COMMISSIONERS APPROVAL

CHILCOTT GC

LUND BL

THOMPSON AT

TAYLOR (Clerk & Recorder)

Date.....December 20, 2005

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino and Glenda Wiles

The Board met for a Request for Commission Action on Hamilton Heights Block 3, Lot 7B AP, Grenell Minor Subdivision with one variance. Present at this meeting was Planner Kelli Zittergruen, Developers Mike and Theresa Grenell and Leonard Shepherd, the developer's agent.

Commissioner Lund read the following statement:

Today's agenda includes one or more land use issues. Because of my years of service as Ravalli County Clerk & Recorder and now as Commissioner and because members of my family are involved in the real estate profession, I am providing this statement in the interest of full and open disclosure. My husband, son and brother-in-law are realtors who conduct business in this county. I do not participate in their real estate business or related matters except as the passive title owner of the building rented by their real estate business. Although connections with my family or their business and the land use issues facing us today are possible, I am not aware of any direct connections and thus do not believe I have any conflicts of interest arising out of my participation in today's meeting.

Kelli presented a power point presentation and entered the report into the record as follows:

Ravalli County
MONTANA

REQUEST FOR COMMISSION ACTION

OG-05-12-1243

Site Visit:	December 15, 2005 at 3:30 p.m.
Meeting:	December 20, 2005 at 9:00 a.m.
Request:	To act on the Hamilton Heights Block 3, Lot 7B AP (Grenell) Minor Subdivision and Variance Request

I. ACTION REQUESTED

This is a request from Mike & Theresa Grenell, represented by Leonard Shepherd, to approve the **Hamilton Heights Block 3, Lot 7B AP (Grenell) Minor Subdivision and Variance Request.**

II. BACKGROUND

This proposed two-lot minor subdivision of a 13.87-acre parcel with an existing residence is located within a primarily rural residential area approximately two miles northeast of Hamilton off Wagon Wheel Way. The property is located within the Corvallis Rural Fire District and the Corvallis School District. The lots are proposed to be 7.43 and 6.44 acres in size. The existing residence is located on proposed Lot 7B2.

The property is relatively flat and the majority of it is currently pasture or vegetated with native grasses and noxious weeds. The property has water rights through the Daly Ditches Irrigation District and these rights are proposed to be divided between the two lots. There are existing covenants on the property, which are included in the application. The proposal appears to comply with the covenants.

The subject property is accessed from Hamilton by heading north on Eastside Highway and turning east on Hamilton Heights Road. Follow Hamilton Heights Road for approximately one mile, and then turn south on Wagon Wheel Way. The property is located on the east side of Wagon Wheel Way.

The applicants are requesting a variance from the road standards for Wagon Wheel Way, an existing privately-maintained road that leads to the subdivision. They are not proposing any improvements to the road.

Staff recommended conditional approval of the subdivision and denial of the variance request.

III. PLANNING BOARD RECOMMENDATIONS

The Ravalli County Planning Board conducted a public hearing on this proposal on November 16, 2005 and took the actions outlined below.

VARIANCE (from the requirement that Wagon Wheel Way meet minor local road standards)
The Board chose not to review the five criteria individually. The Board made a motion to recommend **approval** of the variance request, based on the findings that this subdivision is for relatively large lot sizes and there are neighbors who intend on paving Wagon Wheel Way in the near future, and subject to the conditions that the road remain in its current condition with the addition of dust abatement from the intersection of Wagon Wheel Way with Hamilton Heights Road to the southernmost subdivision access, once prior to final plat approval and once after, and that the existing road certification for Wagon Wheel Way be located and filed with the final plat. **The Board voted 5-1, with 1 abstention, to approve the motion.**

SUBDIVISION PROPOSAL
The Board chose not to review the six criteria individually. The Board made a motion to recommend **approval** of the subdivision proposal, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, with Condition #4 amended to require that a $250 contribution for the newly created lot be made to the Corvallis School District prior to final plat approval. **The Board voted 5-0, with 2 abstentions, to approve the motion.**

Comments from the meeting are contained in the record.

IV. PLANNING BOARD'S RECOMMENDED MOTIONS

(Note: Changes to staff's recommended motions are in underline/~~strike-out~~)

1. That the variance request from Section 5-4-5 (e) of the Ravalli County Subdivision Regulations, which requires Wagon Wheel Way, an existing substandard private road, to be improved to meet county road standards, ***be*** ~~***denied***~~ ***approved***, ~~based on the findings of fact and conclusions of law in the staff report~~, based on the findings that this subdivision is for relatively large lot sizes and there are neighbors who intend on paving Wagon Wheel Way in the near future, and subject to the conditions that the road remain in its current condition with the addition of dust abatement from the intersection of Wagon Wheel Way with Hamilton Heights Road to the southernmost subdivision access, once prior to final plat approval and once after, and that the existing road certification for Wagon Wheel Way be located and filed with the final plat.

2. That the Hamilton Heights Block 3, Lot 7B AP (Grenell) Minor Subdivision ***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, with Condition #4 amended to require that a $250 contribution for the newly created lot be made to the Corvallis School District prior to final plat approval.

V. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Note: Changes to staff's recommended conditions are in underline/~~strike-out~~)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

   Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

   Notification of Irrigation Easements. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities/diversion structures whenever necessary to keep them in good condition. The Daly Ditches Irrigation District must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Daly Ditches Irrigation District have the right to use the easements to maintain the ditches. Please contact the Daly Ditches Irrigation District, 566 Tammany Lane, Hamilton, Montana, 59840, 363-1130 for more information. *(Effects on Agricultural Water User Facilities)*

   Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain Wagon Wheel Way, the private road providing access to this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement was filed with this subdivision and outlines what parties are responsible for road maintenance and under what conditions. *(Effects on Local Services and Effects on Public Health & Safety)*

2. Protective covenants to be filed with the final plat shall include the following provisions:

   Living with Wildlife. (See Exhibit A-1 for required provisions.) *(Effects on Agriculture, Effects on Wildlife and Wildlife Habitat)*

   Waiver of Protest to Creation of RSID/SID. Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to creating and/or improving a community water or wastewater treatment system and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

   Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150′ in length, must have a minimum unobstructed travel surface width of 20′, a vertical clearance of 13′6″, maximum grade of 6%, and an all weather surface that can accommodate the weight of a fire truck to meet requirements of the Uniform Fire Code. Please contact the Corvallis Rural Fire District at PO Box 13, Corvallis, MT, for further information on the requirements of the Corvallis Rural Fire District and/or the Uniform Fire Code. *(Effects on Local Services & Effects on Public Health and Safety)*

   Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires the lot owners to post the County-issued addresses at the intersection of the driveways leading to both of the residences and Wagon Wheel Way as soon as construction on the residences begins. *(Effects on Local Services & Effects on Public Health and Safety)*

   Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. *(Effects on Natural Environment)*

   Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s). *(Effects on Natural Environment)*

   Lighting for New Construction. Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing

light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. *(Effects on Public Health & Safety)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. *(Effects on Public Health and Safety)*

Governing Body Approval. 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.

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*

4. The applicants shall provide evidence that a <u>$250 contribution for the newly created lot</u> ~~financial contribution (to be decided by the Planning Board)~~ has been contributed to the Corvallis School District prior to final plat approval. *(Effects on Local Services)*

5. The applicants shall provide a letter from the Corvallis Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per minute water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence of a $500 contribution made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services - Fire Protection & Effects on Public Health and Safety)*

6. The applicants shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision, in accordance with E-911 addressing policy. *(Effects on Local Services & Effects on Public Health and Safety)*

7. <u>Dust abatement shall be applied to Wagon Wheel Way, from its intersection with Hamilton Heights Road to the southernmost access to this subdivision, once prior to final plat approval and once after. *(Variance)*</u>

8. <u>The original Road Certification for Wagon Wheel Way shall be located and a copy of it shall be filed with the final plat for this subdivision. *(Variance)*</u>

REMAINING ISSUES:	None known.
FISCAL IMPACT:	No extraordinary fiscal impacts noted.
ATTACHMENTS:	Application package and additional application materials Staff Report Planning Board meeting minutes (with relevant attachments)
STAFF:	Kelli Zittergruen
DATE:	December 14, 2005

Commissioner Chilcott called for public comment.

Leonard said the staff report was straightforward and he is in concurrence with the report. Leonard felt the dust abatement should be sufficient to handle any problems.

There was no other public comment, for or against the proposed subdivision before the Commissioners.

Commissioner Lund asked if the engineer, Howard Anderson, had certified the road in regard to this subdivision. Leonard said the plat could not be filed without certification. Commissioner Lund referred to page 6 of the staff report, and asked for removal of Exhibit A-4. It is shown in the Memorandum.

Commissioner Chilcott asked if current ASHTO standards apply to this road. Commissioner Thompson said the road is in good shape, receiving regular maintenance from the property owners. The issue is that one lot is being created, and Commissioner Thompson asked if paving should be required for the entrance to the subdivision.

Commissioner Lund said Road Supervisor David Ohnstad recommends that the road be brought to current design standards.

Commissioner Chilcott said the subdivision was reviewed under the old standards. It is a 2-unit subdivision and the road only serves two units. He stated he did not see the need to ask for a variance request.

Commissioner Lund said the new standards and requirements are different from those in place at the time this subdivision started the process.

Leonard said the road is fairly well maintained with gravel. Once paved, costs are considerable to keep paving in good shape. There is a strong, non-formal road maintenance group presently in place.

Planner Rene Van Hoven came in to clarify the question of variance necessity. She said it must be classified according to the total number of lots on the road. An internal subdivision road would only serve two lots, and would not require paving.

Commissioner Thompson said the existing road receives good maintenance. He then made a motion to approve the variance request from Section 5-4-5 (e) of the Ravalli County Subdivision Regulations, which requires Wagon Wheel Way, an existing substandard private road, to be improved to meet County road standards, based on the findings of fact and conclusions of law that verbal testimony indicated it had a wide enough travel road surface width to accommodate emergency services, the subdivision is for relatively large lot sizes, the road is currently in good condition, and there are an active group of neighbors who intend on paving Wagon Wheel Way in the near future and subject to the conditions that dust abatement be applied to Wagon Wheel Way, from its intersection with Hamilton Heights Road to the southernmost access to this subdivision, once prior to final plat approval and once after and that the original the Road Certification for Wagon Wheel Way be located and a copy of it shall be filed with the final plat for this subdivision and further, that the Hamilton Heights Block 3, Lot 7B, Amended Plat Minor Subdivision be approved based on the amended findings of fact and conclusions of law in the staff report and subject to the amended conditions in the staff report.

Commissioner Lund seconded the motion.

Commissioner Chilcott called for discussion, and suggested that the Commissioners consider all criteria within the variance request.

Criteria #1: The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Leonard stated he has verified the site distance. The site distance was sufficient when the speed limit was 60 mph, and now the speed limit has been dropped to 45 mph.

Commissioner Chilcott said that findings were based on evidence, and the dust concern was mitigated with dust abatement applications.

Commissioner Thompson agreed. Commissioner Lund asked if the letter from the Road Department had to be maintained as a matter of record. Kelli said no findings that are contrary to the finding should be left in the final report. However, she will speak with legal counsel in that regard.

Commissioner Chilcott asked about the present width of the road. Leonard said there was snow on the road when he measured it. However, from tire track to tire track; the road measured 18 feet wide. Mr. Grenell said the road measured 22-24 feet wide. Commissioner Chilcott said the testimony here today indicates that the road is 20+ feet wide along that section.

Commissioner Lund commented the Road Department feels the variance should not be granted. Commissioner Chilcott stated he is not comfortable removing their comments from the record. Commissioner Thompson felt the Board's disagreement with the Road Department does not negate their variance approval.

Commissioner Chilcott said application of dust abatement would nullify detrimental effects of the substandard road, and would be an improvement over current conditions. He added he does not believe it will limit access for emergency vehicles, nor decrease public safety access. The Commissioners agreed granting the variance would not adversely affect the public health and safety.

Criteria #2: 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. The Commissioners were in concurrence, stating they disagreed that the condition for variance is unique to the property.

Criteria #3: 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 owners.

The Commissioners were in concurrence, stating they disagreed that the physical conditions such as topography or parcel shape prevents the applicant from meeting the strict letter of the regulations.

Criteria #4: The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

The Commissioners were in concurrence that the variance would not in any manner vary the provision of the zoning regulations or the Growth Policy.

Criteria #5: The variance will not cause a substantial increase in public costs.

The Commissioners were in concurrence that the variance will not cause a substantial increase in public costs.

Commissioner Chilcott stated the overall findings are based on competent input from the staff report. All voted "aye" on the granting of the variance and approval of the subdivision.

In other business the Commissioners met with Skip Rosenthal for administrative matters as follows:

Skip presented Employee Action forms for the Commissioners' signatures.

Skip presented a letter from Bitterroot Water Forum, stating they are applying for a $38,000 public health and environmental protection grant. In doing so, they are in need of a letter of support from the Commissioners. Commissioner Thompson made a motion to approve of a letter of support. Commissioner Lund seconded the motion. All voted "aye".

Skip presented a change order request from Landworks Consulting on the Victor CTEP project. The change order is a result of increased architectural services, additional work because of weather delays, and additional meetings with the parties involved. Skip recommenced approval of the change order request. Commissioner Lund made a motion to approve of this change order request. Commissioner Thompson seconded the motion. All voted "aye".

Skip presented a proposal for renewal of insurance with the Montana Joint Powers Trust. Commissioner Lund made a motion to renew the MJPT insurance for Ravalli County. Commissioner Thompson seconded the motion. All voted 'aye'.

Skip presented a one-year bargaining agreement for dispatchers, retroactive to July 1st. He stated there are still some questions regarding management language. The dispatchers will be receiving a $1.00 per hour raise. Skip recommended approval of this bargaining agreement. Commissioner Lund made a motion to approve and execute the agreement, with a term ending July 1, 2006. Commissioner Thompson seconded the motion. All voted 'aye'.

In other business the Board met for a variance request for Hamilton Heights Block 12, Lot 19A, by Lynn Nielsen. Present at this meeting was Planner Renee Van Hoven, Civil Counsel James McCubbin, Developer Mr. and Mrs. Lynn Nielsen, and the Attorney for Mr. and Mrs. Nielsen, Phil O'Connell.

Commissioner Lund read the following statement:
Today's agenda includes one or more land use issues. Because of my years of service as Ravalli County Clerk & Recorder and now as Commissioner and because members of my family are involved in the real estate profession, I am providing this statement in the interest of full and open disclosure. My husband, son and brother-in-law are realtors who conduct business in this county. I do not participate in their real estate business or related matters except as the passive title owner of the building rented by their real estate business. Although connections with my family or their business and the land use issues facing us today are possible, I am not aware of any direct connections and thus do not believe I have any conflicts of interest arising out of my participation in today's meeting.

Renee presented a power point presentation including the history of the Nielsen Subdivision. The Request for Commission Action was entered into the record as follows:

Ravalli County
MONTANA

REQUEST FOR COMMISSION ACTION

Site Visit:	A site visit was not scheduled. The Board of County Commissioners (BCC) previously conducted a site visit for the Hamilton Heights, Block 12, Lot 19A, AP Minor Subdivision.
Meeting:	December 20, 2005 at 2:00 p.m.
Request:	To act on the Hamilton Heights, Block 12, Lot 19A, AP Variance Request.

VI. ACTION REQUESTED

This is a request from Lyn and Janet Nielsen to approve the **Hamilton Heights, Block 12, Lot 19A, AP Variance Request**.

VII. BACKGROUND

The Hamilton Heights, Block 12, Lot 19A, AP minor subdivision is located northeast of Hamilton off Wilcox Lane. This subdivision cannot receive final approval until the pro rata is paid on Wilcox Lane or a variance from this requirement is granted. The following history of this subdivision proposal describes the motions the Planning Board and BCC made that have relevance to the variance request from paying the pro rata share of the cost to improve Wilcox Lane.

- **Public Hearing #1 – February 4, 2004**
  The Planning Board originally considered this proposal at a public hearing on February 4, 2004. The Board reviewed the subdivision against the review criteria and then approved a motion to recommend denial of the subdivision based on the findings of fact that there is a major safety issue regarding the access of the property and that the Board had found the impacts of the subdivision on five of the six criteria (1-4 and 6) to be significant. The Board approved the motion to recommend denial with a vote of 8-1.

- **Public Hearing #2 – March 17, 2004**
  The Planning Board held a second public hearing on the proposed subdivision on March 17, 2004. The Board approved a motion with a vote of 5-1 that the Nielson Subdivision as presented, including the staff recommendation for mitigations, be denied on the basis that there is substantial interference with the irrigation wastewater drainage rights of surrounding farmers and there is a safety issue with the access on Wilcox Lane and the use of Wilcox Lane.

- **Public Hearing #3 – June 16, 2004**
  At the June 16, 2004 public hearing, the Planning Board made a motion to approve the Hamilton Heights, Block 12, Lot 19A, AP subdivision proposal,

based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report with the following additional condition: "The applicant shall pay $26,000 for road improvements or the pro rata share, whichever is greater, for improvements to Wilcox Lane from its intersection with Hamilton Heights Road to the access road for the subdivision." The Board voted 6-4 to approve this motion.

- **Board of County Commmissioner Meeting #1 – July 22, 2004**
  A motion was made by Commissioner Chilcott and seconded by Commissioner Lund to approve the Hamilton Heights, Block 12, Lot 19A, AP Minor Subdivision, based on the findings of fact and conclusions of law in the staff report, including all amendments and subsequent memos and attachments, and with the recommended conditions of approval as amended by the Planning Board and as further amended by the Board of County Commissioners. The Commissioners voted unanimously (2-0), with Commissioner Thompson absent, to approve this motion.

With the final plat submittal, the applicant submitted $26,000 for the pro rata payment on Wilcox Lane. The BCC signed the final plat and was sued because a condition of final approval was that either $26,000 be paid or the pro rata share, whichever was greater. The final plat approval was rescinded because the pro rata share would be more than $26,000. The developer is now requesting a variance from paying the pro rata share on the portion of Wilcox Lane that leads to the Hamilton Heights, Block 12, Lot 19A, AP Minor Subdivision.

Staff is recommended denial of the variance request, based on the findings of fact and conclusions of law in the staff report.

VIII. PLANNING BOARD RECOMMENDATION

The Ravalli County Planning Board held a public hearing on November 16, 2005 and took the following action:

The Board did not review the Five Variance Criteria beyond their discussion. The Board made a motion to recommend **denial** of the Variance Request, based on the findings of fact and conclusions of law in the Staff Report with the request that the pro rata be used to improve Wilcox Lane. **The Board voted 4-2, with one abstention, to approve this motion.**

Comments from the meeting are contained in the record.

IV. INFORMATION RECEIVED SUBSEQUENT TO PLANNING BOARD

Staff received an email from David Ohnstad on November 4, 2005 stating that the Road and Bridge Department does not support the approval of this variance request because there is "no reasonable justification to exempt this project from the pro-rata assessment process." Planning Staff failed to forward this email to

the Planning Board before the November 16, 2005 Planning Board Hearing. Finding of Fact #5 on Page 4 of the Staff Report states that the Road and Bridge Department had verbally stated to Staff that they did not support this variance. Staff has determined this email does not constitute new information.

V. PLANNING BOARD'S RECOMMENDED MOTION
(Note: Changes to staff's recommended motions are in underline/~~strikeout~~.)

That the variance request from Section 5-4-5(d) of the Ravalli County Subdivision Regulations, for relief from paying the pro rata share for the portion of Wilcox Lane leading to the property, be ***denied***, based on the findings of fact and conclusions of law in the staff report, with the request that the pro rata payment be used on Wilcox Lane.

REMAINING ISSUES:	None known.
FISCAL IMPACT:	No extraordinary fiscal impacts noted.
ATTACHMENTS:	Variance application package Planning Board meeting minutes for the November 16, 2005 public hearing Additional comment email from David Ohnstad (not considered new information) Additional public comments handed out at the public hearing (Gervais and Grenfell)
STAFF:	Renee Van Hoven
DATE:	December 14, 2005

Public Comment was then called for. Commissioner Chilcott advised the audience they were present at this meeting to discuss a specific variance request.

Phil O'Connell, Attorney for Lynn and Janet Nielsen spoke in favor of this subdivision. Phil relayed the following information. The variance application as required by the Subdivision Regulations was filed in April 2005. Wilcox Lane is not a part of the subdivision and this is an old road created within the Hamilton Heights Subdivision. There are varying widths of the road, and at the Nielsen Subdivision entrance, the road is 40' wide. Some of the road is chip-sealed and from Nielsen's Subdivision, the road descends south into varying grades. Two tenths of a mile south of the subdivision, the grade is between 12-14%. The actual subdivision request was filed in August of 2003. The Planning Board voted to approve this based on Mr. Nielsen giving a pro rata share or $26,000.00; whichever was greater. $26,000.00 was picked because it was double from what the previous Road Supervisor Reid Willey listed as the amount needed to bring the road up to standard. (It was noted Reid Willey presented a written statement on January 4, 2004, following the procedures for the pro rata amount of $13,500, for 3/10th of a mile of the road in order to bring it up to county standards). Two months after the Board of County Commissioners gave approval to the pro rata share amount at $26,000,

(September 2004), the new Road Supervisor, David Ohnstad, stated resurfacing costs to the road would be $117,000.00. This amount was only for resurfacing and not to bring the road up to county standards. When Mr. Nielson received this information, he visited with David and was advised that the costs to bring the road up to standard would be three fourths of a million to 1 million dollars for 3/10th of a mile.

Phil also noted when the traffic study was completed the pro rata share was calculated at 21%. On December 28th, the Board of County Commissioners gave final approval to this subdivision. All conditions were met and the check for $26,000.00 was given to the county. Prior to that date, Deputy County Attorney James McCubbin wrote a memo saying the pro rata share calculations should be done. Phil noted this was two months after final approval. Phil also noted that James verbally laid out a 'game plan' in front of a citizen audience on how the Board of County Commissioners could be sued. The Nielsens did not want to litigate this matter, but chose to allow the litigation to proceed and apply for a variance. Phil noted that as of today, no one knows when or how much David will calculate the pro rata share to be. David has indicated three fourth's of a million dollars does nothing in regard to the grade and width of the road. Phil stated if the Nielsens were required to pay 21% of that amount, nothing would happen to Wilcox Lane, because the actual cost is vastly more than what the Nielsen's are being asked to pay. Instead, the money will go to the grader district. Phil stated the Board of County Commissioners should consider that fact in their findings.

Phil then addressed the review criteria (see attached four pages), entitled Compliance with Variance Review Criteria. Phil stated the Board of County Commissioners should not establish a precedent to say an existing county road is unsafe. There is no history of accidents nor any site distance problems, etc. on this road. He stated there is no dollar amount the county would be able to come up with that will ever allow this road to be brought up to county standards. Furthermore, the road supervisor has never given Mr. or Mrs. Nielsen a total amount required, nor has he ever 'stuck with a number'.

Phil suggested when the neighbors say 'how horrible the road is'; ask them if they are willing to pay the additional 79% of the pro rata share for the reconstruction of the 3/10 mile of road. He asked if there is a hidden agenda. He felt Wilcox Lane is perfectly safe for the purposes of adding another residential subdivision. Phil stated the County's civil engineer (Ron Umera) stated Wilcox Lane meets the safety standards and site distances, and the Nielsen's subdivision does not warrant any significant change.

Phil noted when the Commissioners gave the conditional approval to this subdivision in July of 2004, and the final approval in December, they did not say the County would be harmed or injured in any way. He further stated this issue is about money and the money will not go into this particular road. He felt both Road Supervisors (the previous Road Supervisor Reid Willey and the current Road Supervisor David Ohnstad) would say that Wilcox Lane is low on their priority list for reconstruction or repair. Phil stated granting of this variance will not be a substantial detriment to the public health, safety or general welfare, or injurious to other adjoining properties.

Phil also addressed the uniqueness of the property. He stated all of the conditions are unique to Wilcox Lane. Without those conditions there would be no need for pro rata. The physical conditions, such as topography, are also important to the subdivision. There are steep hills existing on a north/south access. Those conditions prompt the request for a variance. Furthermore, nothing the Nielsen's did was instrumental in creating these conditions. Phil felt these findings prevent the Nielsen's ability to meet the strict letter of the conditional approval. Phil stated the County would not re-build Wilcox Lane with the money given to them from the Developer.

Phil stated there are no zoning issues and no one is seeking a variance from the Growth Policy. Therefore there are no impacts from this subdivision to the Growth Policy. If the Nielsens put $200,000.00 into the Grader District, the County will not even put that money into the actual road. Phil stated this subdivision has no impact on public costs.

He stated the Nielsen's have not pursued litigation; they have followed the regulations, and expect the regulations to be applied fairly and in an even-handed manner. In the past 1½ years, the issues that have arisen have not complied with the law. For example, in September 2004, after the conditional approval, the Planning Department and David Ohnstad developed a new estimate of costs. In regard to the Brandborg decision, this Board of County Commissioners does not get to consider facts that were not before the Planning Board, yet the Board of County Commissioners was considering David Ohnstad's figures. However, the only paperwork present to consider was Reid Willey's estimates.

Phil continued by saying State law allows counties to put regulations in effect, but those regulations must be reasonably intended to mitigate the impacts. He noted that the 3/10th of a mile has increased from $13,500 to a one million dollar project after approval by the Planning Board and the Board of County Commissioners. Phil feels there are some interesting issues the court needs to review under the 'reasonableness of this issue'. He stated it is not reasonable, nor is it mitigation to the subdivision. He stated Mr. and Mrs. Nielsen would like the Board of County Commissioners to approve the variance. Phil also noted to a supposed 'secret memo' that had been presented several months after the approval, addressing the new regulations and new costs. He stated none of what has occurred has been at the hand of Mr. and Mrs. Nielsen. He reiterated that this situation is not fair or equitable to the Nielsens.

Persons opposed to the subdivision then spoke.

Kay Gervais stated she lives on Wilcox Lane. She asked why Phil was referring to Reid Willey because Reid did not even have a measuring devise when he looked at the road. $13,500.00 is a ridiculous figure and she does not remember the 3/4 million dollar figure from David. The Planning Board and staff recommended denial of this variance and the Board of County Commissioners should take that into consideration. The Commissioners based the approval of the subdivision on a lie told by Terry Nelson during the public meeting. She relayed the Corvallis School Superintendent never advised anyone that the bus would come there. She felt Mr. Nielsen should have to pay the amount shown in

David's figures. She also relayed the heavy equipment from the subdivision work has deteriorated the road and several more new homes will continue to deteriorate the road. She stated the neighbors like the road the way it is now, but these changes mean Mr. Nielsen should pay his share.

John Sneiberger, of 121 Deerhaven Lane (not near Wilcox Lane), spoke as a taxpayer. He stated he did not like that Mr. O'Connor has said that every parcel is available to be subdivided and the taxpayers should subsidize the subdivision. He stated Mr. Nielsen wants to develop a subdivision to be paid for by the taxpayers, in an inappropriate location.

Kathleen Driscoll does not live in the area but is a taxpayer. She relayed that yesterday the lawyer and David said the bike path at Daly Lane does not address safety. When a child is hit, she would like to be in that court hearing because the County is aware of the lack of safety. She stated she wants to be a witness in that litigation.

Alan Maki stated he is a rancher in the vicinity of Wilcox Lane. Wilcox is a dangerous road and there are plenty of cars that cannot make the stop at Hamilton and Wilcox. He felt the real issue is about growth and fixing the road, but apparently this whole issue is about saving Mr. Nielsen some money. He stated the $13,500.00 figure would not bring a road like Wilcox up to standards. Granting a variance will not improve the road. Therefore, he questions why Mr. Nielsen does not want to pay the money. He feels it is because Mr. Nielsen wants the taxpayers to subsidize him, and financial hardship is not one of the reasons to grant a variance. He stated the real losers are the people who travel on Wilcox Lane and the taxpayers who pay for these subdivisions.

Nancy Gresham lives south of this subdivision. She stated the Board of County Commissioners should explain to the residents in the area how they are addressing the public safety through the issues of Wilcox Lane, and they should also address the wildlife issue as it relates to the wetlands violation that is occurring on this parcel.

Neil Maki stated Wilcox is a bad road. One time the bus actually had to travel the road backward. He felt there is no way to make this road safe. He has lived there all his life and the road is extremely dangerous. More houses will make it more dangerous. He stated the County does not have enough money to bring the road up to standards. The Board of County Commissioners should consider the taxpayers pocketbooks, as we are a poor County.

Madonna Tilton (Sister Raphael) stated this is an argument of what might or might not happen, and people can't use the argument that it won't happen.

Mark Vadheim does not live in that area, but it is his impression that developers buy property on speculation and there is no automatic right to subdivision. He did not feel the developer could claim hardship. Rather, the Developer made a bad financial decision. He should have researched if this subdivision would 'fit' prior to spending the money on

the property with the expectation that he could do a subdivision there. Mark felt the taxpayers should not subsidize Mr. Nielsen's subdivision.

Pam Merwin of Hamilton stated that Mr. Nielsen knew what the topography of this parcel was like when he purchased the property. More houses, more children, more traffic exacerbates the problems. The people who live there know how to deal with the problems; new people will not. She stated the citizens should not subsidize this development. The first estimate made (by Reid Willey) was just an estimate. She advised the Board to deny the variance, as it does not make any sense.

Steve Wilson lives on Meridian Road. He relayed in another road issue, Reid Willey did some measurements and work, doing a 'fine job'. The developer went to Reid Willey in good faith, got an estimate twice; and the number was accepted. To say that Reid did not know what he was doing is a stretch and unfair to him since he was not here to talk about it.

Attorney Phil O'Connor gave a rebuttal. He stated buses coming to the subdivision travel south to Wilcox from Bass Lane, so there are no grades to contend with. Schools are obligated to provide transportation and two school bus turnarounds have been built. He stated the developer is not asking for the taxpayers to subsidize his project. The County's grader district will take the money and not even use it on Wilcox Lane.

Public Comment was closed. Board deliberation then took place.

Commissioner Lund stated the Commissioners prioritize what roads will receive maintenance. There are over 600 miles of road and Wilcox will be near the bottom of that stack. Therefore, the public should not say the taxpayers would pay for this. In regard to the procedures that the County has in place, it is probably fair to say that if Mr. Nielsen knew what he knows today, he probably would not attempt to do this subdivision. She felt Mr. Nielsen has been caught between two different sets of road supervisors, regulations and interpretations. She also noted that the Fire Department would travel Bass Lane during any emergency. She stated if they were to make a decision today on improving Wilcox Lane, they would not do any improvements because there are other roads that need improvement. The Commissioners asked residents if they would do an RSID and they declined to help, even with the Nielsen's contribution of $26,000.00.

The Board then made review of five variance criteria.

1) *The granting of the variance will not be substantially detrimental to the public health, safety or general welfare of injurious to other adjoining properties.* Commissioner Thompson disagreed, saying it has already been noted the money should not be used for Wilcox Lane. Rather, the decision was to utilize the monies within a grader district, which allows everyone to see the benefit. Those benefits include snow plowing, the filling of potholes, brush cutting, stop sign replacement, etc., on Wilcox Lane. Commissioner Chilcott and Commissioner Lund concurred with Commissioner Thompson.

2) *The conditions on which the request for a variance is based are unique to the property on which the variance is south and are not applicable generally to other property.* Commissioner Thompson disagreed stating there are a multitude of roads in the county that have steep grades. His residence is located off of a 12.2% grade. Commissioner Chilcott and Commissioner Lund concurred with Commissioner Thompson.
3) *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).* Commissioners Chilcott, Commissioner Thompson disagreed. Commissioner Lund agreed with the criteria adding that the road was created as part of the section line, and topography does prevent the applicant from following the strict letter of the regulations.
4) *The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.* Commissioner Thompson stated the Growth Policy speaks to this and they are simply asking for pro rata share, and this includes the above maintenance, so he disagrees. Commissioner Lund felt this does not vary the provisions of the Growth Policy so she agrees with criteria #4. Commissioner Chilcott stated this is an appropriate site and cumulative impact is a consideration, and to continue to improve the existing infrastructure is on point so he disagrees.
5) *The variance will not cause substantial increase in public costs.* Commissioner Lund did not think it would, because the County will not do anything on Wilcox Rand. She stated this road receives plowing and other maintenance, so she does not see an increase in public costs. Commissioner Thompson agrees that the road will not be rebuilt, and there was never an intention for that to happen. This money will be for maintenance and any needed work in the grader district. He stated they are asking for a proportionate share to access the subdivision and from that standpoint, he does not see any substantial impact to the public. He felt the variance will not cause a substantial increase. Commissioner Chilcott agreed with Commissioner Lund, stating this would not be an increase in public costs. Commissioner Chilcott said no one knows how much it will cost to bring Wilcox up to standards and the Supreme Court case speaks specifically to that.

James stated the financial terms is not in the variance criteria. The Supreme Court case in 1980 is an EPA case and money is not a reason for granting a variance. He stated this case is not on point, but certainly relevant to the issue at hand.

Commissioner Thompson discussed the amount of money for pro rata. He stated they have been consistent in requesting the pro rata at the time of final plat. He stated he knows nothing about secret memos. Rather the Commissioners work in the public eye holding meetings in front of the public. He stated they recognize the substandard road, and the pro rata is appropriate. He indicated the Commissioners do not have crystal balls in order to look into the future. While they have received numerous letters in regard to this variance request, such as citizens stating the grades are too steep; the Fire Department did not say they would not respond. He stated the people should stick to the facts and 'not go into tangents'. Commissioner Thompson also relayed he did not read

that the school would not send a school bus. Lastly, the Planning Board recommended that the request be denied, and wanted the pro rata. He felt utilizing all of the money just on this specific road would be a bookkeeping nightmare for the Road Department. Therefore, it is important to utilize the money within the grader district.

Commissioner Lund agreed stating the money should be put into the grader district.

James noted all three of the Commissioners agreed with the 5th Criteria, which is different from the staff. In that regard, the staff report defined substantial in the finding of fact. While Commissioners Thompson, Chilcott and Lund did not feel it would be substantial. James stated anytime traffic volume is increased, there will be some costs. But since the Board of County Commissioners does not plan any major reconstruction, there are no substantial costs. Commissioner Chilcott stated the Board of County Commissioners could adopt portions of Phil's memo; thus the variance will not cause a substantial increase in public costs. Commissioners Thompson, Chilcott and Lund concurred. Commissioner Lund said the staff's findings are somewhat harsh and she concurs with Phil's memo.

Commissioner Thompson said variances are usually not granted for pro rata. He suggested the Board of County Commissioners utilize criteria "E" in Phil's memo. In that regard, Commissioner Thompson made a motion to deny the variance based on criteria A – D of the staff report and criteria E of the memo submitted by Attorney Phil O'Connor. Commissioner Lund seconded the motion for purposes of discussion. Commissioner Lund asked if (d) applies to this variance. James said the variance was submitted under those regulations. Commissioner Lund commented that those were in place at the time of the pro rata. James stated they do not apply for THE request today; as the variance she is referring to was 'brought before the subdivision'. He stated pro rata is a continuing requirement.

Commissioner Thompson and Commissioner Chilcott voted 'aye'. Commissioner Lund voted 'nay'.

The variance was denied.

The public meeting was adjourned.

handed out
@ BCC Hrg.

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) Wilcox Lane is an old Ravalli County road which does not satisfy current county road standards. Adjacent to the Nielsens' subdivision, Wilcox Lane has a forty foot wide right-of-way with approximately twenty feet of chip-sealed surface. The speed limit is thirty-five miles per hour.

2) Two-tenths of a mile south of the Nielsen subdivision, Wilcox Lane descends steeply, at a grade between twelve and fourteen percent for approximately one hundred feet before intersecting the Hamilton Heights Road. The Ravalli County Road Department Supervisor recommended that the developer install a warning sign regarding the steep grade near the crest of the steep hill on Wilcox Lane before it descends to Hamilton Heights Road in order to mitigate potential impacts of the subdivision on the road system and public health and safety. This recommendation was adopted by the Board of County Commissioners as a condition of subdivision approval. Applicant does not seek a variance from this condition.

3) The Ravalli County Road Supervisor stated in a February 24, 2004 letter that the Road Department cannot make the judgment that Wilcox Lane north of its intersection with Hamilton Heights Road is hazardous or that the intersection with Hamilton Heights Road is a bad intersection.

4) The new intersection between Wilcox Lane and the eight hundred foot long cul-de-sac within the Nielsen subdivision satisfies all Ravalli County regulations.

5) There is no record of an existing safety problem on Wilcox Lane.

6) In its July 22, 2004 preliminary plat approval for the Nielsen subdivision, the Board of County Commissioners found nothing indicating that Wilcox Lane in its present condition is "substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties."

7) Ravalli County has no intention or plan at the present time to make any improvement or modification to Wilcox Lane.

8) If the applicants were to be required to pay any sum of money pursuant to §5-4-5(d) of the Ravalli County Subdivision Regulations, the funds would not be spent to improve or modify Wilcox Lane, but rather, would be spent by the County Road Department to improve other roads within the same grader district.

9) By granting a variance to waive the requirement for the applicants to pay a pro-rated share of the cost to improve the portion of Wilcox Lane leading to the proposed subdivision to County standards, there will not be a substantially detrimental effect on the public health, safety or general welfare or injurious to other adjoining properties.

Conclusions of Law:

The granting if the requested variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other 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.

Findings of Fact:

1) Wilcox Lane is an old Ravalli County Road which does not satisfy current County Road standards.

2) Wilcox Lane is laid out on a north south axis and follows that axis without cuts or fills or variation in direction. Wilcox Lane does not have the sixty feet of width currently required by County Road standards. As currently constructed, Wilcox Lane does not satisfy the pavement requirements of the current County Road standards.

3) Approximately two/tenths miles south of the Nielsen subdivision Wilcox Lane descends to the Hamilton Heights Road at grades between twelve and fourteen percent.

4) All of the above-described conditions are unique to Wilcox Lane in the vicinity of the Nielsen subdivision.

Conclusions of Law:

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.

//

//

//

//

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 owners(s).

Findings of Fact:

1) The topography of the land over which Wilcox Lane runs and the shape of the parcel on which Wilcox Lane is laid out cause Wilcox Lane to be a substandard county road.

2) Because Wilcox Lane is a substandard county road, §5-4-5(d) of the Ravalli County Subdivision Regulations would require the applicants to pay a pro-rated share of the cost to improve County standards to the portion of Wilcox Lane leading to the proposed subdivision.

3) The physical conditions underlying Wilcox Lane, including topography and the parcel shape of Wilcox Lane, are the cause of the requirement that applicants pay a pro-rated share of the cost to improve to County standards the portion of Wilcox Lane leading to the proposed subdivision. These physical conditions are not a result of past actions by the applicant or previous owners of the applicants' land.

4) The physical conditions, including topography and the parcel shape of Wilcox Lane, are not located on land owned by the applicants.

5) It is not within the applicants' ability to improve Wilcox Lane to current County standards.

6) The County has no plan to improve Wilcox Lane to County standards.

7) Any funds paid by applicants pursuant to §5-4-5(d) of the Ravalli County Subdivision Regulations will not be used to improve Wilcox Lane to County standards.

Conclusion of Law:

Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of the subdivision regulations. These physical conditions do not result from the past actions of the applicants or previous owners of the applicants' property.

//

//

//

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

Findings of Fact:

1) The Nielsen subdivision and the property adjoining the relevant section of Wilcox Lane are not zoned.

2) No provision of the Ravalli County Grown Provision will be varied or otherwise affected by the grant of the requested variance.

Conclusions of Law:

The requested variance will not in any manner vary the provision of the zoning regulations or the Ravalli County Grown Policy.

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

Findings of Fact:

1) Ravalli County has no present plan to improve or modify Wilcox Lane.

2) No substantial increase in public road costs resulting from the Nielsens' subdivision has been identified. The variance will not cause a substantial increase in public costs.

Conclusions of Law:

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