

PUBLIC MEETING – JANUARY 11, 2006

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt and Deputy County Attorney Colleen Dowdall.

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims list in the amount of \$544,171.43. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Lee Family Transfer

Chairman Carey opened the public hearing.

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 7 in the south one-half of the south one-half of Section 8, Township 14 North, Range 20 West.

Sharon L. and John H. Lee have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately five acres in size, located near Missoula, Montana. Sharon and John propose to create one approximately two and one-half (2-1/2) acre parcel for transfer to their daughter, Rebecca Bayliss, for residential purposes and keep the remaining approximately two and one-half (2-1/2) acre parcel for residential purposes as well.

The history of the parcel is as follows: In the early 1970's, a large parcel of land was divided into five and ten acre parcels, making this parcel a five acre parcel. A Warranty Deed was filed in August, 1994, deeding this parcel to John H. and Sharon L. Lee.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Chairman Carey: Is there somebody from the family that can step forward please. Could you state your name for the record?

Sharon Lee came forward to answer questions.

Chairman Carey: Thank you. We'll ask our Deputy County Attorney to ask you a few questions. We do this for everybody. It's basically just putting on the record, you're assuring us that you're not attempting to evade the Subdivision Regulations.

Colleen Dowdall: I forgot to note how long you have owned the property.

Sharon Lee: '92.

Colleen Dowdall: Okay. Did you buy the property with the intent of dividing it?

Sharon Lee: No.

Colleen Dowdall: And then were very patient and waited 13 years. Do you or your transferee, your daughter, intend to sell the property or transfer it in the next year?

Sharon Lee: No.

Colleen Dowdall: Are there any houses on it now?

Sharon Lee: Just mine.

Colleen Dowdall: Will your daughter build a house?

Sharon Lee: Correct, on the other two and a half acres.

Colleen Dowdall: Will she be residing there?

Sharon Lee: More than likely.

Colleen Dowdall: Where does she live now?

Sharon Lee: In town.

Colleen Dowdall: In Missoula?

Sharon Lee: Correct.

Colleen Dowdall: Have you talked to anyone at Missoula County about going through subdivision review to divide this?

Sharon Lee: No. You can only divide it once and there has to be two and a half acres.

Colleen Dowdall: Are you in the business of building houses or developing property?

Sharon Lee: Just my own.

Colleen Dowdall: Are you attempting to evade subdivision review?

Sharon Lee: No.

Colleen Dowdall: Do you understand that if you're found to be guilty of evasion, it's a misdemeanor?

Sharon Lee: Okay.

Colleen Dowdall: You understand we're not reviewing this request for adequate access for emergency vehicles; those are the kinds of things we do in subdivision review, but if you're exempt from subdivision review, that's all up to you?

Sharon Lee: It would have its own access on Fred Lane anyway.

Colleen Dowdall: You understand that this does not mean that it has been approved for septic or for floodplain if there were floodplain problems, any other permits. This is just permission to divide it.

Sharon Lee: Right.

Colleen Dowdall: Okay.

Chairman Carey: Thank you. Any further questions for Ms. Lee?

Commissioner Curtiss: No.

Commissioner Evans: No.

Chairman Carey: This is a hearing. Does anybody else care to speak to this matter? I'll close the hearing then. Do we have a motion?

Commissioner Evans moved that the Board of County Commissioners approve the request by Sharon and John Lee to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey: Thank you. You'll be getting a letter in a few weeks notifying you of this decision. You're certainly welcome to stay but you're also free to go if you'd like. Thank you.

Consideration: Lolo Creek Trails Request for Amendment to Condition

Denise Alexander, Office of Planning and Grants, presented the staff report.

The Lolo Creek Trails Subdivision was approved on June 2, 2004, subject to 21 conditions. The applicant is currently in the process of preparing the final plat for filing of Phase 2.

The original Condition 21 stated: "The developer shall dedicate a 20 foot non-motorized public access easement to a qualified entity of the State or Federal government in the approximate location of the 'Lolo Trail.' Significance of the trail and recognition of the various groups that used it historically should be interpreted through installation of signage. This condition is subject to review and approval by OPG prior to final plat approval."

In May, 2005, an amendment was granted to Condition 21 as follows: "The developer shall show a 20 foot non-motorized public access easement on the face of the plat of Phase 1 in the approximate location of the 'Lolo Trail.' Prior to filing of Phase 2, the developer shall dedicate the easement to a qualified entity of the State or Federal government. Significance of the trail and recognition of the various groups that used it historically should be interpreted through installation of signage. This condition is subject to review and approval of OPG prior to final plat approval."

This request was made because the developer was not able to find a qualified government agency to accept the trail easement and they were ready to file Phase 1. The final plat of Phase 1 was filed with a 20 foot non-motorized public access easement shown on the plat, with a note stating it would be dedicated by the owner and developer of this subdivision to a qualified entity of the State or Federal government prior to recording Lolo Creek Trails-Phase 2.

The applicant is now ready to file Phase 2 and still has not been able to find a government entity to accept the easement and the related responsibilities and liabilities. In order to preserve the goal of a public trail easement in the location shown on the Phase 1 plat and overcome the difficulty of finding a public agency that will accept the responsibilities of the easement at this time, staff recommends that the condition be revised to state: "The Phase 2 final plat for Lolo Creek Trails shall include language dedicating the 'Nez Pierce Non-Motorized Public Access Easement' shown on the Lolo Creek Trails-Phase 1 plat as a conditional non-motorized public access easement, conditioned upon connection to a similar non-motorized public access easement on land east or west adjacent to the Lolo Creek Subdivision. The final language of the description of the conditional easement shall be reviewed and approved by the County Attorney's Office prior to final plat approval of Phase 2."

Chairman Carey: Thank you, Denise. This is a consideration, not a hearing, but we certainly welcome anybody who wants to comment on this matter.

Dick Ainsworth: For the record, I'm Dick Ainsworth, I'm with PCI. I really don't have anything to add to what Denise said. I'm here representing the developer. The developer is also here if you have any questions. I think you folks know the problems we've been through with this. I think this is a good solution but still keeps the opportunity open for it to become a public trail at some point in the future. We're here to answer questions if you have any. Thank you.

Chairman Carey: Thank you, Dick. Anyone else care to speak to this? Do we have a motion?

Commissioner Evans moved that the Board of County Commissioners amend Condition 21 for Lolo Creek Trails Subdivision as recommended by staff in the Request for Commission Action submitted by Denise Alexander dated January 6, 2006. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Consideration: Doerr Subdivision (4 lot minor subdivision) – Windemere Drive

Denise Alexander, Office of Planning and Grants, presented the staff report.

Heather Doerr, represented by John Kellogg of PCI, is requesting approval of the Doerr Subdivision, a 4 lot residential subdivision on 20.59 acres, zoned C-A3. The property is located at the intersection of Big Flat Road and Windemere Drive. It is outside the Sewer Service Area and the Urban Growth Area. The 2002 Missoula County Growth Policy, including the 1998 Missoula Urban Area Comprehensive Plan Update, is the applicable plan for this property. The property is within an area designated by the plan as "Residential," with a recommended maximum density of one dwelling unit per 5 to 10 acres. The property is zoned C-A3 which allows a maximum density of one dwelling unit per 5 acres. The lots are proposed to be 5 and 5.4 acres. The overall density of the proposed subdivision is one dwelling unit per 5.15 acres. The Big Flat Irrigation Ditch serves lots within the subdivision. A 20 foot wide irrigation pipeline easement is shown on the plat along the east boundary of Lots 2-4 and the north boundary of Lots 1-2.

The property is accessed from Windemere Drive, a 20 foot wide paved road in a 60 foot wide private access easement accessed via Big Flat Road, a 24 foot wide County road in a 60 foot wide public road easement. Subdivision Regulations require a minimum paved surface width of 24 feet for Windemere Drive and the applicant is requesting a variance from that requirement. The County Public Works Department supports the variance request and staff is recommending approval of the variance request. The covenants include provisions for driveways over 150 feet in length.

The Missoula Rural Fire District commented that all roads and homes must have County approved addressing prior to homes being occupied. The applicant has included this requirement in the proposed covenants. In response to Fire District comments, the applicant has included language in the covenants that would require driveways with a length in excess of 150 feet to maintain an unobstructed width of not less than 20 feet and a minimum unobstructed height clearance of 13 feet 6 inches and to provide facilities for the turning around of fire apparatus and that final driveway design be reviewed and approved by the Fire District. The covenants also include the provision to require interior residential fire sprinkler systems within each home.

The Subdivision Regulations state that lots outside the Urban Growth Area on private roads shall provide internal pedestrian connections, pedestrian connections to school bus stops and to adjoining neighborhoods. The applicant is not providing these pedestrian connections and has requested a variance from this requirement. There are no sidewalks or pedestrian access facilities in the area near the proposed subdivision. The County Public Works Department supports the variance request and staff is recommending approval of the variance request.

Todd Klietz, Floodplain Administrator, commented that although the property is located outside of the 100 year floodplain according to FEMA, the floodplain mapping shows one-third of the property, including most of the proposed Lots 1 and 2, as encumbered by Shaded Zone-X. Todd also commented that although floodplain development permits are not required for this location, he recommended that pre-construction elevation certificates documenting lowest floor elevations two feet above the base flood elevation be submitted at the time of zoning compliance. Staff is recommending this as a condition. He also commented that the note on the plat be modified to state: "The Doerr Subdivision is partially located within the non-regulatory Shaded Zone-X floodplain as per FEMA FIRM panel #1170 (dated August 16, 1988). Floodplain permits are not required. Areas of lots below the 3,081.5 foot NGVD 1929 contour have been determined by the Missoula County Floodplain Administrator to be beneath the base flood elevation and subject to inundation during flood events." Staff had, in the original report, recommended two conditions of approval – first of all, recommendation of approval of the variances and then two conditions of approval. The first one, per Mr. Klietz's recommendation about the lowest floor elevation being two feet above the 100 year floodplain elevation and the language on the note on the plat. Colleen has provided you with a lavender memo there, after some discussion with the applicant and then with you at Planning Status, staff has provided you with a possible new Condition 1 which states: "Any basements built on lots within the Doerr Subdivision shall be designed and constructed according to the design recommendations of the FEMA Technical Bulletin 10-01 and shall be certified upon completion by a qualified design professional as required in that bulletin. Further, the developer and the engineer who designs and monitors construction of the basements shall indemnify and hold Missoula County harmless for any damages that may result to any parties, including landowners, homeowners or to public infrastructure from the negligent act, error or omission, in the engineering work that has been performed and completed as a result of building basements in the Doerr Subdivision. The Indemnity and Hold Harmless is subject to the review and approval of the County Attorney's Office prior to final plat filing." Some new findings are also provided on that purple sheet to support that new condition.

Chairman Carey: Would the developer's representative or anybody else care to speak?

John Kellogg: For the record, I'm John Kellogg with PCI, representing Heather Doerr in the proposal before you. I just want to make some fairly brief comments and then let Darryl Moss continue with some suggestions that he has on the proposed revisions that you have in front of you. This subdivision is one that's in conformance with the zoning of the area, the development pattern of the area, the Comprehensive Plan. Heather has agreed to comply with conditions as proposed by the planning staff, with one exception here that we have some concerns about. This area generally is – when you approach the concept of potential flooding in this area, there are a number of ways of looking at it. The Zone-X area essentially is a broad brush FEMA mapping of the area, which in many cases does not conform very closely with topographic mapping. As a result, typically when we come in with the specific subdivision proposal in areas such as this, the more precise topographic mapping enables us to take a little bit closer look at what the real potential might be. As a result, you have the estimation that Todd Klietz has indicated that if we draw a rather arbitrary cross section line from the river and the 100 year floodplain, making a number of broad brush assumptions, we would come up with the area shaded in blue on that map behind you as potentially also being within this area that is subject to one foot or less of standing water in the event of a 100 or 500 year flood. The issues before you, and I think Mr. Moss will go into a little more detail, have to do with the regulatory ability of the agencies to apply this to a subdivision in the area. We are interested in coming up with a suitable solution to what Heather's intentions are and what the subdivision regulations require in adapting this subdivision to this particular site. With that, I would encourage you to approve the subdivision in the end. I'll let Darryl go into more detail on his recommendations on the revised condition.

Commissioner Evans: Before you do that, John, would you do me a favor, would you come to the board. Would you just draw me a cross section of the height of the land, the height of the river, and where the floodplain level would be on their land? In other words, if they were to put in a basement, how far down in the ground would that ordinarily be? If you meet the 2 feet above the floodplain, how far down in the ground would it still be? Do you see where I'm trying to get.

John Kellogg: Do you want a diagram that would indicate –

Commissioner Evans: I want to know that if they put a basement in the ground, but it isn't as far down in the ground as ordinary, how far down in the ground could they go and still meet the requirement of 2 feet above flood?

Commissioner Curtiss: You need the microphone.

Commissioner Evans: Maybe I'm asking for something that nobody can give me but that's what I want to know.

John Kellogg: I'm not quite clear on what you're saying. The elevation indicated for the first floor is going to then be – there's a number of issues to take into consideration. One is, does ground water reflect what surface flooding is occurring, maybe temporarily at this site, in a 100 or 500 year flood event? I think there's a question, if you look at the map behind you, whether in the event the areas shown in hatched blue are covered with less than a foot of water, if that is then going to mean ground water generally in the area is going to be affected similarly. Is that going to be a plain where ground water is going to come up to that level? I don't believe we have the answer to that. I don't think FEMA does; we don't. I don't think anybody does. The question you raised was, if a foundation or a basement put 5 feet deep in the ground –

Commissioner Evans: How far down in the ground can they go and still meet the 2 feet above flood?

John Kellogg: With the first floor –

Commissioner Evans: With the basement elevation.

John Kellogg: They couldn't then.

Commissioner Evans: They couldn't.

John Kellogg: If that an occupied floor, if the basement floor is an occupied floor, then there couldn't be an occupied floor below that elevation.

Colleen Dowdall: I think that some of this land is at an elevation that is at or below the elevation for the floodplain; is that correct?

Commissioner Curtiss: Todd, in his thing says, 3,081.5, anything below that is in the flood.

John Kellogg: Where that comes from is the Clark Fork River has a series of cross sections that you've seen on the FEMA maps. Todd picked one of those cross sections that seem to be adjacent to this development and projected that elevation – actually between two elevations over across topography and to this site and said, in his estimation that 3,081.5 is – if the river is going to get to that elevation in the 100 year flood over here, then he would, in a worst case scenario, say that 3,081.5 is going to uniformly flood based on topography over to this site.

Commissioner Curtiss: John, the blue hatched area on there, that's on FEMA's map, whatever they call it.

John Kellogg: No, they don't precisely coincide. There's the Zone-X, has a broad area that loops into this that covers a greater area than the blue hatched, and actually goes across Windemere Drive.

Commissioner Evans: Is the blue hatched area lower than the rest of their land?

John Kellogg: Yes, that's correct. This is the lowest area of the entire site.

Commissioner Evans: Is there any reason, Todd, why they couldn't build their house somewhere outside the blue hatched area and have their basement?

Todd Klietz: The areas outside the hatched area, elevation should be above the 100 year flood elevation, except with the basement, and they would be below the 100 year flood elevation. The concern is that with those being sands and gravels there that during a 100 year flood whether or not there would be water migrating in through the foundation wall of the basement, even in areas outside of that shaded Zone-X area.

Commissioner Evans: How many feet are different between the blue hatched area and the rest of the land? 5 feet, 10 feet, 2 inches, what?

Commissioner Curtiss: It looks like the highest one is about 8 feet and that's clear over by Big Flat Road is 3,089.

John Kellogg: There's some higher areas – 3,085, 3,086, 3,088 – on Lot 4, and similarly, 3,086 around in here are higher area.

Commissioner Curtiss: Most of it is 2 or 3 feet.

Commissioner Evans: Thank you. I'm not getting where I wanted to go but –

Chairman Carey: Dennis.

Dennis Doran: For the record, my name's Dennis Doran and I'm representing Cornerstone, which is a construction company that I own. To answer your question, Barbara, I don't think the condition that you have to be 2 feet above 3,081 is a part of this; however, if you were to try to construct the home irrespective whether it has a basement or a crawl space, 2 feet above 3,081, most, if not all of this property, you couldn't build a house on, because you would have to have a footer and at least a 4-5 foot frost wall, then you have to bring in the fill to create the slope and then create, essentially manufacturing the elevation incorrectly. Thus, it is pretty much frowned upon by the County, from a DEQ standpoint along with the building standpoint. When we started this project – I'm not a soils engineer – but we spent a tremendous amount of time with GMT Consulting. We took elevations of the river last Friday and how far below the river was compared to this subject property. We dug a series of test holes in the lower section of that blue mark and the highest section of it, to see if the ground water had any elevation with the river. We find ground water at 14 feet where her site is. I can see in the excavation where I think the groundwater the highest place that it has ever come up to be, because you can see the difference in the soils. That's not always a good indication if you had a 100 year flood, where it would be. We gained enough knowledge that should we adhere to Todd's recommendation of following this FEMA guideline, along with some other safety measures incorporated in that FEMA design as far as the size of the pump and some different fabrics around it and keep it up 4-5 feet, that Bill Weikel with GMT would certify and would hold the County – well, not harmless but – Colleen has the definition. Colleen, he saw that and if we work together with him, he would agree to your language. Anything above 2 feet above 3,081, you wouldn't be able to construct on this, according to the rules of Zoning Compliance. We do have a permit there and DEQ has approved the drainfields on all four locations from their monitoring wells that they've conducted over the last 20 years.

Chairman Carey: Thank you, Dennis. Does anybody else care to speak to this?

Darryl Moss: Darryl Moss with Sullivan, Tabaracci and Rhodes law firm, here on behalf of the owner of the land, Heather Doerr. We have a lot of issues, I won't go into them, I think Colleen and I went round and round on them enough, we don't need to rehash them here today. We just have one question and see if we can do some minor modification of language in the staff's recommendation as amended on the lavender sheet that was passed around. One of the issues that we have here is we don't have your typical builder, subdivider situation where we have a developer that is going in and putting in a subdivision. They are responsible for all the buildings that are going to lots. What we have here is a 20 acre parcel that was purchased by Ms. Doerr that she wanted to put her home on. She then went in the process, in order to cover costs of her own home and to cover the cost of the purchase of the property, elected to subdivide the property, create three other lots so that she had four 5-acre lots. Sell those other lots to third parties and then pay off what it cost to purchase the property and pay for the construction of her home. With the language that it requested as far as the indemnification and hold harmless from the developer and the engineer, I think it creates a hardship on Ms. Doerr because once she sells off those other three lots, she has no control or ability to control what those owners of those properties do with respect to building on those lots. What we'd like to see is some modification where the condition is that one; we comply with the FEMA guidelines with respect to basements and putting that together. We believe – I'm not an engineer so I'll put that caveat right out there – we believe in reviewing that and reviewing the data and the information that that will adequately protect against any negligencies that might arise during an adverse flood event. The second thing that we would like to do is change the language so that the owner of the lot and the engineer who designs and builds a basement, if that's the procedure that they elect, that owner and that engineer would be the ones to hold harmless, not a developer and a single engineer at the very beginning of the process, so some language that would require – what I brushed together and I'm sure Colleen would have some comments on this – but something that reads, in that second sentence of that Condition 1, that would be, something to the effect that further the, strike developer, and put owner of any lot and the engineer who designs and monitors construction of a basement on any lot, shall indemnify and hold Missoula County harmless – on down through the line, and then towards the end, on said owner's lot. What we're doing here and what we hope to create there is that when a person comes in and buys this, they have a choice. They can simply say, we're not going to put in a basement and we don't have to do any indemnification; we don't have to do any hold harmless; we don't have to mess with FEMA regulations, we can just build. But if we want to take a risk and we want to proceed forward as an owner, as an individual; we hire an engineer, they design it to meet the certification and the requirements from FEMA and they then provide the indemnification, hold harmless based upon the language. I think we've traded some language back and forth that I think would be acceptable to Colleen, but we would have to work that into either a condition, a covenant, in the restrictive covenants or a condition on the plat. At that time they go in and they submit for approval, they then, if they are going to build a basement, they have to have certification that complies with FEMA and they have to have indemnification, hold harmless, from that owner or builder and their engineer, that would basically release Missoula County along the language set forth in the indemnification.

Colleen Dowdall: Could you repeat the language?

Darryl Moss: Here's what I wrote: Further, the owner of any lot, (striking the word "developer") and the engineer who designs and monitors construction of a basement on any lot, shall indemnify and hold Missoula County harmless for any damages that may result to any parties including land owners, homeowners or to public infrastructure from the negligent act, error or omission in the engineering work that has been preformed and completed as a result of building (and here I would insert some more language) a basement on said owner's lot in the Doerr Subdivision." That would relieve the burden from Ms. Doerr from having to basically become the developer of all four lots and developing all four lots. If we could do that, Ms. Doerr is willing and would like to proceed along those lines. Thank you.

Chairman Carey: Thank you, Mr. Moss. Colleen, do you have any comments on that?

Colleen Dowdall: It leaves it pretty open ended, in terms of, we won't know what's going to happen until the individual lots are sold, and then we would be relying upon individual homeowners. I'm just not sure how all of it will be triggered for review. What we are normally looking for is the engineer who has worked on the subdivision and has agreed that this is a good condition of approval, and to put this in the covenants or on the face of the plat would require that as each homeowner came in, or potential homeowner to build their home, if they want to put a basement, they would have to come to the County, and I assume, have their engineer indemnify us for the work that that engineer has done. If we have building permits in place that may be a possibility.

Commissioner Evans: If we're correct in when we are anticipating the building permit department to be up; it would be next month. Are we still thinking February?

Chairman Carey: I think so.

Commissioner Evans: Is there any way to guarantee that –

Chairman Carey: Denise.

Denise Alexander: Right now, the condition is written to say that the indemnity and hold harmless is subject to review and approval of the County Attorney's office prior to the final plat filing, but somehow this could be tied into Zoning Compliance Permits for each of those homes. The only difficult part about it is that the Zoning Compliance Permits, the Building Permits if they're enforced, are issued before the home is built, where all of these things need to happen after the home is built. The engineer has to certify that the technical bulletin has been complied with and then we'd get the indemnity statement, so that's a difficult part of that.

Commissioner Evans: Don't you need an occupancy permit before you're supposed to move into the house or is that just commercial stuff?

Denise Alexander: I'm not sure what the County's process is going to be. I know in the City, there's no occupancy permit for single-family dwellings; only for commercial and industrial.

Commissioner Curtiss: In the County they could ask to be exempt if they're building their own home.

Chairman Carey: Mr. Moss, did you have something?

Darryl Moss: What I was saying, is a trade; a way that we can try and tie this into a triggering event is we could put something either in as a deed restriction in the deed when the property is conveyed, actually giving the County the right to stop building or to stop work on the house if that deed restriction is not met or something in the covenants or conditions that would give authority to the County if they wanted, to stop that, get an injunction to stop their work in the event they failed to comply with that provision or to (inaudible).

Colleen Dowdall: I think that with a deed restriction, it assumes a subdivision planner see every deed transfer and that just isn't the case. They are not an effective means of doing land use controls. If the covenants say that we have the right to litigate if you don't follow the conditions of approval, again, we would like something a little more foolproof than having to litigate if someone doesn't follow a condition of approval. I'm not sure how to –

Todd Klietz: How we've done it in the past with elevation certificates and similar floodplain-type conditions, even where we don't have building permits in place, is to make it a requirement Zoning Compliance Permit. We issue the permit with the condition that they have to come back and provide the elevation certificate, or in this case the elevation information would be supplied with the architectural or engineering certification for the pump, so we'd have a written paper trail, at least, which is what we have in other similar floodplain situations. I think the ZCP would be our current trigger for this if we don't have – even if we don't have the Building Permit program up and running, whoever owns the property would need to come in for Zoning Compliance Permit.

Colleen Dowdall: So are you confident then that you could follow it after the Zoning Compliance Permit, so we would get – what I'm worried about is what if the engineer won't certify it then; they've got their house, they've got their basement, then we have no indemnity.

Todd Klietz: Put that on the condition of the Zoning Compliance Permit, that they have that, that they submit that. If they don't – if they haven't complied with the Zoning Compliance Permit –

Colleen Dowdall: Then we're back to litigation.

Commissioner Evans: It seems to me that the other approach we could do is, since Mrs. Doerr is willing to indemnify and apparently from what I heard that the folks that also were involved, whether it's the engineer or whoever, are willing to indemnify the County, and we know who this purchaser or owner would be. I don't like telling people that they can't have a basement if that's what they really want. I don't like telling the new people that are going to buy the land, you can't have a basement whether you like it or not. But we can't have it fall back on the County and the taxpayers to pay for anything that happens. The other option is to tell Mrs. Doerr that she can have one, but there will be no other basements. That seems to take off the responsibility or the concerns as to whether or not the subsequent buyers are willing to do this or not do this. I don't like that option either.

Heather Doerr: For the record, Heather Doerr. When you go to build your home and you get a permit to build and you start the basement; maybe before they could precede with the rest of the home, that their basement have

to be inspected and signed off by the engineer at that point. If the engineer and the owner of that particular property did not sign off on it, then they would be unable to proceed with the rest of the construction of their home.

Commissioner Evans: I wouldn't want anybody sitting there with a basement they couldn't build on.

Heather Doerr: But that's what they know before they could go to build it; that they were going to have this indemnity given before they even start construction. So knowing that, this would be put into place so they could not skirt this obligation that has been put on the plat. The County could ensure that this would not fall back on them. A suggestion just so that – I just feel frustrated that I'm doing all I can to mitigate this process but now, for the other three lots, I'm being burdened because the County doesn't know how to follow through with the rules that they put into place. Does that make sense?

Colleen Dowdall: What I'm saying, if we do the rules that we want to do, that you don't want us to do, those are the rules we know how to enforce. The County doesn't have a great deal of power. Our power is best before the plat is filed. That's when we like to get indemnities and that sort of thing because if you don't give us what we need, you can't file your plat. After the property is platted, the amount of power that we have decreases substantially. It's just the nature of local government. Your only responsibility is because you are subdividing these lots and going to sell them to people who may or may not be aware of these issues and the significance of them. It is your profit and it's your liability.

Commissioner Curtiss: Colleen, would there be a way for her to transfer at the time of sale. She could have an agreement with the new purchaser that they would assume the same responsibility, now that it is their lot. Is that something that she could think about with her attorney?

Colleen Dowdall: It's something that she can think about with her attorney. Again, it's nothing that we could require because we aren't involved in the sale process. If she wanted to make any sale contingent upon, if you build a basement, you assume this liability and indemnify the County.

Heather Doerr: My only thought would be to say that as a regular person trying to subdivide property, it's conveying a message that if you're not a multi-million dollar developer, or have any kind of stature of that, you really shouldn't go forward with developing your own land because of the process and the liability that you put yourself in for the rest of you life, or the rest of your heirs life, because this property will be there forever.

Commissioner Evans: I need to explain to you, Heather, that in the past, we have been sued and we have lost on places that flooded. We don't want to be in that position again. The land that you happen to have has the shaded Zone-X on it, and our Floodplain Director tells us that there are some concerns in regards to potential flooding, and so we don't want to be in that position of paying out money again because we make a mistake and aren't indemnified. At the same time, I don't want to say, you can't have your basement. I'd like to let you have your basement as long as the responsibility doesn't fall on us and other taxpayers to take care of it should something happen. You've said okay, your developer has said okay. We can go ahead, assuming that our Floodplain Administrator is comfortable with that particular FEMA Article number whatever. So the problem we have then is the other three lots. How do we guarantee that we'll be in the same protected position?

Heather Doerr: I understand. If it's put on the plat and that plat transfers with the sale of the property to the new homeowner and they fail to abide by those rules and regulations and the County does not catch them before the house is already built, and then 20 years down the road the property does flood, would the County have some sort of – I don't know what the word is – but some sort of leverage on that plat that they bought and signed for, did have that information on it and they did not comply with the County procedure for building that basement, etc.

Commissioner Evans: Can you put an indemnification on a plat, Colleen?

Colleen Dowdall: I think what she is saying is that it would be more of a warning on the plat, that we are saying, if you build a basement, you are doing it at your own risk. That may work in relationships between private individuals in contracts, but what hasn't worked for us in the past is acknowledging the risk, warning people and then not doing anything else, because, the Commissioners, when they make a decision, the whole review for subdivision is that they are supposed to be protecting certain things. One of those is the public health and safety and that includes future residents of the subdivision. So how do they balance that by – the argument that is made back to us is, if you were worried enough about this, we should have told us we couldn't do it and just telling us we're doing it our own risk – and you know, people will do it anyway. That's what happened and then they sued us and then we paid them money.

Chairman Carey: Was it half million dollars?

Colleen Dowdall: We paid out \$300,000 and our attorney's fees were nearing \$200,000.

Heather Doerr: I guess I don't feel like it's just a warning for my lot. I feel like I'm being forced to comply with this FEMA approved basement and getting the indemnification signed by the engineer and the owner, so why wouldn't anyone else that was buying the other lots feel that way if it's put on the –

Colleen Dowdall: I think probably because other people who are buying your lot don't have to come before the Board of County Commissioners. They could read it on the plat. It's a warning. You are dealing with us because you want to get your plat approved. We have to work out something that's agreeable – or we're hoping to work out something that's agreeable to the County and to you, in order to even get your plat filed. And other people will take it more seriously than others. But our experience is that between the builder and the homeowner, we have septic systems put in, in unapproved places because the homeowner decides, well I'd rather have my house over here, and the builder says, no problem, I don't have to look at the plat and see what the septic approval was; they just put it in. We don't have a perfect system but we're held accountable many times for being as perfect as we can when it comes to your basement being flooded.

Heather Doerr: But if it's on the plat map and they go to pull a permit to build, the County inspector would see that on the map and say, well here's how you have to build your basement. Once you build your basement, you have to have an inspection just like before you could put drywall up you have to have your electrical inspected before you can go forward.

Colleen Dowdall: I used to think that was foolproof also, until in meetings with the Building Department at the City, when they were doing building permits in the County as well, they explained to me, planning office looks at the plans, the plans look good, they meet the requirements of the subdivision, they don't show a basement, they show the house is where it is supposed to be, and then when the first inspector goes out, it might be the concrete foundation inspector. That inspector does not have the plat with him. He is not there to inspect to see if the house is being built where they said it is built. He's there to see if the concrete is adequate. As a result, in the place where we were sued, people didn't show basements and built them. People built in the floodplain, but their plans didn't show them in the floodplain. It is more difficult for us than it seems.

Heather Doerr: I understand that. My frustration is that there is always going to be a loop-hole in every situation. I'm sure two attorneys can sit and come up with a loop-hole for every situation that you put anyone in. If we follow this and it's part of the permit process, it's part of what they need to do to construct a home; the burden keeps continuing to fall back on me as the ordinary citizen trying to develop my property.

Colleen Dowdall: I don't think we're trying to do that. I think what we would rather do is say, no basements.

Commissioner Evans: I'd like to say, we're not trying to force you to do anything. What we're trying to do is find a way to give you what you want without having it harm us and the rest of the taxpayers. So it isn't a matter of, we're going to see to it that you do what we want. We're trying to find a way to help you.

Heather Doerr: I guess when I went to go purchase the property, I had researched properties all around, had talked to Office of Planning and Grants about the property. I knew I've always wanted a basement. I knew that the properties around all had basements, that adds more value to the property. I spent an enormous amount of money for this 20 acres, being forced to because I could not find 5 acres of my own in this area. This 20 acres was not even for sale. I had to really beg and plead for this man to sell the property. I spent a lot of money on this property and as an ordinary citizen, I'm just trying to follow the rules. OPG had said that there was not a problem with basements in this area. I'd done a lot of due diligence to make my risk much lower and to be able to get out of the property what I needed to just to have my 5 acres.

Colleen Dowdall: I'm concerned about your statement, because I think the building permit you got recommended against basements.

Heather Doerr: I'm talking about speaking with the Office of Planning and Grants before buying the property, before closing on the property, during my due diligence time.

Commissioner Curtiss: Ms. Doerr, on the record, I think we should put that there are three subdivisions that we've approved in the last several years between your property and Kona Ranch Road, that we put the same exact – you can't build 2 feet below – you have to build 2 feet above such and such a number. That's Riverwood,

Blixt Addition, and Don's Acres. So there are three properties in this immediate area that we recognize the same potential flooding danger and did this with.

Todd Klietz: The only difference is, is that in those we prohibited basements altogether. Whereas in this we're saying –

Commissioner Curtiss: Right. We're actually trying to give you a little bit of leeway, rather than just saying no basements. Maybe your best bet, if you don't want to carry the liability, is to say on Lot 2 or whichever one you want to build on, you're willing to do this, because we believe you, that you want to do the right thing. If you don't want to carry it forward for the other three lots because you don't know who is going to buy them, what they're going to want to build, theirs could say no basement. That's an option for you to think about.

Commissioner Evans: There was one other issue if I'm not mistaken. I don't know if it's gone away, and that's that for you not to have to put in residential sprinklers. Is that still an issue?

Heather Doerr: That was what – when I initially pulled the permit on my 20 acres to start my construction, I wanted to be able to build my home and go forward at that time. That would mean not having the condition of the sprinklers at that time.

Commissioner Evans: I'm sorry to put you through this but I'm going to ask the Assistant Fire Chief to give us the reasons why sprinkler systems are important. And the distance from your land to the nearest fire station. Curt, if you don't mind sir.

Curt Belts: Curt Belts, Missoula Rural Fire District Assistant Chief. We recommend residential fire sprinklers in all homes that are not on a municipal water system or are not going to be able to produce a water system that's compatible with Subdivision Regulations, because residential sprinklers save lives. It's that simple. The United States has the highest fire death in residences than any industrialized nation. It's because we tolerate fire deaths. That's the reason it's there. We, as a nation, simply have an article in the paper that there's a tragedy, that people have lost their lives, when we can prevent them. Residential fire sprinklers have been proven to save lives. They act immediately upon detection of fire. The farther it is from a fire station to get delivery of fire suppression services to the home, the more damage is done to the home and the less likely survivability for someone inside a house. Residential fire sprinklers act in less than four minutes. In a four minute time frame, in ideal situations that a fire department could get there, the fire has a big head start. The amount of water that we're going to put on that fire to suppress that fire is far greater than the damage that would be incurred with the sprinkler system going off. Usually in one case, one head would suppress the fire and allow escape from a fire puts out 18 gpm. My inch and a half hoses put out 95 gpm, if I use one. The math is pretty simple as far as water damage goes. As far as life safety goes, a fire is not survivable past four minutes, in most cases.

Commissioner Evans: How far do you anticipate it is from Blue Mountain Road to your nearest fire station?

Curt Belts: It is approximately –

Commissioner Evans: 15 minutes.

Curt Belts: No we're less than that from where Station 6 is. We're probably about – I would guess on Windemere Road, we're probably somewhere between 6 to 9 minutes would be my guess, not having driven it.

Commissioner Evans: Thank you.

Chairman Carey: Thanks, Curt. Mr. Moss.

Darryl Moss: In talking with Ms. Doerr, what I would propose is that we do is that we follow the language and give them the option, prior to the final recording of the final plat, to either put a condition on those lots that not have a basement – to not put a basement on it as a condition or as covenant, or if they want to have a basement, that she agree to indemnify with the engineer. That way she can come back and rather than indemnifying all four lots, they have a choice to say, I'll indemnify as to Lots 1 and 2, I'll put covenants on Lots 3 and 4 to say no basements, they way I'm not exposed as to everything. Does that makes sense, Colleen?

Colleen Dowdall: It mostly matters if it makes sense to the Commissioners.

Darryl Moss: What I'm trying to say, if I said it correctly. What we're trying to say is to give us the option at this point to put the restriction on to say, if you're going to have a basement you have to have an indemnification. If you don't want to do the indemnification, then put a covenant on it that says no basement. That way then we can make the choice before the recording of the final plat to say, are we going to find out a way to have future owners indemnify us back, with indemnification we're given to the County, or do we simply say no basements. That way we have a choice then to be able to go forward and maximize the value for her property in the future.

Commissioner Evans: I would like to know how our Floodplain Administrator feels about it.

Todd Klietz: I'm comfortable with it from a practical position of trying to insure that that's enforced through the ZCP's. It's similar to what we currently have and it's the best situation that we have right now, is through the Zoning Compliance Permit.

Commissioner Evans: Does Colleen feel comfortable with the wording for the premise here?

Colleen Dowdall: I'm looking at the condition of approval now to see how we could word it.

Commissioner Curtiss: How about if you just preface the one on the purple sheet to say, prior to final plat approval, all basements blah, blah, blah ... indemnification, or be noted as having no basements, all lots, something like that.

Commissioner Evans: Did you read the entire thing, Jean, because I didn't.

Commissioner Curtiss: You didn't get the blah, blah, blah?

Commissioner Evans: Blah, blah, blah was a little different.

Commissioner Curtiss: I wasn't changing anything that was on the purple sheet, just adding, prior to final plat approval the developer would either – that all basements would either meet this as listed, the indemnification, then just add something to the fact of – we'd have to say that they would either indemnify each lot or note that the lot couldn't have a basement. Somehow we would need to figure that out.

Commissioner Evans: Who would it indemnify? Mrs. Doerr or the prospective buyers?

Commissioner Curtiss: That she would indemnify us on Lots 1 and 2 maybe, 3 and 4 would have no basements or she would indemnify for all. I would image that would be dependent upon whether or not she had a buyer in mind that agreed to this, understood it, and wanted to have a basement or whether she didn't know who the buyer might be and she might have a lot left with no basement.

Colleen Dowdall: I think we could also do it by just adding a sentence that says, as an alternative, the plat will have a statement that prohibit basements. Is that what you were thinking Darryl?

Darryl Moss: I'm sorry, say that again.

Colleen Dowdall: Denise, did you want to change that?

Denise Alexander: Well I was wondering if all we want to say is they don't have basements or would we want to use the language that was in the original condition of plat.

Colleen Dowdall: Right, the original language.

Darryl Moss: If I could, if we could break it up so that it applies to each lot individually rather than as a whole one way, or a whole the other way. We could say, Lot 1 we're going to indemnify, Lot 2 no basement, Lot 3 no basement, Lot 4 we're going to indemnify. If we could do that kind of a thing, where we could split up and make that decision, I think that would be very beneficial.

Denise Alexander: And all of that would be decided before the plat is filed; is what I understand.

Darryl Moss: Yes, that would be a condition that decision has to be made and as part of the final plat.

Commissioner Curtiss: Colleen, do you need a couple of minutes to try to figure out how to –

Chairman Carey: We can recess for 5 minutes, would that work?

(RECESS)

Chairman Carey: I'll call the meeting back to order. Do we have language that will work?

Colleen Dowdall: Yep. Denise gave me an additional task here and I'm slow. The language for Condition 1 would read: The plat will include language stating: "The first floor elevation, including basements, mechanical equipment and duct work shall be a minimum of 3,083.5, etc. Pre- and post-construction elevation certificate shall be submitted documenting the lowest floor and utility elevations. As an alternative, if any basements are built on lots within the Doerr Subdivision, they shall be designed and constructed according to FEMA Technical Bulletin 10-01 and shall be certified upon completion by a qualified design professional as required in that bulletin. Further, the developer and engineer who designs and monitors construction of a basement shall indemnify and hold Missoula County harmless for any damages that may result to any parties including landowner, homeowners or to public infrastructure from the negligent act, error or omission in the engineering work that has been performed and completed as a result of building basements in the Doerr Subdivision. The indemnity and hold harmless is subject to the review and approval of the County Attorney's Office prior to the final plat filing or Zoning Compliance Permit."

Chairman Carey: Does that suffice?

Commissioner Curtiss: I guess I didn't hear – so you need to clarify for me – that it gave them the option of doing different things on different lots.

Colleen Dowdall: It's subtle, some of the changes that Darryl had recommended before was changing "any" to "a" in terms of the indemnification. So you can either have the language on the plat that says you can't have basements, or if basements are built, that they be designed and constructed – if basements are built on lots within the Doerr Subdivision, they shall be designed and constructed according to FEMA.

Commissioner Curtiss: So, on the plat it could say something different for each lot?

Colleen Dowdall: You could do that. I think this covers it, if all of this is –

Denise Alexander: I think it needs to be before the final plat approval, not –

Commissioner Curtiss: Not at Zoning Compliance.

Denise Alexander: That's what they were stating, that if someone on a lot is going to build a basement, then they will do the indemnification. Although that would mean that – does that mean that they would have to have the basement built before the filed final plat, because that needs to be certified?

Colleen Dowdall: I think we can maybe work that out. For one alternative, and actually, the way we could do it is to say that at the end of pre- and post-construction, elevation certificates shall be submitting documenting the lowest floor and utility elevations, and say that that language – that language will be approved prior to final plat approval. The alternative language would be, approved at Zoning Compliance Permit, if they're doing it as they are building houses. Does that make sense?

Commissioner Curtiss: Kind of.

Colleen Dowdall: If they choose to not have any basements, that language will be on the plat, we'll review it prior to the plat being filed. If they choose to allow basements, then Todd had said that through the Zoning Compliance Permit process, we could track and monitor. The bottom one will say, indemnity and hold harmless is subject to the review and approval of the County Attorney's Office prior to Zoning Compliance Permit.

Chairman Carey: Are we okay with that then?

Commissioner Curtiss: Is that connected so you could print that?

Colleen Dowdall: I can send it to Patty by e-mail.

Commissioner Curtiss: I think I would like to read it and you would probably like to read it.

Chairman Carey: Should we recess again? Alright.

(RECESS)

Colleen Dowdall: I think if we added, at the end of the condition, these restrictions – referring to the most recent – shall be shown on the plat indicating for each lot whether a basement will be built. These restrictions – we can also work on these words –

Commissioner Evans: This is following Condition 1?

Colleen Dowdall: It's at the bottom of Condition 1. These restrictions – we've just been talking about the technical bulletin restrictions and the indemnity – shall be shown on the final plat, indicating for each lot whether a basement will be built. What I'm trying to get to here is that if there's a basement built, then the second language applies. If there's not a basement built, we need the pre- and post-construction elevation certificates. Correct?

Chairman Carey: Okay.

Colleen Dowdall: So both sets of language would appear on the plat, if it's going to be a mixture of some lots with basements and some lots without.

John Kellogg: John Kellogg. In that case, we would not have to designate that, we'd just put the statement on and say it's an either/or.

Colleen Dowdall: I don't know what you mean.

John Kellogg: We wouldn't have to say Lot 1 is basement, Lot 2 is without, Lot 3 is with, Lot 4 is without. We would say, this statement covers both eventualities.

Colleen Dowdall: I think that – I don't know if it would be easier for you to track Todd, if we did know which ones were going to have basements.

Commissioner Evans: How would we know that before it's settled?

Colleen Dowdall: The developer offered this; that they would tell us that at the time of the plat.

Chairman Carey: You need to come to the microphone to be on the record.

Darryl Moss: I'm trying to think of the best way to phrase that. If that's the choice that we're going to make, what if we switched it around so that we just simply said, all lots are going to be subject to basements; however, if at any time the owner of the lot elects not to build a basement, then this first language kicks in.

Colleen Dowdall: You'll notice we turned them around and that was because our alternative – our preference is there not be basements.

Darryl Moss: Basically what you're saying, we need to designate before the recording of final plat which lots may or may not. So even if we designate a lot as having a basement, there's still an option for an owner to come back at a later time and say, I'm going to put a basement on there; I just don't want a basement.

Colleen Dowdall: Correct. But I understood you to say that we want to wait and decide which lots will have basements on and which lots we won't, and we'll just do that at the time of final plat, so I wrote it that way.

Commissioner Curtiss: Because the County only needs an indemnification on lots where you plan to put a basement, so if you decided it was only on Ms. Doerr's property, then the owner is not carrying that liability.

Darryl Moss: I'm fine with that.

Chairman Carey: Okay, so we're going to use the language that you've just given us. Anything else on this? Is there a motion?

Commissioner Evans: Did we close the hearing?

Chairman Carey: It's a consideration.

Commissioner Evans: Yes, it does include fire sprinklers.

Colleen Dowdall: Currently the submittal says that all houses – it's says, covenants require sprinklers, and for a number of reasons, I think it would be a good idea to make that a condition of approval as well.

Commissioner Evans: The paperwork that I had, had that as a condition – January 9, 2006, Doerr BCC notes.

Denise Alexander: Right, but they were –

Commissioner Evans: They're not conditions, but they ought to be, is that what you're saying.

Denise Alexander: My notes – January 9, 2006 – and actually just states that it's in the covenants that all homes will have sprinkler systems, but what Colleen is suggesting is that we also have a condition, so that it can be followed up at Zoning Compliance Permit, those be reviewed and approved by the Rural Fire.

Colleen Dowdall: I have language that says, installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each home for the purposes of fire protection.

Commissioner Curtiss: So that would be a new Condition 3?

Commissioner Evans: Could we change the last couple of words from "purposes of fire protection" to "purposes of public health and safety." I know Curt would like that. See, to me, that's the reason, that is the purpose of having those sprinklers, is to protect people's lives.

Commissioner Curtiss: Are we ready for a motion?

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations requiring a 24 foot paved surface width, to allow the existing 20 foot wide paved surface for Windemere Drive, based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of Missoula County Subdivision Regulations to vary from the requirement to provide a pedestrian circulation system, based on findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners amend Condition 1 to read: "The plat will include language stating: 'The lowest floor elevation, including basements, mechanical equipment and ductwork, shall be a minimum of 3,083.5 feet (NGVD 1929). Pre- and post-construction Elevation Certificates shall be submitted documenting the lowest floor and utility elevations.' That language shall be approved prior to final plat approval. As an alternative, if any basements are built on lots within the Doerr Subdivision, they shall be designed and constructed according to FEMA Technical Bulletin 10-01 and shall be certified upon completion by a qualified design professional as required in that Bulletin. Further, the developer and the engineer who designs and monitors construction of a basement shall indemnify and hold Missoula County harmless for any damages that may result to any parties, including landowners, homeowners or to public infrastructure from the negligent act, error or omission, in the engineering work that has been performed and completed as a result of building basements in the Doerr Subdivision. The Indemnity and Hold Harmless is subject to the review and approval of the County Attorney's Office prior to Zoning Compliance Permit. These restrictions shall be shown on the final plat, indicating for each lot whether a basement will be built." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss stated that Condition 2 did not change.

Commissioner Curtiss moved that the Board of County Commissioners add Condition 3 to read: "Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each home, for the purposes of public health and safety." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Denise Alexander: I just wanted to make a correction. I think it had been corrected in a newer Request for Commission Action, but in the motion for the first variance, I think what you read, it said 20 foot gravel surface for Windemere Drive and actually Windemere Drive is paved, so to allow the existing 20 foot paved surface for Windemere Drive.

Commissioner Curtiss: Okay, so I'd make that correction. So that's our only three conditions then.

Commissioner Curtiss moved that the Board of County Commissioners approve the Doerr Subdivision, based on the finding of fact and subject to the conditions as amended, as presented and amended in the meeting today. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Doerr Subdivision Conditions of Approval:

1. The plat will include language stating:

"The lowest floor elevation, including basements, mechanical equipment and ductwork, shall be a minimum of 3,083.5 feet (NGVD 1929). Pre- and post-construction Elevation Certificates shall be submitted documenting the lowest floor and utility elevations."

That language shall be approved prior to final plat approval. As an alternative, if any basements are built on lots within the Doerr Subdivision, they shall be designed and constructed according to FEMA Technical Bulletin 10-01 and shall be certified upon completion by a qualified design professional as required in that Bulletin. Further, the developer and the engineer who designs and monitors construction of a basement shall indemnify and hold Missoula County harmless for any damages that may result to any parties, including landowners, homeowners or to public infrastructure from the negligent act, error or omission, in the engineering work that has been performed and completed as a result of building basements in the Doerr Subdivision. The Indemnity and Hold Harmless is subject to the review and approval of the County Attorney's Office prior to Zoning Compliance Permit. These restrictions shall be shown on the final plat, indicating for each lot whether a basement will be built. *Subdivision Regulations Article 3-1(1)(B) and Floodplain Administrator recommendation.*

2. Note #3 on the preliminary plat shall be replaced with the following language:

"The Doerr Subdivision is partially located within the non-regulatory Shaded Zone-X floodplain as per FEMA FIRM panel #1170 (dated August 16, 1988). Floodplain permits are not required. Areas of lots below the 3,081.5 foot NGVD 1929 contour have been determined by the Missoula County Floodplain Administrator to be beneath the base flood elevation and subject to inundation during flood events." *Subdivision Regulations Article 3-1(1)(B) and Floodplain Administrator recommendation.*

3. Installation of interior residential fire sprinklers that meet NFPA 13D standard are required in each home, for the purposes of public health and safety. *Subdivision Regulations Article 3-7, Missoula Rural Fire District, Board of County Commissioners and staff recommendation.*

Commissioner Evans: I would like to thank whoever is putting on the Fiscal Impact Statement here, I think it is very helpful. And for the record, I would like to say to Mrs. Doerr; I want you to know that you are really very much in our concerns and that we really went a long ways to help you, not to force you to do anything.

There being no further business to come before the Board, the Commissioners were in recess at 3:00 p.m.