

**PUBLIC MEETING – June 16, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, County Engineer Joe Jedrykowski and County Public Works Assistant Director Chuck Wright.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$506,921.72. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Asphaltic Plant Mix (Public Works)**

Joe Jedrykowski presented the staff report.

Bids were advertised for Asphaltic Plant Mix with two vendors responding as follows: LS Jensen in the amount of \$334,630 and JTL Group in the amount of \$343,980. It is the recommendation of the Public Works Department to award the bid to LS Jensen in the amount of \$334,630 as the lowest responsible bid.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for Asphaltic Plant Mix to LS Jensen in the amount of \$334,630 as the lowest and most responsible bid. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Ice Rink Renovation Site Work (Fair)**

Scot Meader, Fair Manager, presented the staff report.

Bids were advertised for the Ice Rink Renovation Project Site work with two vendors responding as follows:

Bidder	Base Bid +	Alternate 1 =	Subtotal		+ Alternate 2 (if necessary) =	Total Bid
JTL Group	\$76,161.50	\$13,720.00	\$89,881.50		\$38,220.00	\$128,101.50
Quality Construction	\$72,557.80	\$5,381.00	\$77,938.80		\$41,371.00	\$119,309.80

Quality Construction's bid amount of \$41,371.00 for Alternate 2 will only be necessary if the soil material does not meet the GP soil requirements. About 3.5 feet of soil needs to be removed to get level and have the drainage set. They are not sure about the material under the base of the slab. A soil test will be conducted to know if the alternate will be necessary. If the soil is not compatible, an additional amount will need to be removed.

It is the recommendation of staff to award the bid to Quality Construction in the amount of \$77,938.80 and the additional amount of \$41,371.00 should it be necessary.

Commissioner Curtiss stated that it is not known what is under the existing slab.

Scot Meader stated that was correct. Ice rink insulation is a fairly complicated process. The new ice slab will have a heating element to heat the ground to prevent frost heave. This will eliminate the need to thaw the ice slab every year and extend its lifespan.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for the site work for the Ice Rink renovation project to Quality Construction in the amount of \$77,938.80 as the lowest and most responsible bid, understanding that the additional amount of \$41,371.00 for Alternate 2 will only be necessary if the

soil material does not meet the GP soil requirements. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

**Decision: Petition to Abandon Right-of-Way (No name roads within DNRC property) – North Avenue at Spurgin Road**

This is a request for a petition to abandon road Right-of-Ways of No-Name Roads within DNRC property from North Avenue to Spurgin Road more particularly described as those road right-of-way easements within the lands of the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION situated in Section 30, Township 13 North, Range 19 West, Principal Meridian, County of Missoula, State of Montana, as described in Commissioner's Journal Book P, on page 558, bound by the southerly right-of-way line of Spurgin Road on the north, the northerly right-of-way line of North Avenue to the south, and the easterly line of the NE 1/4 of the SW 1/4 of said Section 30 to the east, and more particularly shown on attached Exhibit A, and described as follows:

The east 60 feet of Government Lot 2 of said Section 30

TOGETHER WITH:

The east 60 feet of Government Lot 3 of said Section 30

TOGETHER WITH:

A 60 foot strip within the NE 1/4 of the SW 1/4 of said Section 30 as described in that certain "Map of Accompany Application for Right-of-Way across Fort Missoula Military Reservation. Application made by Missoula County" dated November 1932 and filed as "File G, Can 5," records of Missoula County Clerk and Recorder's Office and further described as "and a strip of land 60 ft. in width, 30 ft. on each side of the following described centerline run across and through the NE 1/4 SW 1/4 of which the point of beginning is North 667.5 ft. from the (southwest corner of the NW 1/4 SW 1/4) of said Section 30 same Township and Range thence west 1052.0 feet, thence S.63°50'W. a distance of 304.0 feet."

The reasons for the request are as follows:

1. Veterans Cemetery to be established.
2. Further development of nursery for seedling conservation.
3. Efficient utilization of public land.

The following landowners have been notified: MT DNRC Forestry Division and MT Dept. of Military Affairs.

The public hearing on this matter was held Wednesday, June 9, 2004. A site inspection was conducted by Commissioner Jean Curtiss and County Public Works Assistant Director Chuck Wright on Tuesday, June 15, 2004.

Chuck Wright: My name is Chuck Wright and I'm the Assistant Public Works Director/Surveyor. I went out with Commissioner Jean Curtiss to view the abandonments on the DNRC property. We don't want to abandon the roads, what we want to do is alter those roads. The dashed lines are those original lines. We're proposing to alter this north/south road to move over with the prolongation of Hiberta and come down from Spurgin to North Avenue right-of-way and then we want to take this prolongation of Strand and shorten it so it gets in here, so that would be what the configuration would be. If you'll notice on this aerial photography, there is Hiberta and there is already some kind of an existing road from here down to here and then it's not as wide here. So, this would come all the way down to North Avenue and that's what we're proposing, moving this right-of-way in here and there's nothing really there, out in there, it looks like it's trees and something like that going in through there, there's a little road there. But that's what we propose to do. Thank you.

Chairman Evans: Jean, you went out and saw it with them. Would you give us your recommendation.

Commissioner Curtiss: Right. So, also meeting us on the site were Jim Hausauer, who is interested in trails, of course, and Sue Clark from DNRC and Mark Pharis from DNRC met us on-site. So we did walk through the property and of course the goal of this whole proposal is to take the encumbrances off of the property that's being proposed to transfer for the Veterans Cemetery. There's a little unique thing that Charlie can probably explain much better than I, that these roads were actually given to us by the War Department in 1935 and for them to be, they are called ...

Chuck Wright: Revocable permit.

Commissioner Curtiss: Revocable permit, but that has to come from Rumsfeld or President Bush or someone. And the reason that we, as we walked through there, we thought it would be better just to move the right-of-ways over, in other words, alter rather than abandon. I understand that Jean Crow, who is the right-of-way person for DNRC, who wasn't able to meet with us yesterday, has some concerns now, but I'm going to propose what we decided then, then we can allow public comment and we may decide to amend the proposal. So, my motion would be that the Board of County Commissioners alter, not abandon, the location of the 60 foot right-of-way of the No-Name Road that's shown on Exhibit A in our packets. I do have handouts here marking where I'm proposing that they would go. I would propose we change the location of the 60 foot right-of-way to the east, to be east of the eastern boundary of the proposed Veterans Cemetery running north and south from North Avenue to Spurgin Road in line with Hiberta as Chuck just showed us and that we also alter the 60 foot right-of-way of the No-Name Road shown on Exhibit A traversing east and west to be in line with Strand so that it just intersects this new north/south right-of-way but does not continue into the proposed Veterans Cemetery. The results of these alterations would be that the unnamed right-of-ways would not encumber the proposed Veterans Cemetery.

Mike Sehestedt: Jean, could I make one quick comment?

Commissioner Curtiss: Yes.

Mike Sehestedt: We can do this as an alteration only if we have the consent of the property owners that would receive the relocated right-of-way. If we do not have that consent, you have essentially three choices. First is to simply deny the requested vacation in total. The second is to grant the requested vacation in total and the third is to grant the requested vacation in part and leave the remaining unvacated right-of-ways in place.

Commissioner Curtiss: I understand that Mike and I did tell DNRC that I was going to propose this as we discussed yesterday and then we could discuss it.

Mike Sehestedt: I knew you did and I just wanted to get it on the record.

Commissioner Carey: So, I'll second that motion.

Chairman Evans: Certainly like to have all of you who want to say something on this come up and give us your opinion on this. Tell us whether or not it's okay with you if we do as Jean is suggesting.

Charlie Crookshanks: I'm not going to speak to that particular issue, I wanted to just go over some of things I said last week. The Veteran's Administration in Washington, D.C. has given us \$3 million to complete this project. Governor Martz is standing by to sign the Executive Order and today, Joe Foster, who is the Administrator of the Montana Department of Veteran's Affairs, is interviewing design firms to start letting contracts to begin the design work. So, we appreciate your hard work and we hope we can come to some accommodation that meets everybody's needs. But the main thing is we need to move ahead, we trying to get the design man from Washington, D.C. out here in July or August and hopefully we could do this job and have the dedication on Memorial Day next year. So, thank you very much.

Chairman Evans: Thank you Charlie. Anybody else who'd care to speak?

Jim Hausauer: I wanted to bring up the question of North Avenue that was part of the consideration. We haven't said anything about that today. I just wanted to remind you about that and then make myself available if you had any questions.

Commissioner Curtiss: In response to Jim's point, the right-of-ways of North Avenue and Tower Street, they show just kind of right along the edge, of course, of the property. We weren't proposing to abandon, they don't really encumber the property, it's just normal to have right-of-way that actually shows up on somebody's property line, so those are needed for existing roads.

Chairman Evans: Anyone else who'd care to speak?

Sue Clark: For the record, I'm Sue Clark, Bureau Chief for Budget and Facilities Management with DNRC and I did, as Jean spoke of earlier, had the opportunity to view the property once again yesterday and I stand here before you taking position for the Department of Natural Resources that we do abandon in full these right-of-ways that I'm not even 100% are valid at this time. The reason I say that is because when this transfer of ownership was actually conducted, it was never recorded, so I am not confident that this abandonment and these rights-of-ways are still valid, but I would request full abandonment of these right-of-ways anyway, if in fact that does not prove to be

effective today, the Department will go ahead and go forward as planned and work with the Veteran's Committee and transfer this property over to Department of Military Affairs and DNRC will then dig deeper and see what we can come with, with the Federal government to find out what the validity actually is concerning these right-of-ways.

Chairman Evans: Thank you Sue. Michael, would you like to comment on this. It makes the water a little more muddy for me.

Mike Sehestedt: Well, I don't think it necessarily makes it any muddier, I mean, I believe the statement these were not recorded is based on the fact that whoever the State contracted with to do title work didn't find them, because they are indubitably recorded in the property records, micro records of Missoula County and have been since approximately 1935. That said, clearly, Commissioner Curtiss' option is precluded by the comments of DNRC.

Commissioner Curtiss: So, would I be better off to withdraw that motion and make a new one.

Mike Sehestedt: I would suggest a substitute motion addressing one of the other three alternatives, which are deny the vacation in total, grant the vacation in full or vacate that portion of the two unnamed roads lying within the perimeter of the proposed Veterans Cemetery.

Chairman Evans: Thank you Michael. Anybody else care to speak? Please come to the front.

Jean Crow: Jean Crow, Right-of-Way Specialist for DNRC. I'd just like to share with you, in Section 36 in Kalispell, we currently have development going on there. We go ahead and move forward with the transportation development and infrastructure and then as that procedure goes through then we go ahead and grant rights-of-way to the City or County, whichever it would be, in whichever case, and it happens to be the City because we're still in the City limits up there. So I just would like to encourage the Commissioners to realize that we're really looking forward to abandoning what we don't perceive as to be even valid rights-of-way through there right now and in knowing that in the future, and I would say very much in the future, probably none of us will even be alive at that point, that the DNRC facility on Spurgin Road would decide to sell that property for development, there would be no reason why the DNRC would hold any kind of rights or withhold anything from the County at that point to take over and then the DNRC deed rights-of-way at the time that a developer would be involved, the DNRC would be involved, everyone would be involved at the table of determining where exactly you would need rights-of-way through that area, around the cemetery, of course. But at this time, since everything is really clouded, we're not sure, 100% sure, if you really hold a valid right-of-way through there. We're just asking that you release that, extinguish it and then in the future know that the DNRC would be there working with the County for any kind of development purposes, but that is not going to happen, like I said, in our lifetime.

Chairman Evans: So Jean, if we were to abandon, Michael you correct me if I get this wrong, anything that's within the Veterans Cemetery but leave the rest of it alone, would you be satisfied with that.

Jean Crow: Sue, speaking for the Department of Natural Resources, we would like all rights-of-way abandoned. We have no need for them to come through nor do we see any purpose for you, as you stated at the last meeting, you're not in the business of developing roads. Is there any purpose for you to hold those and why couldn't you come later to the table if the DNRC ever were to develop that property and sit down and work out a transportation plan at that point.

Chairman Evans: I personally feel we're kind of caught in a bind here because we don't want to do anything that's going to harm the potential for the Veterans Cemetery. We don't want to do anything that upsets you nor do we want to upset our Public Works Director who sees ahead and knows what roads might be needed in the future. So, I probably will agree to abandon the things that are within the Veterans Cemetery boundaries and that's probably all I'd be willing to do today. I think if you want to come back and convince us to do the rest, working with the Public Works Director, that you might get it done that way.

Jean Crow: Or should, you know, we have some people out in Seattle searching the records right now for, within the Military Department, and then also, legal counsel will be continuing to work on this as to whether or not at the point that the Military Affairs transferred the property to the State, whether, and since it wasn't filed in public records, this document, whether or not that even runs with the property. So there's a chance that you don't even have the rights that you think that you do.

Commissioner Curtiss: They are filed in our public records, right down the hall.

Mike Sehestedt: This is an easy question to answer. You walk down the hall, you go to Book P in microfilm and you go to Page 558 and since 1935, this document has been filed in the public records, but I don't think we need to

resolve this. If DNRC thinks they can successfully challenge it on down the road, they can be my guest, but the suggestion that if we come to the table, they'll play nicey-nicey with us at some point in the future, my reaction, given this conversation, is it would be nice to come to the table with a piece of our own.

Commissioner Curtiss: So, I would substitute, have a substitute motion, that we abandon the two unnamed roads that, in Exhibit A, line up with 31st Avenue and Strand Avenue, but not abandon the small parts of right-of-way that are Tower and North Avenue, we only abandon the pieces within the proposed cemetery, so the exact locations would be determined by the survey that they will be doing to locate those corners.

Chairman Evans: Is there a second?

Commissioner Carey: I'll second the motion, but isn't in question whether or not we have the power to do this.

Mike Sehestedt: I don't think we have any question, I don't think there's any question that you could act to vacate any claimed right-of-way we might have. Your action in doing so can't really be challenged.

Commissioner Curtiss: They want it abandoned.

Mike Sehestedt: They want it, we're just vacating, we're not relocating.

Chairman Evans: Okay, anyone else who'd care to speak? Nick?

Nick Kaufman: For the record, Commissioners, my name is Nick Kaufman. I'm actually here on another item. I'd like to provide some public comment here. As Missoula continues to develop, the one thing that we seem to have the least amount of is contiguous open space. Not far from here, in fact, just off the map, is the Equestrian Park that is owned by Missoula County, which is a significant piece of open space. And if I listen to the discussion about rights-of-way through open space and I think to myself, what we'd be talking about here if there were two existing County right-of-ways which crisscross the Equestrian Park, similar to the existing right-of-ways that crisscross DNRC. We would say that those right-of-ways create a propensity for future development. Because there's right-of-way there, the open space can be bisected. Someone in the community could demand that those right-of-ways be opened and now suddenly what we'd have is public right-of-ways that cross this piece of DNRC, but public open space in two locations, which split it up into four parcels now instead of one single parcel. And so if we were to just think about this piece as being our piece, which is the Equestrian Park, and someone coming forward and saying, hey, wait a second, the lower portion of this we're proposing in open space use, which is a Veterans Cemetery, we don't want those rights-of-way through there, we want the Veterans Cemetery. As a member of this community for the last 30 years, I really want to see the propensity for that open space to stay in one chunk, just like the Equestrian Park to stay in one chunk. And quite honestly, the presence of those right-of-ways is a propensity to break them into pieces or toward future development, and I'd like to see them vacated. Thank you for your consideration.

Mike Sehestedt: If I might respond. Tower Avenue was extended across the County ownership to provide both access to the 160, the Equestrian Park side of it and the ballpark side of it, and to provide an alternative traffic route for Big Sky High. I don't think anyone suggests that that was inappropriate. What will happen in the future in this area is difficult to say. If DNRC comes to us with the proposal that says we vacate, we'll give you the extension of North Avenue and we'll give you right-of-way on 29th Avenue creating some connections, maybe we can talk. There's also discussion about trying to extend pedestrian/bikeways through this area. My preference is that we maintain the pieces we've got so we have something to bring to the table when we talk with DNRC.

Chairman Evans: Anyone else who'd care to speak?

Commissioner Curtiss: Just one more comment. I believe that the reason State law says that a Commissioner and the Surveyor need to visit road sites is to see if there's any need for potential use in the future. I think that it's just incumbent upon us to look at future needs. There are right-of-ways that are across property all over the State that may never be used, but I think that if we gave all of this right-of-way away, we would not be looking toward the future. We definitely want to make sure that the cemetery happens here, we don't want our roads going through it other than the ones that they design for access to the cemetery. Just speaking in favor of my motion.

Chairman Evans: Is there anybody else that would care to speak? Anyone else who'd care to speak? Okay, we'll close this portion of the hearing. We have a motion, we have a second, all those in favor of the motion say Aye.

Commissioner Carey: Aye.

Commissioner Curtiss: Aye.

Chairman Evans: Aye. The motion carries. And certainly, if you folks want to come back and talk to us about doing something like Michael suggests, we'd be more than happy to do that. And we thank you for coming.

Commissioner Curtiss: Thanks for meeting with us yesterday. I thought we had come to more of a consensus.

**Consideration: Shadowridge Addition (3 lots on 5.28 acres) – Northeast of the Wye**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a request from Doug and Andrea Dahlberg, represented by Brenda Rankin of Territorial Engineering and Surveying, Inc., to create the Shadowridge Addition, a 3 lot summary subdivision of a 5.28 acre parcel. Two lots are proposed at 1.5 acres each and the third lot is proposed at 2.28 acres. The property is located north of the Wye and east of Highway 93, off three roads, two public and one a private driveway. The two public roads are Ladyslipper Lane and Tucker Lane and the private driveway involved is Shadowridge Drive.

The property is unzoned and the Wye-O'Keefe Creek Area Plan recommends a density of 1 dwelling unit per 5 acres. The density of this development is approximately 1 dwelling unit per 1.73 acres. While this does not comply with the Wye-O'Keefe Creek Plan density, it does meet some of the plan's development guidelines.

There are two public roads and one private driveway involved with the proposal. Ladyslipper Lane and Tucker Lane are the public roads and Shadowridge Drive is the private driveway. Ladyslipper Lane is a public road within an 80 foot right-of-way directly east of Highway 93, and continues on until Tucker Lane diverges to the east. Ladyslipper Lane continues to the south to the Spring Meadows Subdivision. Tucker Lane is a 15 foot wide gravel, off-site road within a 30 foot public right-of-way. Since it is less than 500 feet from the nearest publicly maintained paved road, the Subdivision Regulations require paving and widening to a 24 foot width. A variance was requested from the developer. Erik Dickson, County Public Works, felt that adding one driveway to Tucker Lane did not warrant the paving and widening of Tucker Lane. Staff recommends approval of the variance request.

There are two new driveways proposed, one comes off Ladyslipper Lane and the other comes off Tucker Lane. These will serve the 1.5 acre lots. They both meet driveway grade standards. Staff is recommended that the covenants include fire safety related provisions for dead end driveways that exceed 150 feet in length.

Shadowridge Drive provides access to the 2.28 acre lot. The driveway begins within a 30 foot private access easement and actually goes outside of the easement into Montana Rail Link right-of-way, then on the northern end of the property comes back within the 30 foot private access easement. Because physical and legal access differ regarding Shadowridge Drive, staff is recommending that the developer provide proof of legal access across Montana Rail Link right-of-way prior to final plat approval. If this cannot be demonstrated, staff is recommending that Shadowridge Drive be moved so it fits within the 30 foot private access easement.

Walkways are not proposed with the subdivision. The plat contains the waiver of the right to protest a future RSID for improvements to both Tucker Lane and Ladyslipper Lane and the language does include improvements for pedestrian walkways which meets Subdivision Regulations.

Frenchtown Rural Fire Station #7 is directly south of the subdivision, within a couple hundred feet. Frenchtown Rural Fire District is recommending either residential sprinklers in the two new homes or that a 350 gallon per minute water supply be provided for fire fighting. The developer will present additional information on water for fire protection.

The property is fairly open with grasses, a few trees and some knapweed. The Health Department recommended that radon safety language be included in the covenants. The Health Department also commented that the aprons of the two new driveways that front Ladyslipper Lane and Tucker Lane, if they fall within the air stagnation, will have to be paved. Staff is not making a recommendation to that comment as it will be reviewed by the Health Department when the developer comes in for septic permit. In conclusion, staff recommends approval of Shadowridge Addition.

Brenda Rankin, Territorial Engineering, developer's representative, stated that there were no issues with the recommended conditions of approval. The covenants are in the process of being updated to reflect the recommended changes, including the driveways, the radon and residential sprinklers. Tim Wolfe has been in contact with Montana Rail Link regarding the alignment of the driveway. Apparently, MRL does not grant easements, but will grant a permit to use their right-of-way. Tim said that MRL is willing to work with the developer, which will allow the driveway to remain in its current location. Ladyslipper Lane and Tucker Lane run parallel out to

Highway 93. Tim Wolfe will contact Public Works to see if that issue can be cleaned up for the future. She thanked Tim Worley for his work on the proposal.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss asked if Public Works was aware the two roads run parallel and if that can be fixed.

Joe Jedrykowski stated this was the first that he was aware of the situation; however, he felt that something could be done to correct the situation.

Commissioner Carey moved that the Board of County Commissioners approve the variance request to Articles 3-2(3)(B) and 3-2(14)(B) of the Missoula County Subdivision Regulations requiring a paved width of 24 feet for Tucker Lane, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Shadowridge Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Shadowridge Addition Summary Subdivision Conditions of Approval:**

1. The development covenant shall be amended to include the following sections:
  - a. Dead-end driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus. A turnaround shall be located within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches shall be provided for any driveway over 150 feet. The opening through a gate should be two feet wider than the road. Final design shall be approved through the Frenchtown Rural Fire District. *Subdivision Regulations Article 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*
  - b. Prior to occupying the residences constructed on Lots 2 and 3 within Shadowridge Addition, the developer or purchasers of lots shall: 1) install NFR 13 standard residential fire sprinkling systems in the residences; or 2) provide a 350 gpm water source for fire protection to be reviewed and approved by the Frenchtown Rural Fire District. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
  - c. The property owners within the Shadowridge Addition Subdivision are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems. *City-County Health Department recommendation.*
2. The developer shall provide proof of legal access for Shadowridge Drive across the Montana Rail Link right-of-way or shall relocate this driveway to the private access easement. *Subdivision Regulations Article 4-1(11)(iv) and County Attorney recommendation.*

**Conditions of Approval: Carlton Heights-Maple Creek Addition #2 (Alternate 3) – Postponed from May 26, 2004**

Monte Sipe, Office of Planning and Grants, presented the staff report.

Bruce and Mary Maclay, represented by Nick Kaufman of WGM Group, are requesting that the Board of County Commissioners approve Alternative #4 of Carlton Heights-Maple Creek Addition No. 2 Subdivision, a modified proposal submitted for review for conformance with Alternative #3.

The Missoula Consolidated Planning Board conducted a public hearing on the original request on Tuesday, February 3, 2004 and voted 4 to 3 to recommend denial of the subdivision. Staff's February 3, 2004 recommendation was that the Carlton Heights-Maple Creek Addition No. 2 Subdivision be denied, based on the findings of fact in the staff report.

The original proposal was scheduled for a public hearing at the February 18, 2004 Commissioners Public Meeting. The developer requested an extension at that hearing, which was granted to March 17, 2004, by a vote of 2-0. The Commissioners heard public testimony on the original proposal at this hearing, then recessed the public hearing until the March 17, 2004 extension date.

Alternative #3 of Carlton Height-Maple Creek Addition No. 2, along with the original proposal and Alternative #2, were presented by the developer's representative at the March 17, 2004 meeting. The Board of County Commissioners reconvened the public hearing, heard testimony and discussed the original proposal and the alternatives presented. At the outcome of the March 17, 2004, public meeting, the Commissioners voted 3-0 to support, in principal, Alternative #3 of the Carlton Heights-Maple Creek Addition No. 2 as presented by the developer's representative.

Since that time, the developer has requested several postponements to scheduled hearings and requested extensions to complete further work on the project. The applicant is now presenting what is being referred to as Alternative #4 to the Board of County Commissioners with new findings.

At the Planning Status meeting on Monday, Jim O'Neal presented some of their design concepts that brought them to Alternative #4 and why they feel it complies with, in principal, Alternative #3 approved by the Commissioners back in March. The Request for Commission Action related to Alternative #4 includes six variances and recommended conditions for the Board's consideration. These address a majority of concerns from OPG and legal staff in regard to the most recent submittal. The variances will need action if the Board chooses to approve the subdivision, as well as adopt findings of fact and conclusions of law. Nick has provided some findings based for Alternative #4 in response to staff's original report from February, 2004. In bold are new findings for Alternative #4 that respond to some of staff's concerns that led to denial of the original request.

Nick Kaufman, WGM Group, Inc., developer's representative, stated there were a few things that need to be discussed. The submittal for Alternative #4 has findings of fact presented with the original concerns of OPG and the way they have been addressed with the redesign. A letter was received from Greg Robertson who has no concerns with the modification of the subdivision. Fish, Wildlife and Parks complimented the developer on the fact that over half of the site is now in common area and the potential disturbance has been reduced by creating building site areas on each lot. FWP still says this is an elk calving area, however, biologist Joe Elliot testified to the contrary at previous public meetings. The developer has done everything they could do to address the concerns raised by FWP and mitigate those. A significant concern of OPG with the original proposal was Sun Valley Road does not meet current public right-of-way standards. A variance for Sun Valley Road was granted with the initial Carlton Height-Maple Creek Addition Subdivision. The same variance is being requested with this subdivision. The approval of the variance with the original subdivision should stand for this project as well. Lamar Trail comes off the King Road/Sun Valley Road intersection and winds up to where Maple Creek Road takes off. The Commissioners granted variances for Lamar Trail with the original subdivision, specifically for road grades, but required the road to be widened to 24 feet. The as-builts for Lamar Trail have been reviewed and approved by Public Works. There were also variances granted to Maple Creek Road to exceed an 8% grade and a roadway width from 24 feet to 20 feet with the original subdivision. The only road variance for Addition No. 2 is to keep the 20 foot road width. There is only one on-site variance. All the rest are off-site variances and were reviewed and approved with the original Carlton Heights-Maple Creek subdivision but need to be reviewed and approved for this project. Maple Creek flows from the west to the east through the property. There is an existing identified riparian area which was part of the original subdivision. This request encompasses only one of the lots created with the original subdivision. The Riparian Management Plan has been recorded with the covenants in the filing of the original subdivision. All of the lotted area has been removed from the south-facing slopes – the most critical wildlife slopes – and from the riparian area. The original proposal had the entire 28.31 acres lotted. Now, of the 28.31 acres, 14.38 acres are in common area/open space. A development agreement is being proposed which limits the land uses in that common area/open space to silvacultural uses to reduce fire fuels, to allow non-motorized trail system, emergency motorized access and access for ranch management. Monte has provided some conditions which further clarify that use. The lots have been made smaller and provided building restriction lines on each lot, the largest about an acre and the smallest about a half-acre. The Development Agreement limits use inside those building restriction areas to homes and driveways and limits use on the lots outside of the building restriction areas to just driveways, drainfields, wells and related service lines. Less than 4 acres of the site will be used for buildings. Working with Jim O'Neal, the building sites will blend in with the vegetation. When Alternate #3 was approved in principal, the visibility of the building sites and the location of the driveways had not been taken into consideration. In re-siting the building sites, using and incorporating existing vegetation to screen them has improved the site plan in terms of value and visibility from the valley below. An initial concern with the subdivision was from the Florence Volunteer Fire Department. A letter was provided at the last public hearing stating the well required had been installed and test-flowed at 360 gpm. The Fire Department responded to a wildland fire in this location recently and the roads served them well. Gordon Geiser of the Florence Fire Department had mentioned he would write a letter to that effect, but has been involved with other matters and the letter has not been received. His comments in a phone conversation were that he had no concerns. In conclusion, FWP has a broader concern regarding the Maclay Ranch as elk habitat. The Public Works Department doesn't have any problems with the modifications. The Florence Rural Fire Department has no concerns. The Development Agreement has been modified; the proposal includes over 50% common area, to

reduce the disturbance area and the building sites; and the road has been moved almost 200 feet back from its previous locations to reduce impacts to the riparian area. The subdivision in its revised state is worthy of approval in conformance with the Growth Policy and the Subdivision Regulations.

Commissioner Carey stated that Nick and his team have done a good job in mitigating the concerns and making it an attractive subdivision. He asked if the developer has a way to influence the kind of house that may be built.

Nick Kaufman stated the existing covenants for this subdivision have architectural review. The developer has the right to review all architectural plans. An outbuilding close to this subdivision, but off-site, was constructed a little differently than was expected. The owner of the property was required to install over \$1,600 worth of evergreen trees to help screen the building.

Commissioner Curtiss asked about the variance for reduced right-of-way width on Sun Valley Road.

Monte Sipe stated that Sun Valley Road is only 30 feet in right-of-way width and the actual surface width varies from 18 feet to 26 feet. There has been difficulty acquiring the additional right-of-way easements from adjoining property owners. This issue is prevalent throughout the Carlton area. The reduced right-of-way width creates difficulties in constructing a road that complies with Subdivision Regulations.

Nick Kaufman stated that to help mitigate that concern, there is another access further south from King Road and Carlton Creek Road. Mr. Maclay has prepared engineering plans that have been reviewed and approved by Public Works that would connect Lamar Trail to McClain Creek Road.

Commissioner Curtiss asked if that was included in the findings of fact.

Colleen Dowdall stated it is included in the revisions that Nick has prepared. When the findings of fact are drafted, that pertinent information will be included.

Commissioner Curtiss asked how the Board should proceed with adoption of findings.

Colleen Dowdall stated that the motion should say that the Board's decision is based upon the findings of fact to be drafted later that reflect the testimony and the information that supports adoption of Alternate #4.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow for a reduced road width from 24 feet to 18-26 feet, a reduced right-of-way width from 60 feet to 30 feet and to exceed the maximum grade of 8 percent for Sun Valley Road, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow a reduced road width from 24 feet to 20 feet for Maple Creek Road, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I)(i) of the Missoula County Subdivision Regulations to allow the Maple Creek Road cul-de-sac to exceed 1,000 feet in length to a length of 4,308 feet, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow for the maximum road grade to exceed 8 percent for the off-site portion of Maple Creek Road, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow for the maximum road grade to exceed 8 percent for Lamar Trail South, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Carlton Heights-Maple Creek Addition No. 2 Subdivision – Alternate #4 – based on the findings of fact which will be substantiated by the staff report, comments from the developer's representative, agency comments and public testimony, subject to the

conditions in the Request for Commission Action from Monte Sipe dated June 16, 2004. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Carlton Heights-Maple Creek Addition No. 2 Subdivision – Alternate #4 – Conditions of Approval:**

1. The revised set of construction plans for the Maple Creek roadway extension shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J) and Public Works recommendation.*
2. The Non-Motorized and Emergency Access Easement (NMEAE) shown on the preliminary plat shall be amended to state “Emergency Access Easement (EAE)” on the final plat, subject to OPG review and approval prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*
3. The Riparian Resource Area shall be delineated on the final plat and labeled “Riparian Resource Area – No Improvement Zone,” subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-13(4)(B) and OPG recommendation.*
4. The approved building restriction lines for each lot shall be clearly defined on-site by staking prior to final plat approval. An exhibit showing a center survey point or other monumentation of each lot building restriction area shall be attached to the covenants and referred to in the section describing the “Building Envelope.” A note shall be placed on the face of the final plat stating, “Building Envelopes have been designated for each lot within this subdivision, no structures are permitted outside of these designated areas, see exhibit in covenants.” The requirements of this condition are subject to OPG review and approval prior to final plat approval. *Subdivision Regulations Article 3-1(2), 3-1(5), 3-1(9) and OPG recommendation.*
5. A turnaround on Maple Creek Road shall be reviewed and approved by the Florence Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(1)(I) and OPG recommendation.*
6. The Florence Rural Fire District shall review and approve the design of driveways in excess of 150 feet in length prior to construction of any residence. This requirement shall be referenced in the covenants, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*
7. Residential sprinkler systems meeting NFPA requirements shall be installed in all homes and for which plans are subject to review and approval by Florence Rural/Missoula Rural Fire District. The requirement for Florence Rural/Missoula Rural Fire District approved residential sprinkler systems in all homes shall be noted on the face of the final plat, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2), 3-7 and OPG recommendation.*
8. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and County Weed Board recommendation.*
9. The Riparian Resource Management Plan attached to the recorded covenants for Carlton Heights-Maple Creek Addition shall be modified as follows and attached to the covenants pertinent to the Carlton Heights-Maple Creek Addition No. 2 approved subdivision:
  - Remove the last sentence of paragraph #1 – “Future road and driveway ... for crossing the riparian area.”
  - Remove the second sentence in paragraph #2 – “No disturbance ... driveway crossings (see road construction guidelines).”
  - Modify paragraph #3 – stating “No livestock is permitted in the designated riparian areas.”
  - Delete paragraph #6 – stating “Existing ranch roads will be limited to ranch vehicles and for ranching purposes only.”
  - Delete paragraph #7 – delete the entire “Road and Driveway Construction Guide” section. *Subdivision Regulations Article 3-14 and OPG recommendation.*
10. The submitted development agreement shall be modified to be consistent with approval of Alternate #4, subject to OPG and County Attorney review and approval, prior to final plat approval, and shall address the following:

- Under B. #2 Riparian Areas. The last sentence shall be modified to state: “No disturbance of riparian area vegetation and the associated stream channel is permitted, except for necessary and required vegetation fuel reduction measures for fire mitigation and trail maintenance.”
- Under B. #3 Wildlife Habitat. A sentence shall be added stating: “No livestock or grazing is permitted in the Common Areas.”
- Under C. ACCESS. The sentence shall be modified to state: “No lot, any portion of a lot, or the designated common areas, shall be used to provide motorized access to any other lot or adjoining lot or parcel of land, except for the approved Maple Creek Road access shown on the final plat for Carlton Heights-Maple Creek Addition No. 2.”
- Under H. WILDLAND/RESIDENTIAL INTERFACE. The title shall be corrected to state “WILDLAND” and a section shall be added to state: “Where Wildland/Residential Interface and Riparian Management sections or standards are in conflict, the Riparian standards shall apply. This provision is specifically directed toward vegetation removal on the downslope side of Lots 2 and 3.” *Subdivision Regulations Article 3-14, 3-8(7), 3-8(8) and OPG recommendation.*

### **Other Business**

Craig Kaprayra, HDR Engineering, stated his firm is doing the construction administration on the Mullan Road Sewer Project. He has change order #7 and pay request #12 that have been signed by Greg Robertson. They also require Commission approval, which he is requesting from the Board.

Chairman Evans stated those types of items are typically included on the Commissioners Administrative Meeting agenda thereby meeting the open meeting rules. He should give the requests to the secretary so she can include them on the agenda for tomorrow morning’s meeting.

Joe Jedrykowski, County Engineer, stated that a few weeks ago the Board of County Commissioners awarded a contract to Bodell Construction for the renovation of the Van Buren Street Pedestrian Bridge. The contract, performance bond and insurance have been received and the contract is ready for signature. He will have the item included on the agenda for tomorrow morning’s Administrative meeting.

There being no further business to come before the Board, the Commissioners were in recess at 2:35 p.m.