of the impacts of the Aspen Springs Subdivision on public health and safety could be adequately mitigated, but there are still two major impacts that have not been mitigated.
2. MDT has identified that there will be impacts from the Aspen Springs Subdivision on the intersection of Eastside Highway with US Highway 93 that have not been adequately mitigated. The specific impacts have not been identified. A decreased level of service at this intersection would negatively impact traffic safety.
3. The Ravalli County Sheriff's Office will not be able to provide adequate service to this subdivision. The proposed mitigation will not improve the situation.

## COMPLIANCE WITH:

### 1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

### 2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.
2. M.C.A. 76-3-203 allows a condominium exemption when the approval of the original division of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are met.

3. The developer is proposing a maximum of 35 condominium units on Lots C-1 through C-7 and will be eligible for a condominium review as a subdivision exemption provided that the units proposed on each lot do not exceed the following:
   a. Lots C-1 through C-3 are allowed a maximum of nine units each.
   b. Lots C-4 through C-7 are allowed a maximum of nine units each.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

**3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS**

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

**CONSISTENCY WITH EXISTING ZONING AND COVENANTS**

Findings of Fact:

1. The property is not located within a zoning district.
2. There are existing covenants on the property and the proposal is in compliance with the covenants.

Conclusions of Law:

1. Zoning does not apply.
2. The proposal is in compliance with existing covenants.

**PROVISION OF EASEMENTS FOR UTILITIES**

Findings of Fact:

1. The plat indicates existing utility easements are located along Lower Woodchuck Road and proposed internal easements are shown on the preliminary plat. Utility easements are required to be shown on the final plat.
2. According to the application, the proposed subdivision will be served by Ravalli Electric Cooperative, NorthWestern Energy, and Qwest Telephone. Utility certificates are a requirement of final plat approval.

Conclusion of Law:

Utility services are available to the subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS**

Finding of Fact:

Physical and legal access for this subdivision is proposed via Eight Mile Creek Road, Lower Woodchuck Road, and an emergency access off Mountain View Drive. *(Local Services)*

Conclusion of Law:

With the mitigating conditions and requirements of final plat approval, the proposal meets physical and legal access requirements.

## VARIANCE REPORT

### VARIANCE REQUEST #1

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #1; therefore, no changes have been made to the content.)*

The applicant requested a variance from Section 3-2-21 of the Ravalli County Subdivision Regulations to allow for the project to have 33 phases filed over a maximum period of 20 years, instead of a maximum of two phases over a period of four years as allowed in the Subdivision Regulations. The proposed phasing plan allows for multiple phases to be filed in a year and final plats may be filed non-sequentially, regardless of the proposed timeline, if the necessary infrastructure is in place.

### Compliance with Review Criteria

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. If Aspen Springs was submitted as 33 individual subdivisions over a period of 20 years, the cumulative impacts of the entire project on public health, safety and general welfare, and adjoining land owners would be difficult to assess. With the proposed phasing plan, impacts to the public from the entire project can be properly assessed and mitigated.
2. Section 76-3-610 MCA allows for preliminary plat approval periods that are longer than the standard one to three years, if they are subject to a written agreement between the governing body and the subdivider. Subsection 2 also notes the governing body may not impose additional conditions after preliminary plat approval if final plat approval is obtained within the original or extended approval period.
3. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.
4. The application states the granting of the variance will not be detrimental to the public health, safety or general welfare or injurious to other adjoining properties because required improvements will be installed prior to the filing of the final plat for each phase of the subdivision or the applicant will post a bond. It also states that adjoining property owners in Riverview Orchards to the south of the subdivision would prefer to have the timeframe for development of the subdivision extended longer than two phases over four years.
5. Regardless of whether the proposal comes through with an extended phasing plan or if the subdivision was split into multiple subdivisions that are reviewed and approved over the same period of time, DEQ and the County Environmental Health Department will review final plans prior to issuing a Certificate of Approval for each phase and will ensure the most current standards are applied.
6. With the proposal to allow for nonsequential filing of phases, it would be possible to file a phase that is dependent on infrastructure not scheduled for completion until a future phase.
7. To ensure adequate infrastructure is in place and to protect public health and safety, the following conditions shall be imposed: the proposed phasing plan shall be accepted and any changes to the order and dates of filing shall be submitted as a revised phasing plan(s) to the Board of County Commissioners for review and approval, phases shall be filed such that there are easements for necessary infrastructure in place if necessary, all necessary infrastructure for a phase shall be completed prior to filing the phase even if it is not scheduled to be finished until a future phase, and temporary road turnarounds shall be installed as necessary for each phase. (Conditions 1, 2, 3, and 4)

Conclusions of Law:

1. Impacts to public health, safety and general welfare and adjoining properties can be better assessed for a planned subdivision in phases than for multiple individual subdivisions.
2. With the mitigating conditions of approval, impacts of granting the variance on public health, safety and general welfare and on adjoining property owners have been addressed.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. The application states the land mass of the subject property, which is required to complete a development of this type and scale, is unique to the property.
2. There are other large properties in the Bitterroot Valley that could support a similar type and scale of development for which a long term phasing plan might be requested.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

Physical conditions of the property do not affect the phasing of the development.

Conclusion of Law:

This criterion does not apply.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The application states the property is not zoned and an approval of the variance will not vary from the growth policy.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

   **Countywide Goals 1B:** Promote private open land, farm land, ranch land and recognition of agriculture and forestry as valued land resources.
   **Countywide Policy 1.3:** Encourage new development that allows continued agricultural and forestry activities. The intent of this policy is to minimize the adverse impacts of new development on agricultural and forestry operations; (i.e., nuisance litigation over weed spraying, dust, livestock odors and noise.)

   - According to the variance application, phasing allows for a development of this size and scope because the developer can react to changes in the market and can recover some of the engineering and construction costs.
   - Aspen Springs will provide increased housing density while consuming less land. Encouraging new development in this area may protect other areas in the County that are more viable for agriculture.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.
**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.
**Countywide Policy 4.2:** Consider cumulative impacts of development.

- The applicant has requested a variance from the phasing limitations in the Subdivision Regulations. Although it is difficult to determine whether all impacts of the subdivision on the primary review criteria will have been mitigated 20 years into the future, reviewing the overall development plan for a long term phased subdivision allows the County to consider the cumulative impacts of development as compared to limiting review to a series of smaller subdivisions that would have to be reviewed individually. Mitigating conditions will protect the public and future land owners from taking on the costs of this development.

Conclusions of Law:
1. Provisions in the zoning district standards do not apply.
2. With the mitigating conditions, provisions in the Growth Policy appear to support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**
Findings of Fact:
1. Mitigating conditions will prevent impacts of granting the variance on public costs. (Conditions 1, 2, 3, and 4)
2. By reviewing the entire project in phases instead of 33 individual subdivisions, potential costs to the public are easier to evaluate.

Conclusion of Law:
With the recommended conditions, impacts of granting the variance on public costs have been addressed.

**VARIANCE REQUEST #2**
*(Staff Note on New Information: Based on comments from David Ohnstad that were considered new information by the BCC, staff is recommending conditional approval of Variance #2, which would allow for a temporary emergency access. When the Level of Service on Lower Woodchuck Road falls below LOS "A", the emergency route shall be constructed to Mountain View Drive and Mountain View Drive improved to meet the new road standards. Prior to final plat approval of Phase 19 or the first phase east of the main drainage, the emergency access shall be improved to be a primary access. The applicant shall improve Mountain View Drive and Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet the road standards and the emergency access only barricade removed.)*
The applicant has requested a variance from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow. The Section further states that if adjacent lands are vacant or un-platted, the road easement shall be extended and the road developed to the boundary of the proposed subdivision, where appropriate.

The applicant is proposing three accesses off Lower Woodchuck Road and one emergency access off Mountain View Drive. One existing road easement connecting to the north is also proposed. The applicant is requesting that no other road or road easement connections be required.

The Riverview Orchards Subdivision is adjacent to the southern boundary of Aspen Springs and, according to the preliminary plat, there are four road easements that connect the Riverview Orchards Subdivision to Aspen Springs. One connection from Aspen Springs to the Riverview Orchards Subdivision is required. The emergency access proposed off Mountain View Drive will not provide for "proper inter-neighborhood traffic flow" because it will only be used in emergency situations.

The four potential connections to the south are Cottonwood Drive, Meadow View Drive, Riverview Drive, and Mountain View Drive. Mountain View Drive, Meadow View Drive, and Cottonwood Drive do not have 60-foot wide easements, and there may not be legal access on Cottonwood Drive or Riverview Drive. Potential wetlands and steep slopes also pose challenges to a southern connection; however the application packet shows the emergency access connection with Mountain View Drive to be 7%.

**Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. At build-out, Aspen Springs is proposed to have a maximum of 671 units and contribute approximately 5,866 average daily trips to the road system (application). All of this traffic is proposed to be funneled onto Lower Woodchuck Road.
2. The applicant is proposing an emergency access off Mountain View Drive. The extension of Madison Drive south to the southern boundary of the subdivision is proposed to meet the new road standards and a knock-down gate is proposed. No improvements to Mountain View Drive are proposed.
3. In emails dated June 27, 2006 (Exhibit A-6) and August 17, 2006 (Exhibit A-36), David Ohnstad makes the following recommendations regarding a southern connection:
   - An emergency route through Mountain View Drive should be constructed when the Level of Service (LOS) on Lower Woodchuck Road decreases below LOS "A".
   - The internal roads leading to Mountain View Drive and Mountain View Drive should be improved to meet the new road standards when the emergency route is constructed.
   - The emergency barricade should not be a locked gate.
   - If the portion of Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road and the portion of Lower Woodchuck Road leading to the subdivision are improved to meet the new road standards prior to the final plat of Phase 1, then the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive would not need to be improved.
4. To mitigate impacts on public health and safety, when the LOS for Lower Woodchuck Road falls below LOS "A", the emergency route, which includes the internal roads leading to Mountain View Drive and Mountain View Drive, shall be improved to meet the new road standards, as amended August 4, 2005 prior to the final plat approval of the next phase to be approved after the LOS has dropped below LOS "A" (Condition 5).
5. Phases 19 through 33, approximately half of the total proposed lots, are located in the southeastern and eastern portions of subdivision. As proposed, there would be no primary access through Mountain View Drive. Traffic would be routed across the subdivision to Lower Woodchuck Road causing internal congestion.
6. As proposed, the people living along Lower Woodchuck Road will experience the most traffic. If the traffic was dispersed to a road network with multiple routes to the public road system, the impacts of the Aspen Springs traffic would be equally dispersed throughout the Riverview

Orchards Subdivision and therefore be less injurious to the property owners along Lower Woodchuck Road.

7. In the event of a road blockage on Lower Woodchuck Road, such as road maintenance or an emergency situation, there would be no alternative route for entering and exiting the subdivision without an access route to the south. The intent of the Subdivision Regulations is to optimize traffic safety and efficient traffic movement, which is problematic when you have all standard (non-emergency use only) access points on a single road, Lower Woodchuck Road. At this time Lower Woodchuck dead ends to the north. In regards to other road safety issues, the County Attorney's Office has advised us that to any extent that there is a finding of negative impact on review criteria from the design of this subdivision, the subdivision application should not be approved unless sufficient mitigation to minimize the potential dangers can be done. Approval without requiring sufficient mitigation or approval where mitigation is not possible to provide for adequate public and emergency access, exposes the County to significant liability in the event of a public emergency in the subdivision.
8. To mitigate impacts to public health and safety and adjoining landowners, the emergency route shall be improved to be a primary route prior to the final plat approval of Phase 19 or the first phase east of the main drainage. The applicant shall improve Mountain View Drive (the change from emergency access to primary access may require more improvements than are required with Condition 5) and Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet County standards and remove the emergency access only barricade prior to the final plat approval of Phase 19 (Condition 6). Since Mountain View Drive is a private road, a Road Maintenance Agreement for this road would be required prior to the final plat approval of the first phase east of the main drainage.
9. To mitigate impacts on public health and safety, the internal subdivision road connecting to Mountain View Drive shall be named Mountain View Drive for E-911 purposes (Condition 7).
10. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusions of Law:

1. With a temporary emergency access for Phases 1 through 18, impacts to public health and safety will be mitigated.
2. With a primary access through Mountain View Drive at Phase 19 or prior to the final plat approval of the first phase east of the main drainage, impacts to public health, safety, general welfare, and adjoining properties will be mitigated.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

Aspen Springs is a proposed subdivision of 643 lots (671 units) on 392 acres, with a platted subdivision adjacent to the south property boundary and only three accesses onto one County-maintained road.

Conclusions of Law:

1. These are the conditions that warrant road connectivity.
2. The conditions on which the variance request is based are not unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There are steep slopes below the bench along the southern boundary of Aspen Springs.

Conclusion of Law:

There are some topographic limitations that may restrict the applicant from building a road connecting to the south, but the applicant has successfully created road plans for an emergency connection to Mountain View Drive that is at 7% grade.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

   **Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.
   **Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.
   **Countywide Policy 4.2:** Consider the cumulative impacts of development.
   **Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.
   - A development of this size and scope should not only have a secondary, emergency access, but should provide road connectivity for efficient traffic flow when the second half of the subdivision is developed.
   - To ensure the proper infrastructure is in place for efficient traffic flow and public health and safety, an emergency route shall be constructed via Mountain View Drive when the LOS for Lower Woodchuck Road falls below LOS "A" and a primary route shall be constructed prior to the final plat of Phase 19 or the first phase east of the main drainage (Conditions 5 and 6).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating conditions, the Growth Policy supports the granting of the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. Aspen Springs will add an estimated 5,866 trips per day. The applicant is proposing primary access onto Lower Woodchuck Road, a County-maintained road and emergency access via Mountain View Drive.
2. If the variance request is approved as requested, the traffic on Lower Woodchuck Road will degrade the road much faster than if the traffic were dispersed to a second primary route to the south.
3. To ensure that there are no substantial increases in public costs, a primary route shall be constructed prior to the final plat of Phase 19 or the first phase east of the main drainage (Condition 6).

Conclusion of Law:
With the mitigating condition, there will not be a substantial increase in public costs.

**VARIANCE REQUEST #3**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #3; therefore, no changes have been made.)*

The applicant has requested a variance from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations, for relief from the requirement that a no-build zone within 100 feet of the high pressure gas line traversing the western portion of Aspen Springs be shown on the final plat.

**Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. A high pressure gas line with an 8.0-inch diameter, owned and operated by NWE, traverses the property. The gas line is within a 50-foot public utility easement.
2. Finding 5-2-1(4) of the Subdivision Regulations in place at the time of the application submittal states that a 50-foot wide setback from the high pressure gas line would reduce impacts to public health and safety and Section 5-2-2(a)(13) of the Subdivision Regulations states that land within 100 feet of a high pressure gas line shall be a no-build zone on the final plat. Finding 5-2-1(4) and Section 5-2-2(a)(13) were not consistent. The Subdivision Regulations were amended August 4, 2005 to require a 25-foot setback from high pressure gas lines, but since Aspen Springs was submitted prior to this date, the 100-foot setback applies.
3. The NWE Right-of-Way Development Provisions state: "No permanent structure will be built within 25 feet of [NorthWestern Energy's] pipeline without prior approval from [NorthWestern Energy]" (Exhibit A-20).
4. The applicant is proposing to show a 50-foot wide no-build zone centered on the high pressure gas line on the final plat, as shown on the preliminary plat.
5. To mitigate impacts on public health and safety, a 50-foot no-build zone centered on the high pressure gas line shall be shown on the final plat of each applicable phase, as proposed on the preliminary plat, and a notification of the high pressure gas line shall be included in the Notifications Document (Conditions 8 and 10).
6. In a letter from NWE to the developer, NWE stated that they had concerns about the street crossings over the high pressure gas line (application). In another letter, NWE stated they also have concerns about utility crossing and drainfields in close proximity to the gas line (Exhibit A-23). In an email dated July 12, 2006 (Exhibit A-32), Mr. Darkenwald states that after his concerns are met he will submit a letter stating that Aspen Springs will not pose a greater risk to public health and safety than what existed prior to development. To mitigate impacts on public health and safety, the applicant shall submit a letter from NorthWestern Energy stating that the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity, will not pose a greater risk to public health and safety than what existed on the property prior to development prior to the final plat approval of the first phase. The letter shall also state that the Right-of-Way Development Provisions document has been signed by the developer (Condition 9).
7. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

With the mitigating conditions of approval, impacts of granting the variance on public health and safety will be reduced.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005 from 100-foot setbacks from the gas line to 25-foot setbacks. The Aspen Springs application was submitted prior to the amendment.

Conclusion of Law:

The conditions upon which the variance is requested are unique to the subject property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There is sufficient area on the property for 100-foot setbacks from the gas line and topography does not affect the placement of easements.

Conclusion of Law:

There do not appear to be physical conditions preventing the applicant from meeting the Subdivision Regulations.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. There is no zoning on this property.
2. The goals and policies in the Ravalli County Growth Policy do not appear to address this variance or related public health and safety issues.

Conclusion of Law:

Provisions in the zoning and the Growth Policy do not appear to apply to this request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

If the high pressure gas line was ruptured, there may be costs associated with providing emergency services. To lessen the chance of a rupture, the 50-foot no-build zone on the preliminary plat shall be shown on the final plat, a notification of the gas line shall be included in the Notifications Document in accordance with NWE policies, and the applicant shall provide a letter from NWE stating the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity to the gas line will not pose a greater risk to public health and safety than what existed on the property prior to development (Conditions 8, 9, and 10).

Conclusion of Law:

With the recommended conditions of approval, impacts on public costs will be reduced.

**VARIANCE REQUEST #4**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #4; therefore, no changes have been made.)*

The applicant requested a variance from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, for relief from the requirement that "each lot have an area sufficient for a practical building site of at least 7,500 square feet..." because there are 152 lots proposed within Aspen Springs that will not meet this requirement. The proposed minimum lot size is 3,972 square feet and the average lot size is 10,460 square feet.

**Compliance with Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. The proposal is to vary from the minimum building area of 7,500 square feet as required in the Regulations for 152 lots within Aspen Springs. The proposed minimum lot size is 3,972 square feet, with an overall average lot size of 10,460 square feet.
2. The minimum lot size within the subdivision is larger than the traditional lots platted in most existing towns, which are typically 25 to 30 feet wide by 125 feet deep.
3. The application states that smaller lots within this subdivision will have detached garages accessed via an alley, which can be considered safer because this allows for access from both the front and rear of the lot and the residents will be accessing their homes via alleys instead of the busier streets. No parking will be allowed in the alleys.
4. To mitigate impacts on public health, safety and general welfare by having buildings too close to one another such that fire could spread easily between structures a minimum five-foot wide side yard setback shall be included in the covenants filed with the final plat (Condition 11). This minimum setback is based on a survey of side yard setbacks for zoning districts in other jurisdictions that have a minimum lot size between 5,000 and 10,000 square feet.
5. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

With the mitigating condition, granting the variance will not result in adverse impacts on public health and safety or be injurious to adjoining landowners.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. The application states that the proposal is unique because it offers a variety of housing types and lot sizes, which will provide opportunities for homeownership for a broad range of residents. The smaller lots will allow for more affordable market rate housing.
2. The variance does not appear to be based on unique features of the property.
3. The Montana Board of Housing has indicated that affordable housing is difficult to find in this area, in large part due to the cost of land and infrastructure (Exhibit A-18). Their typical home buyer is a hard working Montana family with an average annual income of about $35,000. They note that "all rapidly growing communities need to consider higher density housing developments on communal water and sewer systems to offer the only opportunity for new construction homes to fit the incomes of many Montana Board of Housing buyers."

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property; however, they are unique to the proposal.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The application states the ridgelines and bowl features of the property, as well as its horizontal and vertical separation from the neighboring Riverview Orchards make this property unique and these features allow for clustering development away from the ridgelines and buffering the neighboring properties. The proposal is also focused on clustering development on smaller lots to allow for large tracts of open space. The applicant also argues that the higher density development allows for more amenities. A development that met the minimum building area on each lot would result in less open space and potentially fewer neighborhood amenities.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations; however, it appears it would be more difficult to achieve the project goals with the minimum building area of 7,500 square feet.

**D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not zoned.
2. The variance will not vary provisions in the Growth Policy; however some general goals and policies supporting voluntary open space programs and provision of quality affordable housing may support granting the variance request.

Conclusion of Law:

Zoning does not apply and the Growth Policy may support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

The variance will not result in increases to public costs and the application argues granting the variance will actually increase the tax base for the County.

Conclusion of Law:

Granting the variance will not increase public costs.

**VARIANCE REQUEST #5**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #5; therefore, no changes have been made.)*

The applicant requested a variance from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for 6 flag lots (B110, B126, B133, B134, E93, E126) that if not designed as flag lots would likely have resulted in additional road construction.

## Compliance with Review Criteria

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. The applicant requested a variance from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for 6 flag lots (B110, B126, B133, B134, E93, E126) within the subdivision, and consequently has avoided additional roadway construction that would likely have been needed to accommodate a "non-flag lot design".
2. The proposed flag lots all have "poles" shorter than 150 feet in length, which is the distance most fire districts in the Valley are willing to travel before they require an 18 to 20 foot wide compacted all weather surface instead of a standard driveway to provide safe access, particularly for emergency services providers.
3. No impacts to adjoining property owners are anticipated from the granting of the variance request.
4. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

No impacts to public health and safety or general welfare or injury to adjoining property owners are anticipated from the granting of the variance request.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. The application states the design that includes flag lots will help to further preserve the natural features of the site without the extra site disturbance that would be required through additional road construction.
2. The application does not identify conditions upon which the variance is requested that are unique to the property.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property; however, they are somewhat unique to the proposal.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The application states the rolling topography of the site and the natural features encourage the use of flag lots and these lots help prevent excessive infrastructure development and costs.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations.

**D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not zoned.
2. The provisions of the Growth Policy do not apply to the variance request.

Conclusion of Law:

Neither zoning nor the Growth Policy applies.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

No increases in public costs are anticipated from the granting of the variance request.

Conclusion of Law:

Granting the variance will not increase public costs.

**VARIANCE REQUEST #6**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #6; therefore, no changes have been made.)*

The applicant has requested a variance from Chapter 5, Article 4 of the Ravalli County Subdivision Regulations, to allow all of the internal subdivision roads to meet the new road standards, as amended August 4, 2005, instead of the standards in place at the time of subdivision application submittal.

**Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. The developer is proposing an internal road network to access the lots within the subdivision. The developer is requesting a variance from the road standards in place at the time of application submittal and is instead proposing to construct the roads to the new road standards, as amended August 4, 2005, without any design exceptions.
2. The road plans have been approved under the new road standards by the Road Department and the Road Department recommends approval of this variance (Exhibit A-3). To mitigate impacts on public health and safety, the applicant shall construct the internal roads to meet County Standards, as amended August 4, 2005 (Condition 12).
3. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

With the mitigating condition, the granting of the variance will not have impacts on public health, safety, and general welfare or adjoining properties.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005, and the Aspen Springs application was submitted prior to the amendments to the road standards.

Conclusion of Law:

The conditions upon which the variance is proposed are unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There are slopes greater than 25% on the property, but it would not prevent the applicant from building the internal roads to the road standards in place at time of application submittal.

Conclusion of Law:

No physical or topographic limitations have been identified that would restrict the applicant from meeting the road standards in place at the time of application submittal.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

   **Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

   **Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

   - New provisions in the Subdivision Regulations were adopted August 4, 2005, while this proposal was involved in the subdivision process.
   - To ensure that the developer will be providing the necessary infrastructure, the applicant shall construct all internal roads to meet County Standards, as amended August 4, 2005 (Condition 12).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating conditions, the Growth Policy supports granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

The applicant will be responsible for constructing the roads to meet the current Subdivision Regulations (Condition 12).

Conclusion of Law:

There will not be an increase to public costs.

**VARIANCE REQUEST #7**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #7; therefore, no changes have been made.)*

The applicant has requested a variance from Chapter 5, Article 4 of the Ravalli County Subdivision Regulations, to allow the developer to reconstruct the gravel portion of Lower Woodchuck Road to meet the road standards, as amended August 4, 2005 and pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet County Standards. If a recovery contract was in place, the developer is willing to improve the entire portion of Lower Woodchuck Road leading to the subdivision. The design exception is to lower the design speeds on the curves where Lower Woodchuck Road intersects with Slack Lane and Sapphire Lane. (Staff Note: The Board of County Commissioners recently decided that design exceptions are independent of variances, so the Road and Bridge Department will be reviewing design exceptions.)

**Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. Based on the Trip Generation 7th Edition, Aspen Springs will add an estimated 5,866 trips per day to Lower Woodchuck Road (application).
2. Lower Woodchuck Road is currently classified as a Major Local Access – Agricultural Access roadway. From Eight Mile Creek Road to Slack Lane, Lower Woodchuck Road is paved, but does not meet County Standards. From Slack Lane north to the subdivision, Lower Woodchuck Road is gravel and does not meet County Standards. There are two curves located where Lower Woodchuck Road intersects with Slack Lane and the proposed Sapphire Lane that are close to 90 degrees.
3. The Subdivision Regulations require that the entire length of Lower Woodchuck Road be improved to meet the Standards in place at the time of application submittal, which was prior to the August 4, 2005 amendments.
4. The developer is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards.
5. The developer is not proposing to improve the paved portion of Lower Woodchuck Road (from Eight Mile Creek Road north to Slack Lane), but is proposing to pay a portion of the cost to improve this portion of Lower Woodchuck Road to County Standards. If there is a recovery contract in place, the developer is willing to improve the entire portion of Lower Woodchuck Road leading to the subdivision.
6. In an email dated June 21, 2006 (Exhibit A-4), David Ohnstad states, "The current 'design' and condition of the roadway may be nominally acceptable for current traffic volumes, but would not be appropriate for the potentially large volume of traffic generated by the Aspen Springs project. Significant increases in volume on this roadway, without improvement, may create un-safe conditions for current users as well as new residents." To mitigate impacts on public health and safety, and to ensure proper conditions for future users of the roadway, the applicant shall improve the paved portion of Lower Woodchuck Road, in addition to the gravel portion, to meet the County road standards, as amended August 4, 2005, prior to the final plat approval of Phase 1 (Condition 13).
7. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

With the mitigating condition, the applicant would be required to improve the entire length of Lower Woodchuck Road that provides access to Aspen Springs to meet the Road Standards, as amended August 4, 2005. This would mitigate impacts on public health and safety.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005. The Aspen Springs subdivision was submitted on June 17, 2005.

Conclusion of Law:

The conditions upon which the variance is proposed are somewhat unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevents the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There is currently a 60-foot wide easement on the entire portion of Lower Woodchuck Road leading to Aspen Springs.

Conclusion of Law:

There are no physical conditions preventing the applicant from improving Lower Woodchuck Road to meet the standards.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

   **Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.
   **Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.
   **Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

   - The applicant is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards, but is not proposing to improve the paved portion, unless a recovery contract is in place.
   - Aspen Springs is expected to contribute over 97% of the traffic on Lower Woodchuck Road, a substandard County-maintained road. To mitigate impacts on the existing road network, the applicant shall improve the entire length of Lower Woodchuck Road leading to Aspen Springs to meet the new road standards (Condition 13).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating condition, the Growth Policy supports granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

To mitigate impacts on public costs, the applicant shall improve Lower Woodchuck Road to meet the new road standards, with one design exception (Condition 13).

Conclusion of Law:

With the mitigating condition, there will not be an increase in costs to the public by granting this variance.

**VARIANCE REQUEST #8**

*(Staff Note on New Information: Staff determined the email from David Ohnstad that was considered new information by the BCC may affect Variance Request #8. A condition of approval of Variance Request #2 is that the Mountain View Drive access be improved to a primary access with Phase 19 or the first phase east of the main drainage. The applicant would be required to improve the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet County Standards if this route was a primary access. The staff recommendation on Variance Request #8 has not changed due to the new information, but the findings of fact have been modified.)*

The applicant requested a variance from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that the portion of Eight Mile Creek Road that leads to Aspen Springs be reconstructed to meet County road standards prior to final plat approval because the subdivision has more than 21 lots. The applicant is proposing to pay the equivalent of the pro rata share (57%) of the cost of improvements to Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road ($43,981) based on current traffic projections and estimated cost of improvements. The road contribution is proposed to be paid proportionately at the final plat of each phase based on the number of lots in each phase. If there is a recovery contract in place, the developer is willing to improve the portion of Eight Mile Creek from Eastside Highway to Lower Woodchuck Road.

**Compliance with Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. According to the application, Aspen Springs will generate 5,866 trips per day to the portion of Eight Mile Creek Road from Eastside to Lower Woodchuck Road, or an estimated 57% of the traffic load, assuming that a number of proposed subdivisions are approved and filed.
2. The applicant requested a variance from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that Eight Mile Creek Road be reconstructed to meet the County road standards in place at the time of submittal prior to final plat approval because the subdivision has more than 21 lots. Although the variance only refers to the north-south portion of Eight Mile Creek Road, with the requirement for a second access to the subdivision at Phase 19, the subdivider will be responsible for improvements to Eight Mile Creek Road to the intersection of Mountain View Drive and Eight Mile Creek Road. This portion of Eight Mile Creek Road has not been figured into the proposed mitigation.
3. To mitigate impacts of granting the variance, the applicant is proposing to pay the equivalent of the pro rata share (57%) of the cost of improvements to Eight Mile Creek Road ($43,981) based on current traffic projections and estimated cost of improvements. The actual pro rata calculation required under the Subdivision Regulations is based on figures determined at final plat approval. If there is a recovery contract in place, the developer is willing to improve the portion of Eight Mile Creek from Eastside Highway to Lower Woodchuck Road.

4. The County Road Supervisor made the following comment (Exhibit A-5), "The granting of this variance **may prove detrimental** to the public health, safety or general welfare or injurious to other adjoining properties. The N/S segment of Eight Mile Creek Road is functionally classified as a Major Collector roadway with a current ADT of 2113 and currently serves as the only access for ranches and other property in the Lower Woodchuck corridor. The current average Pavement Condition Index for this segment of Eight Mile Creek Road is six (on a ten scale). The current "design" and condition of the roadway are not sufficient for the current level of traffic. If the traffic levels were (more than doubled) as a result of this project, without improvements to the roadway, current users as well as new residents may be subject to compromised safety. Also, the current design of the intersection of Eight Mile Creek Road and Lower Woodchuck Road would not safely accommodate the significantly increased traffic volumes arising from this project."
5. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

Granting the variance will have adverse impacts on the public health and safety and adjoining property owners.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. The application states that the proposal is unique because it is a master planned community and it is not economically feasible or fair to place the burden of improving Eight Mile Creek Road on this developer.
2. No conditions unique to the property were identified as the basis of the variance request.
3. The County Road Supervisor noted that the conditions upon which the variance was granted are not unique to the property.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The application states there are no physical conditions that prevent the applicant from meeting the strict letter of the regulations. It argues that paying the equivalent of the pro rated share of the cost of improving Eight Mile Creek Road with the filing of each phase, based on the figures estimated at preliminary plat review, is more logical.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.
3. The County Road Supervisor stated the physical conditions do not prevent the applicant from meeting the strict letter of the regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations.

**D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not zoned.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

   **Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.
   **Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.
   **Countywide Policy 4.2:** Consider cumulative impacts of development.
   **Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

   - This section of the Ravalli County Subdivision Regulations was adopted by the Board of County Commissioners in August of 2005, after the Growth Policy was adopted.
   - The proposed mitigation could be argued to meet Policy 4.5; however, without full payment of the pro rata equivalent it will be difficult to ensure the actual improvements are made to Eight Mile Creek Road, in part due to the fact that the phasing variance means the County cannot wait until the full contribution is made because it will not be made within the 7 year time frame. Furthermore, the proposal is to base the pro rata equivalent on the current cost of improvements and traffic loads; however, the true proportionality test would require that the cost estimates and traffic counts be completed with each phase.

Conclusion of Law:

Zoning does not apply and the Growth Policy provisions both support and reject granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. The application states the variance will not result in increases to public costs.
2. The County Road Supervisor stated, "**The variance will cause a substantial increase in public costs.** The roadway will need to be improved in order to support the additional demand placed upon it by the proposed subdivision. Absent the project owner making those improvements, upon the arrival of subdivision residents, and given that the roadway is a county-operated facility, the public would be faced with the potential of increasing the level of service on the roadway to satisfy that added demand."

Conclusion of Law:

Granting the variance will increase public costs.