

BLAINE COUNTY PLANNING AND ZONING COMMISSION
Public Hearing Date: April 13, **May 25, and June 8, 2023**

REGARDING THE APPLICATION OF: Chris and Marcella Dornin for a Mountain Overlay District (MOD) Site Alteration (site alt) permit application to construct a swimming pool with associated retaining walls, decking and landscaping at 126 Alpine Drive.	STAFF REPORT By: Rachel Martin Date: May 16, 2023 New comments in red
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Requested Action: Public Hearing and consideration of a MOD Site Alteration Permit application by Chris and Marcella Dornin, to construct a 1,125 square foot, 15' x 75' swimming pool with associated retaining walls, decking and landscaping at 126 Alpine Drive, Lake Creek Subdivision Amended, Block 3, Lot 47A. The lot is zoned Rural Residential District (R-10), Low Density Residential District (R-1) with Mountain Overlay, Avalanche Overlay and Wildlife Overlay Districts.

Applicable Regulations: Title 9-Zoning Ordinance: Chapters 6, 10, 21 22 and 29A

Representatives: Kurt Eggers; Eggers Associates

HISTORY:

- 1. Building permit 2002-067 was approved and obtained for a 5,193 sq ft single-family residence with attached garage entirely within the building envelope. It was determined by the Administrator that all development within the building envelope can be categorically excluded from the Mountain Overlay District and is not subject to further mountain overlay regulation.**
- 2. In 2018 the applicant's representative inquired about building a swimming pool partially within the building envelope, directly adjacent to the residence, see Exhibit C-6 2018 Proposed Pool Placement. This location did not increase the visual impact of the residence. Staff let the applicant know that this location can be categorically excluded. Blaine County Code 9-21-4.B.5 states: "Valid permits and platted building envelopes approved prior to the effective date of ordinance 91-15 on December 18, 1991. This exception includes all structures built within the platted building envelope".**
- 3. In 2019 a building permit for a wooden deck was approved over the planned location of the future swimming pool. The building permit inspection record reports hydronic piping installed in 978 sq. ft. of concrete patio to be hooked up at the time of pool installation. The wooden deck was built over the future concrete pool patio.**
- 4. Now the applicants propose a new swimming pool, decking and retaining walls to the west and outside of the building envelope in the Mountain Overlay Scenic Corridor 1 District.**
- 5. 9-21-1: Mountain Overlay District Statement of Intent and Purposes
*The intent of the mountain overlay district is to direct development to land outside of the mountain overlay district. Only when no sufficient available area for a site alteration exists outside of the mountain overlay district and all other criteria under this chapter have been met may a site alteration occur within the district. Site alterations should not include land within the 100- year floodplain, floodway, designated wetland areas, and avalanche hazard within "available area",***

as defined in the criteria. Even then, the site alteration must be located at the lowest point within the district which will minimize its disturbance and hillside visibility. The design review standards of evaluation of this chapter, and any conditions of approval, should be used to ensure that any site alteration will be limited in its bulk, design, and use of materials to minimize its site disturbance and visibility from a reference road. The size of "sufficient available area" shall depend upon the facts and circumstances of each application for site alteration permit, and is not necessarily dependent upon the specific plans of an applicant. For example, an area may exist outside of the mountain overlay district that would be sufficient in all respects for a one-story, two thousand (2,000) square foot residential dwelling. The mere fact that the applicant's plans specify a ten thousand (10,000) square foot residential dwelling that could only be constructed within the mountain overlay district because of lot configuration and topography would not necessarily change the fact that a "sufficient available area" exists outside the mountain overlay district, albeit for a smaller home than the applicant desires. In other words, an applicant may not create a so called lack of "sufficient available area" outside of the mountain overlay district merely by enlarging the scope of the proposed site alteration.

6. The proposed location is in the MOD SC-1, visibility is determined only from Highway 75.

Section I. General Facts

1. The Land Use office received the Mountain Overlay District Site Alteration Permit application on 1-04-2023. The application was certified as being generally complete on 1-5-2022.
2. Public notice for the May 25, 2023 public hearing for this application was provided as follows:
 - a) Legal notice was sent to the Idaho Mountain Express for publication on 5-10-2023;
 - b) Notification was sent to surrounding property owners within three hundred (300) feet of the subject property on 5-8-2023 and to all county political subdivisions on 3-29-2023.
 - c) An on-site notice was posted on or before 5-26-2023, at least 7 days prior to hearing as evidenced by the affidavit in file;
 - d) The application materials were posted on the website on 5-17-2023.

► **Motion:** Upon motion by Commissioner _____, second by Commissioner _____, and by a vote of ____ to _____, the Commission finds notice to be adequate for the May 25, 2023, hearing and in compliance with I.C. § 67-6512 and § 9-25-4 of the Zoning Ordinance.
3. Public notice for the April 13, 2023 public hearing for this application was provided as follows:
 - a) Area of City Impact notice was emailed on March 14, 2023.
 - b) Legal notice was sent to the Idaho Mountain Express for publication on 3-23-2023;
 - c) Notification was sent to surrounding property owners within three hundred (300) feet of the subject property on 3-29-2023 and to all county political subdivisions on 3-29-2023.
 - d) An on-site notice was posted on or before 4-6-2023, at least 7 days prior to hearing as evidenced by the affidavit in file;
 - e) The application materials were posted on the website on March 29, 2023.

► **Motion:** Upon motion by Commissioner Giannettino, second by Commissioner Stout, and by a vote of 6 to 0, the Commission finds notice to be adequate for the April 23, 2023, hearing and in compliance with I.C. § 67-6512 and § 9-25-4 of the Zoning Ordinance.

4. **Disclosures: Site Visits? Ex. Parte Communications? Economic Conflicts? Other Conflicts?**

► *Ex parte* contacts involve a decision-maker's receipt of any information pertaining to an open application on a quasi-judicial matter. (ie: emails, phone calls, conversations) The undisclosed receipt and consideration of *ex parte* information denies interested persons their right to review and respond to this off the record information, resulting in a due process violation and more generally, an unfair process.

Site visits were performed on May 3rd and 9th, 2023.

5. The following information and exhibits are attached hereto by reference and were received at the Land Use office on 1-4-2023, unless otherwise indicated:

A Exhibits- Application

- A-1:** Completed Application
- A-2:** Revised Plans 1-6-23 MOD
- A-3:** Response to Standards of Evaluation
- A-4:** Email from Applicant 4-3-2023
- A-5:** Applicant Response to Staff Report April 13, 2023
- A-6:** Revised Site Plan 5-1-23
- A-7:** Well Pump Deed
- A-8:** Well Declarations
- A-9:** Alpine Drive Association
- A-10:** Narrative
- A-11:** Pool Maintenance Email
- A-12:** Staking Plan
- A-13:** Dornin Wetlands
- A-14:** Water Right Report
- A-15:** Compliant Lighting

B Exhibits- Agency Comments

- B-1:** County Engineer Loomis Review 1-28-2023

C Exhibits- Blaine County Supplements:

- C-1:** Avalanche Study dated July 1994
- C-2:** Avalanche Report 2017
- C-3:** GIS Aerial with MOD Overlay
- C-4:** Lake Creek Subdivision Plat 1962
- C-5:** Lake Creek Subdivision Amended Plat September 1995
- C-6:** 2018 Proposed Pool Placement
- C-7:** Aerial of drainfield area requiring revegetation
- C-8:** Idaho Statute 18-6409 Disturbing the Peace
- C-9:** Email Correspondence Between Staff and Applicant's Rep 6-1-23

D Exhibits- Public Comment: None as of the date of this report

- D-1: Sheila Naghsh April 10, 2023
- D-2: Christina and George Berridge
- D-3: Philip and Joann Gerhart
- D-4: Colin and Louise Poole April 12, 2023
- D-5: Sheila Naghsh April 19, 2023

**Section II. Evaluation of Site Alteration Permit
Design Review Standards of Evaluation
Pursuant to §9-21-5 of the Zoning Ordinance**

Applicant responses are in Exhibit A-1b. **Staff comments are in bolded font.** *Code citations are italicized.*

Pursuant to §9-21-5 (D) of the Zoning Regulations, *the applicant has the burden of demonstrating compliance with this chapter, including each of the following design review standards of evaluation. Before approving or conditionally approving a site alteration permit, the commission shall review and find adequate evidence that the proposed development or site alteration meets the following standards:*

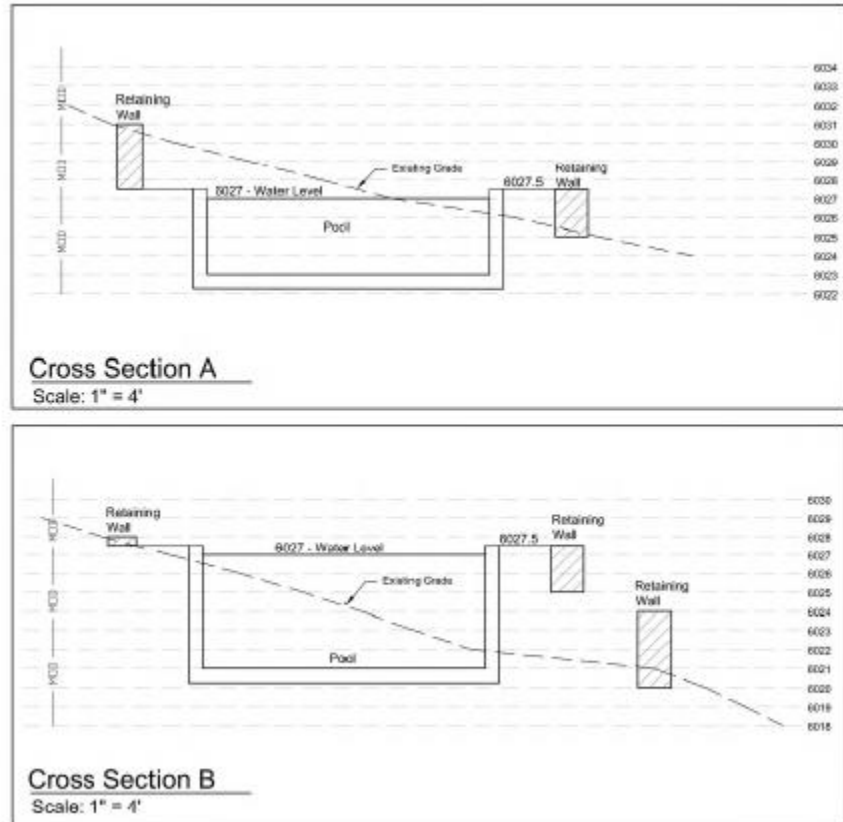
1. No sufficient available area for the site alteration exists on the lot outside of the mountain overlay district. "Available area" excludes land located within the 100-year floodplain, floodway, wetlands, avalanche or landslide hazards created by off site conditions where such environmental concerns outweigh the hillside concerns for the particular project. Existing structures that are nonconforming to this chapter may be improved, moved, or replaced within the mountain overlay district, provided the commission finds that the proposal is less nonconforming than what is existing and is in substantial compliance with subsections D2 through D13 of this section.

► **Staff Comment:** The Commission may want to consider if the proposed pool placement meets this standard. An alternate location was proposed in 2018 partially within the building envelope. The 2018 location is within the Mountain Overlay yet can be categorically excluded due to its location within the building envelope, directly adjacent to the residence. Some portions of the 2018 pool are installed, which would minimize future disturbance if kept in that location. See History #5 for details on the intent of the Mountain Overlay Chapter. The 2018 pool placement within the building envelope sits against the residence, which is visible, this potentially minimizes visibility of the pool from Highway 75.

2. Visibility of the site alteration as viewed from reference roads shall be minimized through design, landscaping and siting. Except where extraordinary circumstances (or natural circumstances as defined in subsection D3 of this section) exist that are peculiar to the physical characteristics of the site, site alterations, particularly buildings, other structures, and hillside roads, are less visible the lower in elevation they are as determined by topographic contour lines. New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. The maximum bulk of structures shall be hidden or minimized by design, landscaping and siting. Landscaping shall blend harmoniously with the surrounding area, and shall not create excessive contrast with the surrounding area.

► **Staff Comment:** The 1,125 square foot swimming pool does not seem to be visible because of the sunken nature of an inground pool. However, the retaining walls, which make the pool possible, will be visible. The lower retaining wall at its highest point is 6 feet from natural grade. A second lower wall extends another 3 feet with a total of 9 feet of retainage below the pool. The upper retaining

wall is sloped with a maximum height of 5.5 feet above the pool. Retaining wall materials may be boulders as shown on page L2 of the plan set and below.



Boulder Wall Example

- **DESIGN:** The need for hillside retainage may make this location more visible than the 2018 location. Lighting will increase the visibility. The proposed lighting does not meet the Outdoor Lighting Chapter requirements.

9-29A-4: OUTDOOR LIGHTING STANDARDS:

A. Light Fixtures:

1. Fixtures shall be mounted such that no light is emitted above the horizontal plane of the fixture.

- **SITING:** The pool location is outside the Mountain Overlay proper yet in the SC1 boundary.

9-2-1: Definitions Of Words And Terms

SCENIC CORRIDOR: An area of significant scenic importance to Blaine County as a representation of the rural character and general attractive beauty of the County. Scenic

corridor 1 (SC1) includes the area on both sides of State Highway 75 north of the east to west Glendale Road intersection that is visible from said State Highway 75. The designated scenic travelway contained within SC1 is State Highway 75, carrying the largest volume of commuter, recreational, and tourism traffic in Blaine County.

The previous proposed location was less visible and required less retainage. Development within the building envelope was categorically excluded in 2018. The previous location is also partially installed, requiring less construction disturbance to the hillside.

- **LANDSCAPING:** Evergreen trees exist below the proposed improvements on the site. The site and surrounding neighborhood is wooded which adds screening to the project.

The proposed pool location is in the MOD SC-1, visibility is determined only from Highway 75. If the pool is heated in the winter, the retaining walls may not retain snow cover and will be visible from State Highway 75 as well as steam from the proposed pool.

3. Site alterations for property protection and hillside stabilization and rehabilitation due to natural circumstances may be permitted, N/A Not a rehabilitation project.

4. The site alteration, and any grading and excavation relating thereto, shall include measures or designs to mitigate the risk of soil erosion, silting of lower slopes, slide damage, flooding, and any other geologic instability. All excavation, grading and fill shall be revegetated as provided herein (except for roadway surfaces) and otherwise stabilized to control erosion.

- ▶ **County Engineer Comment:** The proposed site modification to accommodate the construction of pool addresses the risk of soil erosion, silting of lower slopes, slide damage, flooding, and any other geologic instability, as stated in Standard of Evaluation #4, by proposing minimal impacts to the adjacent slopes, non-structural retaining walls to account for resulting elevation and grade changes, and re-stabilization of disturbed slopes with indicated implementation of revegetation methods and restricting maximum constructed slopes to a 2H:1V grade. The structural design of the pool is not included with the application, but this review assumed the pool structure will be designed according to required standards associated with the site.

Staff Comment: The applicant proposes 3,850 square feet of disturbance with 350 cubic yards of excavated fill to be removed from the site. It is unclear if the applicant is addressing fill to be removed only for the swimming pool or if this includes grading for the retaining walls as well. The applicant addresses the possibility of soil erosion, silting, slide damage, flooding, or other geologic instability with the retaining walls. Revegetation is addressed in possible Conditions 2 and 3 below.

Possible Conditions:

2. Financial Security shall be retained by Blaine County in the amount of 150% of the estimated landscaping cost of the approved landscaping for a period of five years or until it has been demonstrated to the planning director that the approved landscaping is has been adequately established.
3. Silt fence shall be placed below all disturbed ground until vegetation is established and the soil stabilized. Photos shall be provided to the planning office demonstrating silt fencing has been placed as required prior to commencing grading, excavation and construction.

The applicant has provided well information which does not address how much water can be drawn from the well. Staff believes that the initial filling of the swimming pool and revegetation of disturbed area will

exceed the domestic exemption of 13,000 gallons per day. Staff suggests a letter of approval from IDWR to fill and maintain the swimming pool from the community well.

According to the IDWR website, the water consumption of a domestic swimming pool is 10 gallons of water per day per swimmer.

A drywell is proposed on a lower elevation below the pool. The applicant should address how much water this one drywell will drain and will it keep all pool water onsite if there is a failure of the pool.

5. *The site alteration shall comply, where reasonable, with the requirements of the avalanche overlay district.*

- ▶ **Staff Comment:** A majority of Lot 47A is located in the red (high hazard) or blue (low hazard) avalanche zone (see Exhibits C-1 and C-2). A swimming pool is a permitted use in the blue avalanche zone because it is not a habitable structure. However, the Commission should consider impacts to down slope property owners with large amounts of water if a slide were to hit the proposed pool.

Possible Condition 8 Pursuant to 9-22-4C: Natural barriers to potential avalanche slide areas including vegetation shall not be removed or altered so as to increase the degree of avalanche potential.

6. *Any proposed building or other structure shall remain below the skyline and shall be sited in such a manner so as not to create a silhouette against the sky as viewed from any reference road.*

- ▶ **Staff Comment:** The proposed structure is not skylined as viewed from any reference road.

7. *Manmade slopes, road alignments, driveways, improvements, grading, excavation, berming, and fill activities shall conform as closely as possible to the natural terrain. Alteration and severe scarring of the natural drainage of the site shall be minimized and mitigated, except where natural circumstances exist as defined in subsection D3 of this section, in which cases protective factors of the site alteration shall be considered. Hillside roads shall also meet all other applicable road or driveway standards under county ordinances and adopted codes, including, but not limited to, those for grades and emergency vehicles. Existing roads/driveways to existing nonconforming structures located within the mountain overlay district may be moved or improved to reduce the degree of noncompliance with requirements for grades and emergency vehicles.*

- ▶ **County Engineer Comment:** See County Engineer comments in Exhibit B-1. “The man-made slopes, grading, excavation and fill activities, as described in Standard of Evaluation #7, appear to locate the proposed pool in a “bench” area of the larger hillside slope, so somewhat “conform[ing] as closely as possible the natural terrain.” Natural drainage will be interrupted by the pool, and no surface or subsurface water drainage facilities are indicated, other than the pool itself. The slope stability analysis provided by the Geotechnical Engineer addresses the stability of the natural slopes above and below the proposed pool. This analysis does address the proposed constructed 2:1 slopes and the proposed non-structural retaining walls, but this review assumes this analysis would have stated alternatives to the proposed slope and wall designs, if the designs were of concern.

This review notes the proposed pool is located outside of the platted building envelope, and in a location platted for septic system drainfields. The Geotechnical Engineer’s slope stability analysis indicates drainfields have been installed as part of recent additions to the residence, and the site plans indicates these drainfield locations are now located in an area along the westerly property line.

This review also notes no drainage system for the proposed pool is indicated, and refers the owners to requirements associated with pool water disposal. Regarding this MOD application, pool water drainage should not detrimentally impact existing or proposed slope stabilities, or adjacent properties. “

► **Staff Comment:** The proposed retaining walls and flat surface of the pool do not conform to natural grade. A swimming pool surface is inherently flat and cannot conform to natural slope grade. The Commission should consider if this is an appropriate use on the hillside in a scenic corridor. More information should be provided on drainage of the pool water and mitigation of any impacts that may occur. Downslope neighbors may be impacted by water from the pool in the cases of intentional or unintentional drainage.

8. *Native or native compatible vegetation shall be preserved to the greatest extent possible, and revegetation adjacent to residences shall be with low combustible plant species. Revegetation and rehabilitation of disturbed areas shall utilize plant materials harmonious and/or native to the area. The method for control and prevention of noxious weeds shall be demonstrated. Disturbed areas shall be regraded, landscaped or revegetated in a timely manner after completion of the site alteration activities. Components of the revegetation plan shall include the techniques that will be used to ensure the establishment of the proposed vegetation for a period of not less than five (5) years.*

► **Staff Comment:** It appears that disturbed area from the installation of the septic system and drainfield in 2017 were revegetated with non-native vegetation. Along with revegetation of the disturbed area of the pool, the Commission should consider requiring the applicant to revegetate the grass installed in 2017, see Exhibit C-6 Aerial of drainfield to be re-vegetated.

Suggested Condition 2: Financial Security shall be retained by Blaine County in the amount of 150% of the estimated landscaping cost of the approved landscaping for a period of five years or until it has been demonstrated to the planning director that the approved landscaping is has been adequately established.

9. *Exterior building materials shall be of nonreflective materials. The visibility of hillside development shall be lessened by limited glazing and exterior lighting, and by use of materials and colors compatible with the natural surrounding setting. Roofs shall be designed to minimize the visibility of the structure. Reflective metal roofs are prohibited; nonreflective metal roofs may be approved.*

► **Staff Comment:** The Commission may consider a condition requiring the pool to be covered when not in use. See suggested condition 6.

10. *All outdoor lighting shall comply with the outdoor lighting requirements of chapter 29A of this title.*

► **Staff Comment:** The proposed lighting does not meet the Outdoor Lighting Chapter requirements.

9-29A-4: OUTDOOR LIGHTING STANDARDS:

A. Light Fixtures:

1. *Fixtures shall be mounted such that no light is emitted above the horizontal plane of the fixture.*

Lighting on a hillside is even more important to regulate as other homes are below the lighting. Additional conditions such as hours of lighting operation could be considered.

11. *Construction proposed as part of a site alteration permit application shall comply with other applicable codes and ordinances, including, but not limited to, the fire code; title 7, chapter 3 of this code; and the building code, as amended, in effect at the time.*

► **Staff Comment:** This should be a condition of approval.

Suggested Condition 4: The applicants shall comply with all applicable Federal, State and County regulations. The applicants shall apply for and obtain a building permit prior to commencement of any further site preparation work or construction, and shall comply with all applicable zoning, building, fire and health district regulations. As with any building permit application, review and approval of the building permit application and plans by South Central District Health and the responding fire district prior to submittal to the Blaine County Building Department are required.

12. Any proposed new road or driveway is necessary to access a building site or building that was lawfully approved under this title.

▶ **Staff Comment: N/A, no new road or driveway is proposed.**

13. If the applicant or landowner with respect to an application for a site alteration permit under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof. . . **N/A**

14. When the proposed use involves a potential contaminant source or potential contaminant as set forth in appendix A of this title, on file in the county, and is located within a wellhead protection area the applicant has adequately demonstrated that the project has been designed to mitigate any adverse impact to a potable water source.

▶ **Staff Comment: N/A The subject parcel is partially within a wellhead protection district according to the Blaine Co. GIS. Domestic swimming pools are not on the EPA Source Water Protection list.**

Section III. Decision and Possible Conditions

Pursuant § 9-21-5 (E), § 9-30-5, and § 9-25-5 (A) of the Zoning Ordinance:

▶ **Motion:** I move to (approve with conditions or deny) the proposed Mountain Overlay District Site Alteration permit application at 126 Alpine Drive, as presented and discussed at this Public Hearing, finding the application complies with the applicable criteria set forth under Title 10, Subdivision Regulations and Title 9, Zoning Regulations, subject to the following conditions:

If the Commission finds that there is adequate evidence in the record that the proposed development meets the design review standards of evaluation as set forth in Section II, the Commission may attach reasonable conditions including, but not limited to:

Possible conditions of approval:

1. *The exterior building materials will be as approved by the Planning and Zoning Commission and in the record as Exhibit A-2; Sheet 4.0.*
2. *Financial Security shall be retained by Blaine County in the amount of 150% of the estimated landscaping cost of the approved landscaping for a period of five years or until it has been demonstrated to the planning director that the approved landscaping is has been adequately established.*

3. *Silt fence shall be placed below all disturbed ground until vegetation is established and the soil stabilized. Photos shall be provided to the planning office demonstrating silt fencing has been placed as required prior to commencing grading, excavation and construction.*
4. *The applicants shall comply with all applicable Federal, State and County regulations. The applicants shall apply for and obtain a building permit prior to commencement of any further site preparation work or construction, and shall comply with all applicable zoning, building, fire and health district regulations. As with any building permit application, review and approval of the building permit application and plans by South Central District Health and the responding fire district prior to submittal to the Blaine County Building Department are required.*
5. *Expiration of Permit: This site alteration permit shall expire one year following the date of its approval if the site alteration has not been substantially commenced. If good cause for delay in commencement of construction is shown, the Administrator may once only extend the period for commencement of construction for a period not exceeding one year, provided application is made for an extension before expiration of the permit.*
6. *The swimming pool shall be covered when not in use. The pool cover shall be made of non-reflective materials.*
7. *All existing or future lighting shall comply with the Outdoor Lighting Chapter prior to building permit.*
8. *Natural barriers to potential avalanche slide areas including vegetation shall not be removed or altered so as to increase the degree of avalanche potential.*
9. *A letter of approval from IDWR to fill and maintain the swimming pool from the community well.*

10. Other conditions? Well metering?

The approval granted herein is based on the application as submitted by the applicant and the conditions stated herein. Any material changes and deviations in design from the approved plan shall be subject to further zoning review and may result in further review at the applicant's expense by either the County Engineer or the Planning and Zoning Commission.