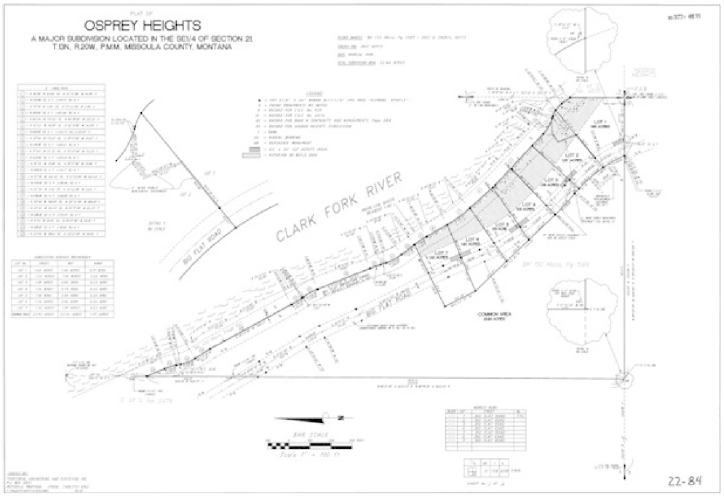
202415660 B: 1107 P: 729 Pages: 7 Fees: $0.00
12/16/2024 10:39:36 AM Resolution
Tyler R. Gernant, Missoula County Clerk & Recorder
eRecording

RESOLUTION NUMBER 2024-111



A RESOLUTION TO rezone property located in the SE4 Section 21, Township 13 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana, also known as the *Osprey Heights Subdivision,* situated on the east side of Big Flat Road, adjacent to the Clark Fork River, and north of the Hidden Heights Subdivision. This resolution rezones these properties totaling 32.46 acres from C-A3 (Residential) to the *Osprey Heights Planned Unit Development*, subject to conditions. (Tax ID #s *3530502, 3530406, 3530300, 3530204, 3530108, 3530002, 3529909, and 417907)*

WHEREAS, §76-2-201 M.C.A. authorizes the Board of County Commissioners to adopt zoning regulations; and,

WHEREAS, the Board of County Commissioners did adopt zoning regulations for Missoula County through the passage of County Resolution #2022-063, as amended; and,

WHEREAS, §76-2-202 M.C.A. provides for the establishment and revision of zoning districts; and,

WHEREAS, the subdivision application for a 7-lot residential subdivision and PUD rezoning was submitted by Eric and Cheryl Hefty on May 16, 1995; and,

WHEREAS, a notice of public hearing was advertised in the Missoulian on May 21 and 28, 1995, more than 2 weeks prior to the public hearings; and,

WHEREAS, adjacent property owners within 300 feet of the parcel were notified by certified mail on May 19, 1995, at least 15 days prior to the hearing; and,

WHEREAS, notice of the proposed rezoning request was posted in three locations near or adjacent to the property on May 22, 1995, in advance of the public hearings; and,

WHEREAS, the Missoula Consolidated Planning Board conducted a public hearing on June 6, 1995, as required by §76-2-204 M.C.A., and recommended unanimous approval of the rezoning from C-A3 (Residential) to the *Osprey Heights Planned Unit Development*; and,

WHEREAS, the Missoula Board of County Commissioners opened the public hearing as advertised on June 28, 1995, to give the public the opportunity to be heard regarding the proposed rezoning as required by §76-2-205 M.C.A.; and,

WHEREAS, the Missoula Board of County Commissioners conducted a second public hearing on the proposed rezoning on July 19, 1995, and approved the subdivision and PUD rezoning for four lots, subject to the following conditions of approval, as noted in their approval letter BCC-95-396 on July 27, 1995:

1. The *Osprey Heights PUD* is subject to the development standards and conditions of approval of the Preliminary Plat for the *Osprey Heights Subdivision*.
2. The PUD incorporates the text and drawings presented in this proposal as design and management standards to be approved by the governing body at the time of final plat approval; and,

WHEREAS, the Missoula Board of County Commissioners adopted Resolution #95-067 stating its intention to zone the subject property to the *Osprey Heights Planned Unit Development* in accordance with the aforementioned conditions of approval and published the resolution of intention in the Missoulian on July 23 and 30, 1995, to allow a 30-day protest and comment period; and,

WHEREAS, after publication of a new public hearing legal notice in the Missoulian on August 6, 1995, the Missoula Board of County Commissioners conducted a public hearing on August 10, 1995, to reconsider the prior approval on July 19, 1995; and,

WHEREAS, on August 10, 1995, the Missoula Board of County Commissioners approved the *Osprey Heights Subdivision and Planned Unit Development* Zoning for seven lots, subject to ten conditions of plat approval and with the same conditions of PUD zoning approval in the previous resolution (#95-067, listed above); and,

WHEREAS, the Missoula Board of County Commissioners adopted Resolution #95-078 on August 10, 1995, stating its intention to zone the subject property as revised at the August 10, 1995, hearing for seven lots; and,

WHEREAS, a protest period was held for thirty (30) days after the first publication of Resolution #95-078 on September 3, 1995, and again on September 10, 1995; and,

WHEREAS, no protest petitions were filed by persons owning real property within the C-A3 (Residential) zoning district; and,

WHEREAS, on January 25, 1999, the Missoula Board of County Commissioners approved an amendment to the conditions of plat approval as reflected in their approval letter BCC-99-043 on January 26, 1999. The list includes a total of seven conditions applicable to the *Osprey Heights Subdivision*. The conditions of PUD zoning approval did not change at this time; and,

WHEREAS, the final plat of the *Osprey Heights Subdivision* was filed at the Missoula County Clerk and Recorder's Office on March 26, 1999; and,

WHEREAS, Lot 1 is the site of an existing home which was constructed in 1980, and no new homes have been constructed on the property since it received final plat approval in 1999; and,

WHEREAS, the landowner has inquired about constructing homes on Lots 2 – 7, and it became evident that the final zoning resolution for the *Osprey Heights Planned Unit Development* was never adopted.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners that a hearing will be held on a final resolution to adopt the *Osprey Heights PUD* zoning in accordance with Resolution of Intention #95-078, and after taking testimony, the Board of County Commissioners do hereby adopt the final zoning resolution, subject to the conditions and the standards shown in Exhibit "A."

PASSED AND ADOPTED THIS 12TH DAY OF DECEMBER 2024

ATTEST:

F941C347206B66B1FE14B1915AFB4B77

Tyler Gernant, Clerk and Recorder

APPROVED AS TO FORM:

6ABD131CAC64960B7B58E293CF03466F

John Hart, Deputy County Attorney

BOARD OF COUNTY COMMISSIONERS
MISSOULA COUNTY

A6ACE081F2505A3A08967F7EBBB8C312

David Strohmaier, Chair

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Juanita Vero, Commissioner

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Josh Slotnick, Commissioner

Osprey Heights
Planned Unit Development Zoning District Regulations

OSPREY HEIGHTS PUD CONDITIONS OF APPROVAL

In addition to the zoning regulations listed herein, the *Osprey Heights PUD* was approved by the Missoula Board of County Commissioners subject to the following conditions on August 10, 1995:

1. The *Osprey Heights PUD* is subject to the development standards and conditions of approval of the Preliminary Plat for the *Osprey Subdivision.*
2. The *Osprey Heights PUD* incorporates the text and drawings presented in this [May 16, 1995, application for subdivision and rezoning] proposal as design and management standards, to be approved by the Governing Body at the time of final plat.

[Note: The PUD standards below reflect the 1995 text and drawings depicting the requirements of this zoning district; therefore, no additional zoning standards apply other than those listed below.]

OSPREY HEIGHTS PUD ZONING REGULATIONS

I. Applicability: *Osprey Heights Subdivision*, SE4 S21 T13N, R20W, P.M.M.

II. Space and Bulk Requirements

a. Maximum building height – 18’ above Big Flat Road elevation adjacent to the lot.
b. Setbacks:
   Front – 20’
   Side – 25’
   Rear – all structures shall be placed outside of the Riparian No-Build Zone shown on the plat.
c. Maximum residential density – one dwelling per five acres
d. Minimum lot width – one-third (1/3) its average depth

III. Permitted Uses

a. One single household dwelling per lot
b. Day care home
c. Agriculture, including any and all structures or buildings needed to pursue such activities
d. Open space land
e. Accessory buildings and uses; however, accessory dwelling units are not permitted

IV. Conditional Uses

a. Home occupation
b. Day care center
c. Community residential facility serving eight (8) or fewer persons

V. Special Exceptions

a. Guest ranch
b. Commercial recreation, amusement, and cultural facility, including golf courses, country clubs, ski areas and riding stables
c. Dog kennels
d. Community residential facility serving 9 or more persons

e. Long-term care facility
f. Public and quasi-public buildings and uses
g. Public utility
h. Temporary uses

VI. General Standards

The Supplementary Regulations in Missoula County Zoning Regulations Chapters 3 & 4 apply, except Sections 3.06.A.8 (Foundation Walls), 3.06.A.9 (Deck Supports), and 3.06.J. (Hillside) (Resolution #76-113, as amended).

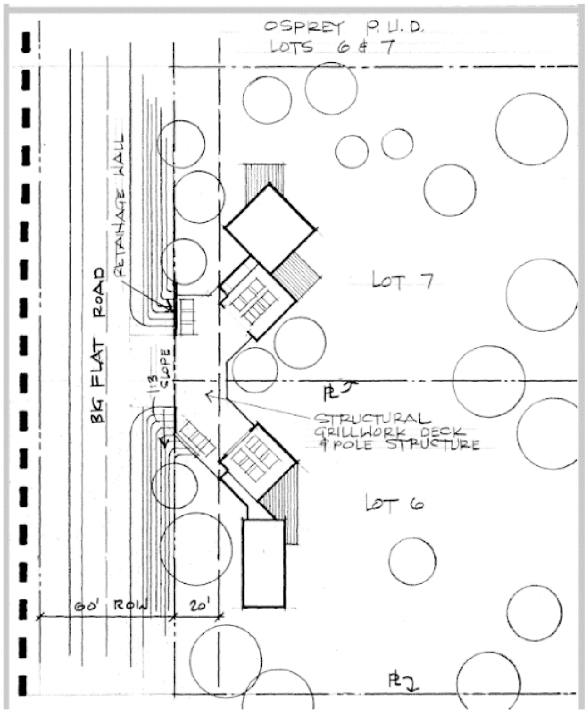
VII. Site Design Standards

a. Riparian Resource Protection

1. A No-Build Zone is shown on the plat along the rear of Lots 1 – 7, adjacent to the irrigation ditch and the Clark Fork River.
2. Except for installation of approved utilities and pedestrian facilities and vegetation management described in the Landscaping Section below (d.), the riparian resource area shall remain undisturbed.

b. Landscaping

1. Lawns and other non-native vegetation are not permitted.
2. Except for gabions, retaining walls may not be constructed within the Big Flat Road right-of-way nor shall any slope within the Big Flat Road right-of-way exceed 3:1.
3. Site disturbance shall be kept to the minimum necessary for construction of a single dwelling and attached garage.
4. No cutting, digging or disturbance of any kind shall occur outside of the buildable zone designated on the plat except for thinning of trees for public safety and wildlife habitat enhancement. Dead old-growth snags shall not be disturbed unless they become a hazard to nearby structures.

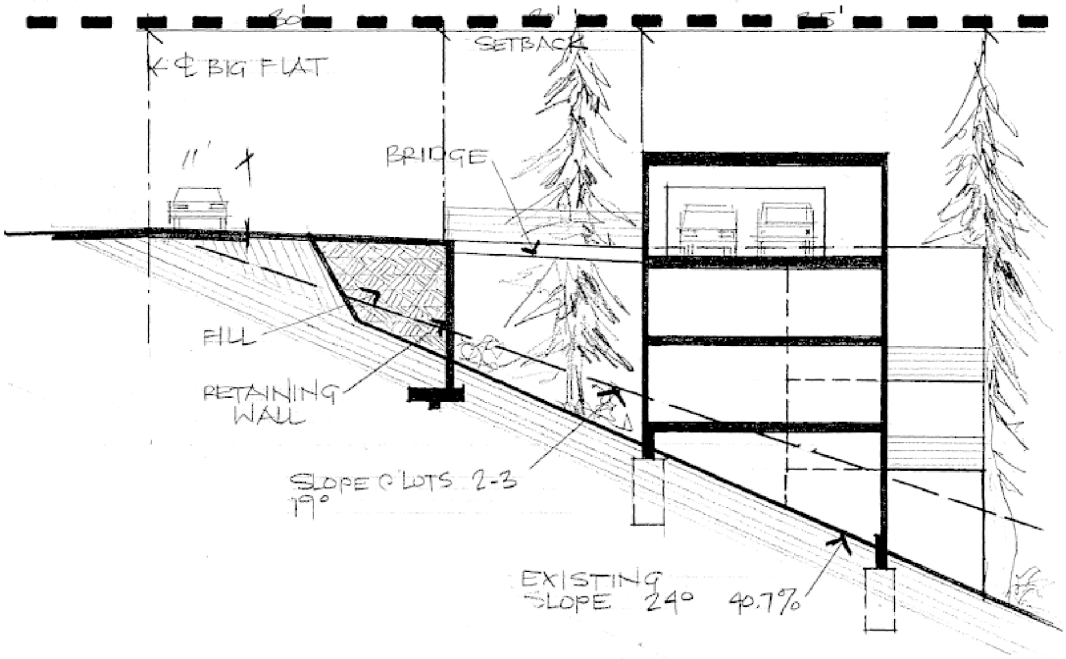


c. Parking

Each home shall provide two (2) off-street parking spaces in addition to a minimum of two (2) garaged spaces. (See exhibit at right.)

d. **Driveways**

1. Driveways require an approach permit and shall meet the requirements of the permit.
2. Driveway approaches shall be located in the Lot Access Areas as shown on the plat. Driveways may be individual or shared between Lots 2 & 3, Lots 4 & 5, and Lots 6 & 7, subject to review and approval by Missoula County Public Works Engineering Division.
3. Driveways shall not exceed 10% grade and shall be constructed to a minimum 16' wide with 20' clearance width, to be approved by MRFD and Missoula County Public Works Engineering Division at time of building construction.
4. Driveway platforms may be constructed within the front setback (as shown in the example schematic section diagram for Lots 6 & 7), provided that utility access is maintained along the full length of the right-of-way and easement.



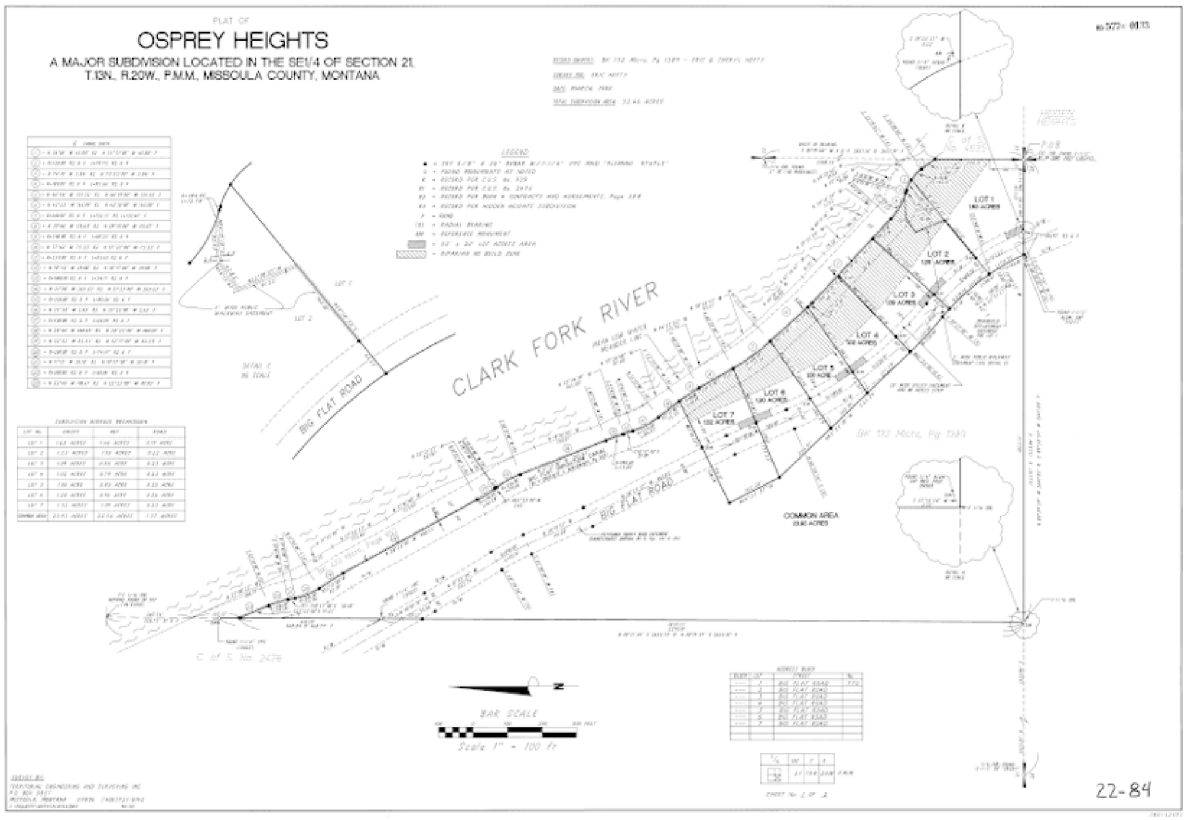
SCHEMATIC SECTION
OSPREY P.U.D.
LOTS 6 & 7
ERIC HEFTY & ASSOCIATES - ARCHITECTS

e. Building Construction

1. Fire resistant materials are required for the roof and building exterior; all roofing shall be constructed of Class A or Class B materials as approved by the fire agency with jurisdiction over the area.

VIII. Osprey Heights Subdivision

The *Osprey Heights Subdivision* final plat was filed on March 26, 1999, as a 7-lot subdivision with a 23.93-acre Common Area. The plat is recorded at Book 22, Page 84. This met the final plat filing deadline of March 31, 1999. Amendments to the original *Osprey Heights Subdivision* conditions of approval were approved in 1999 with the final list of subdivision conditions shown on the following page.



CONDITIONS OF SUBDIVISION APPROVAL (1999): *Osprey Heights*

1. Plans for roadway and right-of-way improvements, paving, grading and drainage shall be approved by the County Surveyor.
2. A property owners' association will be formed to administer the common sewer system. The covenants and restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana and the covenants that contain applicable provisions required by the Missoula County Subdivision Regulations and any provision upon which approval was based or conditioned; and that these provisions do not conflict.
3. All easements shall be shown on the face of the plat. Utility easement widths shall be 20 feet unless a narrower width is approved by the appropriate utilities and/or governing body. In addition to showing the location of easements, the following statement shall appear on the face of the final plat:

   "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines in, over, under and across each area designated on this plat as "Utility Easement," to have and to hold forever."
4. Fire hydrant locations, water supply pressure and turnarounds shall be approved by the Rural Fire Marshall. Fire resistant materials shall be for the roof and exterior of the buildings and this requirement shall be a part of the covenants.
5. A 60-foot right-of-way shall be granted to Missoula County. {Except for gabions, 2024] No retaining walls shall be constructed in the right-of-way, and no slopes in the right-of-way shall exceed 3:1 for the purpose of retaining or supporting driveway approaches in the right-of-way. The individual homeowners shall be responsible for maintenance of the retaining walls, adjacent fill and fill between the roadway and the retaining wall. This requirement shall be a part of the covenants. The County Surveyor shall determine whether "no parking" signs on the roadway are required.
6. The Board of County Commissioners shall approve the Declaration of Covenants and the mechanism to manage and preserve the common area, conservation easement and the riverfront ditch walkway as perpetual open space and wildlife habitat. There shall be an easement for pedestrian use granted over the existing path leading from the roadway to the Clark Fork River.
7. The developer shall execute and record a statement that any owner of Lots 2-7, Osprey Heights Subdivision, waives the right to protest creation of an RSID/SID for purposes of acquiring the land between each lot and the Clark Fork River for a riverfront trail. The statement will acknowledge that the waiver of the RSID/SID is not effective until connections are available on either side of the lots for establishment of a comprehensive riverfront trail system.