

COMMISSIONERS APPROVAL

CHILCOTT

LUND

THOMPSON

TAYLOR (Clerk & Recorder)

Date.....September 20, 2005

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

Minutes: Glenda Wiles

The Board met for various administrative items, which included the following:

Administrative Director Skip Rosenthal brought forth several Employee Action Forms for signature.

Commissioner Thompson made a motion to approve the August claims in the amount of \$755,718.52 and August payroll in the amount of \$729,310.50. Commissioner Lund seconded the motion and all voted “aye”.

Skip also presented the Safe Kids Safe Communities Grant in the amount of \$25,000.00. This is the fourth year of this grant and the grant and program works very well. Commissioner Lund made a motion to sign this grant request to the State. Commissioner Thompson seconded the motion and all voted “aye”.

Skip also met with Juvenile Detention Supervisor Lori Roderick in order to review salary figures on juvenile detention employees. Salary figures were calculated retroactive to July 1<sup>st</sup>, October 1<sup>st</sup> and November 1<sup>st</sup>. The Commissioners will review these calculations and meet with Lori and Skip in order to make a decision.

Skip also presented copies of the revised engineering agreement for the Victor CTEP. The Commissioners will review the agreement and revisit the issue with Skip.

The Board discussed the Stevensville Gravel Pit Buy/Sell agreement with Civil Counsel James McCubbin. James stated the law requires a certified appraisal and the County could not purchase the gravel pit for more than its appraisal. James stated although it makes perfect sense for the Commissioners to purchase this land for the County, they must follow the law. He stated the appraisal would reflect the agricultural covenant that is currently on the property. James indicated the owner could request the lift of an agricultural covenant, but they should follow their procedure of going through the

subdivision process. When and if the agricultural covenant is lifted, the property would become residential property and would be valued accordingly. James felt the property should be appraised in its current status. Commissioner Thompson stated he felt uncomfortable lifting the agricultural covenant, then having the land appraised, as it would not 'look right' for the County. James stated the property was to close yesterday, so the buy/sell is not open to negotiation. He also indicated the Commissioners need to decide if they want the appraisal to go forward. Commissioner Thompson made a motion to contact the seller to see if they are still interested in selling under the current buy/sell agreement based on the appraisal. If they are not interested, the Commissioners need to cancel the appraisal with Mr. Kosena. Commissioner Lund seconded the motion. All voted "aye".

The Board met on a Request for Commission Action on Sunnyside Orchards #3, Block 9, Lot 24-A AP (McCormick) Minor Subdivision and one variance request. This is a continued meeting from May 24<sup>th</sup>. Present at this meeting was Planner Kelli Zittergruen and Civil Counsel James McCubbin.

Kelli presented an updated staff report and power point presentation. The Request for Commission Action was entered into the record as follows.



## REQUEST FOR COMMISSION

### ACTION

OG-05-09-917

Site Visit: May 19, 2005 at 4:00 p.m.  
Meeting: May 24, 2005 at 10:00 a.m.  
Continued  
Meeting: September 20, 2005 at 9:00 a.m.  
Request: To conditionally approve the Sunnyside Orchards #3, Block 9, Lot 24-A AP (McCormick) Minor Subdivision and One Variance Request

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### I. ACTION REQUESTED

This is a request from Kelley McCormick, represented by Terry Nelson of Applebury Survey, to create the **Sunnyside Orchards #3, Block 9, Lot 24-A AP (McCormick) Minor Subdivision**.

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## II. BACKGROUND

The proposed five-lot minor subdivision is accessed from Stevensville by traveling north on Eastside Highway for approximately 2.5 miles, to Moiese Lane. After turning east on Moiese Lane, continue traveling east for approximately ¼ mile. The property is located between Leonard Lane on the western boundary and the Supply Ditch on the eastern boundary. The property is located approximately three miles north of Stevensville.

The existing residence (located on proposed Lot A5) site on top of a moderately sloping hill. The remaining four lots lie on relatively flat land. The Supply Ditch is located immediately (borders) east of the property and the Lee Metcalf Wildlife Refuge is located approximately ¼ mile to the west. The property is vegetated with native grasses, noxious weeds, and there are scattered trees on Lot A5. The property is 8.78 acres in size and each of the five lots will be approximately 1.75 acres in size.

Single family dwellings with individual wells and wastewater treatment systems are proposed for each of the five lots, with Lot A5's already existing. The property is located within the Three Mile Rural Fire District and Stevensville School District. Overlook Trail is the existing access for the homesite located on proposed Lot A5. It is a 40' private road and utility easement that runs through the property between Lots A4 and A5 and provides access to Lot A5 and southern properties. The applicant is requesting a variance from the requirement that Overlook Trail be improved to meet county standards for a minor local road. The applicants are not proposing any improvements to Overlook Trail. Common accesses off of Moiese Lane are proposed for the other four lots.

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

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## III. PLANNING BOARD RECOMMENDATIONS

The Ravalli County Planning Board conducted a public hearing on this proposal on March 16, 2005 which was continued to April 6, 2005. The Planning Board public hearing for April 6<sup>th</sup> was continued to April 13, 2005. At the April 13<sup>th</sup> public hearing, the Board took the actions outlined below.

### VARIANCE

**Variance (from the requirement that Overlook Trail meet County standards for a minor local road)**

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. *Three Board Members agreed and four disagreed.*
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. *One Board Member agreed and six disagreed.*
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). *All Board Members disagreed.*
4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. *Five Board Members agreed and two disagreed.*
5. The variance will not cause a substantial increase in public costs. *Five Board Members agreed and two disagreed*

The Board made a motion to recommend **denial** of the variance request, based on the findings of fact in the staff report. **The Board voted 4-3 to approve this motion.**

**SUBDIVISION PROPOSAL**

The Board reviewed the subdivision proposal against the six criteria as follows:

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices. *All agreed the effects were non-significant.*
2. Effects on Agricultural water-user facilities. *All agreed the effects were non-significant.*
3. Effects on local services, including public road system, police and fire protection, utilities, and public schools. *All agreed the effects were non-significant.*

4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds. *All agreed the effects were non-significant.*
5. Effects on wildlife and wildlife habitat, including fisheries and mammals. *All agreed the effects were non-significant.*
6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas. *All agreed the effects were non-significant.*

The Board made a motion to recommend **approval** of the subdivision proposal, based on the findings of fact in the staff report and subject to the conditions in the staff report. **The Board voted 7-0 to approve this motion.**

*Comments from the meeting are contained in the record.*

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#### **IV. PLANNING BOARD'S AND STAFF'S RECOMMENDED MOTIONS**

1. That the variance request from Sections 5-4-5 (a) & (b) (2) of the Ravalli County Subdivision Regulations, which requires the portion of Overlook Trail within this subdivision be improved to meet county standards for a minor local road be *denied*, based on the findings of fact in the staff report.
2. That the Sunnyside Orchards #3, Block 9, Lot 24-A, AP (McCormick) minor subdivision be *approved*, based on the findings of fact in the staff report and subject to the conditions in the staff report.

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#### **V. PLANNING BOARD'S AND STAFF'S RECOMMENDED CONDITIONS**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications shall be included with 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 Proximity to Lee Metcalf National Wildlife Refuge/Wildlife and Wildlife Habitat.* This subdivision is located within close proximity to the Lee Metcalf National Wildlife Refuge which creates

a likelihood of human/wildlife interactions. Additionally, the Refuge allows shotgun hunting of waterfowl, from early morning to sunset, with the season possibly extending from September to January. The protective covenants recommended by Montana Fish, Wildlife and Parks are included in the protective covenants for this subdivision, and should be carefully reviewed by potential property owners prior to purchasing a lot within this subdivision.

***Notification of Common Access and Road Maintenance.*** Ravalli County, the State of Montana, or any other governmental entity does not maintain the common approaches and/or the road within 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 - Roads*)

***Limitation of Access Onto County Road.*** Non-ingress/egress zones exist along Moiese Lane, which restrict vehicular access onto this County-maintained road, excepting the approved approaches. All lots within this subdivision must use approved access points. This limitation of access may be lifted or amended with approval of the County. (*Effects on Local Services*)

***Lots A1 - A4 within this subdivision do not currently have the right to take irrigation water out of the irrigation ditches or pipelines within or adjacent to this subdivision. Taking water without a water right for irrigation purposes is illegal.*** (*Effects of Agricultural Water User Facilities*)

2. Additional protective covenants including the following provisions shall be filed with the final plat.

***Living with Wildlife.*** Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bears, mountain lions, coyotes, foxes, skunks and raccoons. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a) Homeowners must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b) **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8' or taller. Netting over gardens can help deter birds from eating berries.
- c) **Garbage** must be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. Do not set garbage cans out until the morning of garbage pickup.
- d) **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must/should be aware that deer might occasionally attract mountain lions to the area.
- e) **Bird feeders** attract bears. Consider not using them in this area between the months of April through October. If used, bird feeders must: 1) be suspended a minimum of 20' above ground level, 2) be at least 4' from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f) **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- g) **Pet food and livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears,

mountain lions, skunks, raccoons, etc. **When feeding pets or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

- h) **Barbecue grills** must be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- i) Consider **boundary fencing** that is no higher than 3-1/2' (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- j) **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k) **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.) (*Effects on Wildlife and Wildlife Habitat*)

**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*)

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

**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*)

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

***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 is emitted. The source of the 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 flagpoles shall be permitted. *(Effects on Public Health and Safety)*

***Required Posting of County-Issued Addresses for Lots within this Subdivision.*** The Three Mile Rural Fire District has adopted the Uniform Fire Code 901.4.4 which requires the lot owners to post County-issued addresses at the intersection of the driveway leading to the primary residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services & Effects on Public Health and Safety)*

***Access Requirements for Lots within this Subdivision.*** The Three Mile 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", and be constructed of an all weather surface able to accommodate the weight of a fire truck, approximately 40,000 lbs. to meet requirements of the Uniform Fire Code. Please contact the Three Mile Rural Fire District, 1155 Park Street, Stevensville, Montana, 59833, for further information on the requirements of the Three Mile Rural Fire District and/or the Uniform Fire Code. *(Effects on Local Services - Fire Protection & Effects on Public Health and Safety)*

***Maintenance of the Fence along the Supply Ditch.*** The fencing of the Supply Ditch along the eastern property boundary shall be maintained in perpetuity by the owner(s) of and their successors in interest of Lot A5 and any subsequent subdivisions thereof. *(Effects on Public Health and Safety)*

3. The applicant shall include an RSID/SID waiver on the final subdivision plat or a separate document that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and their successors 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. Common approaches shall be constructed to the specifications in the driveway approach permit(s) prior to final plat approval, subject to the review and approval of the Ravalli County Planning Department and the Ravalli County Road and Bridge Department. *(Effects on Local Services – Roads)*
5. The applicants shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. It shall also be required that the address for the existing homesite off Overlook Trail be changed to one that uses Overlook Trail, and not Moiese Lane, in accordance with E-911 addressing policy. *(Effects on Local Services – Fire Protection & Effects on Public Health and Safety)*
6. With the final plat application, the applicant shall provide a letter from the Three Mile Fire District stating that the applicant has provided the required 1,000 gallons per minute water supply or 2,500 gallons per minute water storage for fire protection for lots within this subdivision. Alternatively, the applicant shall provide evidence of a \$500 per lot contribution paid to the Three Mile Rural Fire District. *(Effects on Local Services - Fire Protection & Effects on Public Health and Safety)*
7. The final plat shall show non-ingress/egress zones along the Moiese Lane frontage of Lots A1 – A5, excepting the approved access point for the common approaches and the interior subdivision road. *(Effects on Local Services - Roads)*
8. The applicant shall provide a receipt from the Stevensville School District for the \$100 per lot contribution to the School District or show it as an encumbrance on the final plat to be paid upon the first conveyance of each lot. *(Effects on Local Services - Schools)*
9. Prior to final plat approval, any open-ended culverts that convey irrigation water within the subdivision shall have grates installed for safety purposes, but not so as to reduce or obstruct the flow of water, subject to review and approval of the Planning Department in consultation with the Supply Ditch Association. *(Effects on Public Health and Safety)*
10. The final plat shall show an additional 5' of County road and public utility easement width along the Moiese Lane frontage of the subdivision. *(Effects on Local Services)*

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**REMAINING ISSUES:** None known.

**FISCAL IMPACT:** No extraordinary fiscal impacts noted.

**ATTACHMENT:** BCC meeting minutes from 5-24-05 meeting  
Letter from Applicant

**STAFF:** Kelli Zittergruen

**DATE:** September 16, 2005

Public comment was called for. Terry Nelson stated Mr. McCormick would like a decision from the Commissioners on continuing the subdivision or seeking legal counsel on a 'takings' issue. Terry stated Overlook Trail has nothing to do with this, as a 60' easement would allow a large subdivision to the east and would also require him to pave the road. Terry stated that is not right.

Skip Rosenthal stated he lives to the south of this subdivision. His attorney wrote a letter yesterday (this letter was presented to the Commissioners from yesterday's mail), to reiterate their concerns. Skip stated all the neighbors would like to exercise their right to future subdivision. This the second meeting with the Commissioners and every time they get close to 'figuring' this out, Mr. McCormick pulls away. Skip stated they had an agreement with McCormick, and then he changed his mind and wanted another agreement. Skip also stated the road was already built in front of Mr. McCormick's house. Mr. McCormick wanted the road to go to Skips' house, which would have made a relocation of Skip's driveway, including the movement of underground sprinklers. Another agreement was signed; then Mr. McCormick bailed again. The neighbors asked for another meeting with McCormick, and again he refused to meet with them. They have tried to address the neighbors concerns through mediation with Mr. McCormick and he would not discuss it. Skip stated he would honor either of the two previous agreements, but Mr. McCormick has made not effort to reach an agreement.

Skip stated the road is a good road and the current accesses protect his property rights.

Jim Hendrickson stated he owns three lots behind Skip and he agrees with Skip.

Terry stated they would like a decision from the Board.

Commissioner Lund asked James to review a document (within the file book 208 of deeds 500, May 4, 1994 recording access easement). James stated this document grants an 80' wide easement where a previous 60' wide easement was. The new 80' easement is a non-exclusive easement (a public easement), to benefit all the lots under paragraph 1 and it crosses various lots under COS 4629 and AP 539.

Terry stated this was for the purpose of access and ingress and goes across Lot 16-19 of COS 4629 and lots of AP 539. Terry stated based on this, Skip and Jim have access through the southern lots to Eastside Highway. Skip stated there have been subsequent abandonment actions to this road. He stated the road is meant to be a loop road if it were to ever be completed.

James stated Lot 24A is listed as a benefited lot. Lot 23A only works if they can drive through Lot 22A, but Lot 22A does not have that right. James stated he would need to make further review of this. He further stated the easement appears to be on the south lots which are the benefited lots.

The Board then reviewed the amended plat and certificate of survey maps. James stated he could see some ambiguity in the easement as it travels north from Moiese Lane. He also stated under the Subdivision Regulations that issue would not matter. There is a road leading to Lot 23A, even if it is for prescriptive use. It will serve a minimum of three lots, and the Subdivision regulations require a 60' easement. He stated there might be an issue of the paving standard, but after calculations, there are five lots and the paving requirement will be the maximum.

Terry stated they could not require full paving when the access has only been agricultural. James stated a road is being utilized and accesses four lots. Therefore this is at least a five or six-lot road.

Commissioner Chilcott asked James if the signed agreement between Skip and Mr. McCormick was a valid document. James stated the regulations require the document to be reviewed for compliance and it does not address the contract. He stated there might be a breach of contract between Skip and McCormick, but it is not relevant to these proceedings.

Joe Ward owns ten acres west of Mr. McCormick's property. Joe stated Darryl Wilburn abandoned the entire easement to the south in the 1990's. Commissioner Lund stated the easement was recorded in 1994. Joe stated the abandonment was the last thing filed.

James asked if the applicant disputes continued use by Rosenthal or Hendrickson. Terry stated the applicant knows that this is Skip Rosenthal's entrance and Mr. Hendrickson uses it for agriculture. James stated there is reason to show there is a road there. Terry stated the applicant is not disputing that.

Public comment was then closed.

Commissioner Chilcott addressed the five variance criteria as follows:

- 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.* Commissioner Lund stated in May this would have been shown to have an adverse affect. Commissioner Thompson and Commissioner Chilcott agreed.
- 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.* Commissioner Lund stated she agreed with the findings in May, commenting that the 'lay of the land is okay'. Commissioner Chilcott disagreed and felt it was not unique. Commissioner Thompson agreed 'it is not that unique'. Commissioner Lund agreed 'it is not as unique as it was in May, and concurred with Commissioner Chilcott and 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).* Commissioner Lund stated in May there was nothing there to prevent the easement. Commissioner Thompson and Commissioner Chilcott concurred.

- 4) *The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.* Commissioner Lund did not feel the variance violates the growth policy. Commissioner Chilcott felt that dust palliative needed to be applied to be consistent with growth policy. Commissioner Thompson stated documentation from Planning addresses dust, and the growth policy addresses undue impacts. Therefore the people, who live south, may be landlocked if the road is not brought to County standards, and at some point someone would have to bring the road to standard, so it seems to vary from the growth policy. There was some discussion of the air quality, dust pollution and if paving is a specific paving policy. Commissioner Thompson felt it would vary those provisions as stated in the variance criteria and violate the growth policy. Commissioner Chilcott concurs after looking at the County goal # 4 under the growth policy. Commissioner Lund stated her initial reaction is that it did not violate the growth policy because they had the dust palliative, but now that she has read this particular goal, she agrees it violates the growth policy. All concurred.
- 5) *The variance will not cause a substantial increase in public costs.* Commissioner Lund did not feel it would impact public costs because it is a private road. Commissioner Thompson asked James if public cost is a cost to government or to the general public for other citizens. James stated public denotes public as a whole, as represented by government. James also stated that one thing the Commissioners should consider is the potential for takings action. Mr. McCormick is threatening a lawsuit, but he is not concerned with that because that is a condition of the subdivision. If this variance was to be granted, and one of the property owners to the south tried to subdivide and a variance was denied, then there could be a takings issue. James stated that is a public cost they need to consider in the variance procedure. General health effects in the County are also to be considered. Terry stated they spoke of dust abatement in the last meeting. Commissioner Chilcott stated he was confused in the number of lots, thinking it was 2 lots, when it is 5-6 lots. This is a significant change in the number of current lots. Terry asked if they are looking at the variance for paving 20' wide all the way to the back. He stated the applicant doesn't want to do anything, including dust abatement. Commissioner Lund stated she understands what James is saying, but this is a private road, and she has a hard time considering any future litigation. She stated while litigation might occur, it is not part of the variance. James stated if the impact was just on private individuals, he would agree, but this is based upon future subdivision and a request for a variance. Commissioner Thompson stated the variance does not cause a substantial cost for the public, even considering what James has stated. Commissioner Thompson stated he sees potential to James argument, but he is not sure about the public costs for potential litigation. James stated it has potential, and to answer what the percentage is; he is not sure. The Commissioners need to decide if that is substantial or not. Commissioner Chilcott stated he sees a potential for taking away the property rights of the neighbors. Commissioner Lund stated she would stick to what she said in the May meeting, (it does not have that much of an impact). Commissioner Thompson and Commissioner Lund concurred it is not an issue, but Commissioner Chilcott stated it was an issue to him.

In regard to the overall findings based on substantial evidence, it is noted that the Commissioners all agreed on numbers one through four. They did not all concur on number five.

Commissioner Thompson stated that based on discussion and rationale under the five points of the variance, he will make a motion that the variance request from Section 5-4-4(a) & (b) (2) of the Ravalli County Subdivision Regulations, which requires the portion of Overlook Trail within this subdivision be improved to meet County standards for a minor local road be denied, based on the findings of fact in the staff report. Commissioner Lund seconded the motion and all voted "aye".

James stated he would recommend that a condition (#11) be added that the plat reflect that Overlook Trail be a 60' easement and be a public easement with utility easement.

Terry asked if the court were to find this is not a road and the other lots do not have access, would the conditions still apply. James stated they would, because they are conditions of the subdivision.

Commissioner Thompson made a motion that the Sunnyside Orchards #3, Block 9, Lot 24-A, AP (McCormick) minor subdivision be approved, based on the findings of fact in the staff report and subject to the conditions in the staff report with the addition of condition #11, as stated by legal counsel. Commissioner Lund seconded the motion with discussion. She asked if they could require dust abatement or does it have to be paved. James stated the applicant could come in after preliminary plat and request a variance request on the paving portion. Commissioner Lund asked about condition #6 being \$500.00 per lot (for fire contribution) when the house already existed. Commissioner Chilcott stated the applicant has only given \$100.00 for the school contribution and since this is a newer house this fire contribution will help with the impact. All voted "aye".

Commissioner Lund attended a JSEC meeting during the noon hours.

The Commissioners made an on site visit to Sunnyside Orchards 3, Block 9, Lots 25-27 AP during the afternoon hours.