



MINUTES

**CITY OF BROOKINGS
COMMON COUNCIL MEETING
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon
May 24, 1993 - 7:00 p.m.**

I. CALL TO ORDER

Mayor Davis called the meeting to order at 7:02 p.m.

II. ROLL CALL

Council Present: Mayor Tom Davis, Councilors Nancy Brendlinger, Bob Hagbom, Dave Scott, Councilor Larry Curry

Staff Present: City Manager Dennis Cluff, Administrative Assistant Donna Van Nest, City Attorney Martin Stone, City Engineer Grant Cramond, Planning Director John Bischoff

Media Present: Tracy Reed, Curry Coastal Pilot; Martin Kelly, KCRE; Marge Barrett, KURY

IV. CEREMONIES/APPOINTMENTS/ANNOUNCEMENTS

V. PUBLIC HEARINGS

- 1. Appeal of Planning Commission Decision - M.F. Gorski Construction, Inc.**

Mayor Davis opened the public hearing at 7:05 p.m.

Councilor Brendlinger declared that she has done business in the past with the applicant's engineering firm, but stated that this would not influence her decision.

Mayor Davis declared that he has in the past done business with the applicant's attorney, but stated this would not influence his decision.

Planning Director John Bischoff explained the background of the project.

Alex Forrester presented the case for the applicant. John Babin answered legal questions pertaining to the project. Tim Bossard answered technical concerns. The applicant's Appeal and appropriate attachments are made a part of the record and are attached to these minutes.

At 8:52 p.m., Mayor Davis recessed the public hearing and the council meeting and requested that the senior students from Brookings-Harbor High School be allowed to make their presentation. Council agreed.

VI. SCHEDULED PUBLIC APPEARANCES

1. Brookings-Harbor High School Senior Class - Presentation - Azalea City Park Playground Project.

Kim Staats, President of the senior class (class of '93) of Brookings-Harbor High School, made a presentation concerning the proposed playground project at Azalea City Park. Council was advised that a contest had been held and a 7-year old had come up with the proposed name for the playground, "KID TOWN". The senior class has contributed \$650 toward the playground project. NO ACTION TAKEN.

At 9:05 p.m., Mayor Davis reopened the public hearing.

Planning Director John Bischoff presented the staff position.

Mayor Davis asked for testimony from proponents.

Andy Drago, Dawson Tract resident, expressed his opinion that wide streets cause speeding, parking problems and police problems. He likes the idea of the 22' street with no parking on the street.

George Ciapusci, 285 Allen Lane, a member of the Planning Commission, explained why he voted no on the PUD at the Planning Commission level, even though he wanted to vote yes and was in favor of the project.

Mayor Davis asked for testimony from opponents. There being none, Mayor Davis asked for testimony from interested parties.

Frances Howard, Dawson Tract resident, stated that she likes the attitude of the developer.

There being no further testimony, Mayor Davis closed the public hearing at 9:57 p.m.

Councilor Hagbom moved to accept the proposed "Oceanside Estates II" 21-unit project as a P.U.D., and further to direct the developer to submit findings to the city attorney to definitively qualify the project as such and further, meet all additional requirements which might include, but not be limited to, sewer line extensions, which motion was seconded by Councilor Scott. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

Nays: None

Motion carried; proposed "Oceanside Estates II" 21-unit project accepted as a P.U.D., and further the developer is directed to submit findings to the city attorney to definitively qualify the project as such and further, meet all additional requirements which might include, but not be limited to, sewer line extensions.

2. Amendment to the Land Development Code

Mayor Davis opened the public hearing at 10:40 p.m.

Planning Director John Bischoff explained that this amendment to the Land Development Code adds Section 84 Public Hearing Procedure to the Land Development Code. This new section will consolidate and update the procedures for public notice of Planning Commission and City Council hearings on land use matters.

Mayor Davis asked for testimony from proponents, opponents and interested parties. There was no response.

Mayor Davis closed the public hearing at 10:43 p.m.

Councilor Scott moved to approve the proposed amendment to the Land Development Code, adding Section 84 Public Hearing Procedure, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

Nays: None

Motion carried; proposed amendment to the Land Development Code, adding Section 84 Public Hearing Procedure, approved. (Ordinance No. 93-O-446.O follows)

IX. ORDINANCES/RESOLUTIONS/FINAL ORDERS

A. Ordinances

1. Ordinance No. 93-O-446.O - An ordinance amending the Land Development Code by adding Section 84.

Administrative Assistant Donna Van Nest read Ordinance No. 93-O-446.O into the record in its entirety.

Councilor Hagbom moved to adopt Ordinance No. 93-O-446.O by first reading, which motion was seconded by Councilor Scott. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Hagbom, Curry, Scott, Mayor Davis

Nays: None

Motion carried; Ordinance No. 93-O-446.O adopted by first reading.

Administrative Assistant Donna Van Nest read Ordinance No. 93-O-446.O into the record by title only.

Councilor Curry moved to adopt Ordinance No. 93-O-446.O by second reading, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Curry, Hagbom, Curry, Scott, Mayor Davis

Nays: None

Motion carried; Ordinance No. 93-O-446.O - An ordinance amending the Land Development Code by adding Section 84. - adopted by second reading. [Effective June 22, 1993]

VII. ORAL REQUESTS AND COMMUNICATIONS FROM THE AUDIENCE

VIII. CONSENT CALENDAR

A. Approval of Council Meeting Minutes

- 1. May 10, 1993 Regular Council Meeting**
- 2. May 17, 1993 Special Council Meeting**

(end Consent Calendar)

Councilor Curry moved to approve the Consent Calendar as presented, which motion was seconded by Councilor Scott. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

Nays: None

Motion carried; Consent Calendar consisting of:

Approval of Council Meeting Minutes

1. May 10, 1993 Regular Council Meeting
2. May 17, 1993 Special Council Meeting

approved.

IX. ORDINANCES/RESOLUTIONS/FINAL ORDERS

B. Resolutions

1. **Resolution No. 93-R-560 - A resolution to adopt a supplemental budget to appropriate a \$15,000 grant from the Department of Land Conservation and Development**

The Department of Land Conservation and Development granted the City of Brookings \$15,000.00 for the establishment of an urban reserve boundary. This grant needs to be adopted into the current year budget in order to spend the money.

Councilor Curry moved to adopt Resolution No. 93-R-560, which motion was seconded by Councilor Scott. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

Nays: None

Motion carried; Resolution No. 93-R-560 - A resolution to adopt a supplemental budget to appropriate a \$15,000 grant from the Department of Land Conservation and Development - adopted.

X. COMMITTEE REPORTS

- C. Planning Commission**
- D. Parks and Recreation Commission**
- E. Golf Board**
- F. Chamber of Commerce**

XI. STAFF REPORTS

A. Community Development Director

- 1. Acceptance of water and wastewater improvements for Phase III of Harris Beach PUD**

Councilor Brendlinger moved to direct staff to accept the improvements for Phase III of Harris Beach PUD with the condition that all documentation be presented to staff and approved, and following that approval certification of occupancy can be issued without coming back before council, which motion was seconded by Councilor Scott. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

Nays: None

Motion carried; improvements for Phase III of Harris Beach PUD accepted with the condition that all documentation be presented to staff and approved, and following that approval certification of occupancy can be issued without coming back before council.

B. Police Department

C. City Manager

D. City Attorney

XII. REMARKS FROM MAYOR AND COUNCILORS

A. Mayor

1. Golf Course Project Update

Jim Cole, Golf Board Chair, recognized the Brookings Golf Board members, Bob Hummel, Yvonne Dunn, Marie Hansen, and Mayor Davis.

Bill Stone and Bob McCallister of WJS Golf, were in attendance. Bill Stone briefed the council on the current status of the golf course project.

The council questioned Mr. Stone about a notice of claim against Caldwell, Read and Associates involving the golf course property. Mr. Stone stated that he had no knowledge of the claim, but would be directing his attorneys to pursue the matter immediately. The council directed City Attorney Martin Stone to deal with the matter of the claim, and requested that Bill Stone settle the matter of the alleged claim within 10 days. No formal action taken.

2. **Urban renewal ballot measure - "Ballot Measure 1 - allows voter approval of urban renewal bond repayment outside limit".**

The council was presented with information pertaining to the state-wide ballot issue. No action taken.

B. Council

1. **Resolution No. 93-R-561 - A resolution exempting paving of Marine Drive from the requirements of competitive bidding, making findings in support of the exemption and authorizing expenditure of funds.**

Councilor Brendlinger declared a potential conflict of interest and stepped down from the bench.

City Attorney Martin Stone presented council with Resolution No. 93-R-561, which would make possible a payback to the property owners who previously paid for the paving of Marine Drive.

Councilor Curry moved to adopt Resolution No. 93-R-561, which motion was seconded by Councilor Scott. The clerk called the roll with the following results:

Ayes: Councilors Curry, Hagbom, Scott, Mayor Davis

Nays: None

Motion carried; Resolution No. 93-R-561 - A resolution exempting paving of Marine Drive from the requirements of competitive bidding, making findings in support of the exemption and authorizing expenditure of funds. - adopted.

Councilor Brendlinger returned to the bench.

EXECUTIVE SESSION - ORS 192.660 (1)()

XIII. ADJOURNMENT

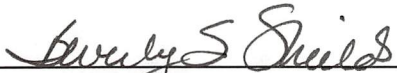
Councilor Scott moved to adjourn, which motion was seconded by Councilor Curry; **motion carried unanimously.**

Mayor Davis adjourned the meeting at 11:54 p.m.



Tom Davis
Mayor

ATTEST:



Beverly S. Shields
City Recorder

April 26, 1993

Mr. Dennis Cluff, City Manager
City of Brookings
898 Elk Drive
Brookings, OR 97415

RECEIVED
APR 27 1993

Job
CITY OF BROOKINGS
With check # 3156
\$ 125 ~~No~~ / 100

**RE: Appeal to Planning Commission Decision,
File No. SUB-3-93/PUD
21-Lot Planned Unit Development and Subdivision
M. F. Gorski Construction, Inc., Applicant**

Dear Dennis:

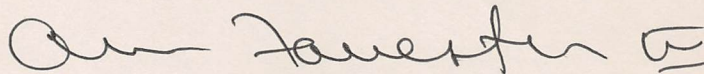
Attached hereto please find our Application for appeal of the Planning Commission action on File No. SUB-3-93/PUD, and our Reasons for Appeal document.

The attached appeal documents set forth the "specific reasons for the appeal based upon pertinent, applicable sections of this code" as required by the Brookings Land Development Code, Section 156.010, and have been prepared with the benefit of legal counsel. We understand from your staff that submittal of this appeal request by Tuesday, April 27, will qualify us for an appeal hearing by the Brookings City Council on Monday, May 10, with a Council workshop review on Monday, May 3. The Applicant and his representatives plan to attend these meetings.

Full color copies of Oceanside Estates II, A Planned Community, Neighborhood Circulation Plan for the Dawson Tract Area, and Dawson Tract Drainage Basin, are being prepared and will be in your hands by Tuesday, April 27, for distribution to the Mayor and City Councilors as part of their packet prior to the May 3 Council work session.

Thank you for receiving this appeal request and for your consideration in this matter. If you have any questions regarding our appeal, please contact me at 479-4603. Thank you.

Sincerely,



Alex M. Forrester III
Principal



cc: M.F. Gorski, Owner
John Babin, Project Attorney
T. J. Bossard, Project Engineer

ALEX FORRESTER & ASSOCIATES
Community and Land Use Planning

303 NE "E" Street
Grants Pass, Oregon 97526
503-479-4603
FAX: 503-476-8955

**BEFORE THE CITY COUNCIL
OF THE CITY OF BROOKINGS
CURRY COUNTY, OREGON**

**IN THE MATTER OF A CONDITIONAL USE)
PERMIT TO AUTHORIZE DEVELOPMENT OF)
OCEANSIDE ESTATES II, A 21-LOT PLANNED)
UNIT DEVELOPMENT AND SUBDIVISION)
LOCATED ON DAWSON ROAD IN THE)
DAWSON TRACT AREA, AND PROPOSED)
AS AN ADDITION TO OCEANSIDE ESTATES I,)
A PREVIOUSLY APPROVED PLANNED UNIT)
DEVELOPMENT AND SUBDIVISION OF 13 LOTS.)
)
**M. F. GORSKI CONSTRUCTION, INC.: APPLICANT)
Planning Action SUB-3-93/PUD)****

**APPEAL
PLANNING COMMISSION ACTION
OF APRIL 20, 1993**

I

APPEAL SUMMARY

Oceanside Estates II is a 21-lot Planned Unit Development and Subdivision, and was submitted as an addition to Oceanside Estates I, a Planned Unit Development previously approved by the City of Brookings Planning Commission.

On Tuesday, April 20, 1993, the Planning Commission reviewed the City Staff Report as presented by City Planner John Bischoff, the Applicant's testimony as presented by Project Planner Alex Forrester and Project Engineer T. J. Bossard, and proponent testimony. There was no opponent testimony. After deliberations, the Planning Commission came to a tie vote on an approval motion of Oceanside Estates II. Due to this tie vote, the Commission determined that a denial was required, and the Chairman requested that a Final Order be so prepared.

This appeal document sets forth the "specific reasons for the appeal based upon pertinent, applicable sections of this code" as required by the Brookings Land Development Code (BLDC), Section 156.010. These reasons may be summarized as follows:

1: Tie Vote by Planning Commission

The tie vote by the Planning Commission appeared to indicate a balance of opinion and not a preponderance of opinion for approval or denial. Therefore, it is appropriate that City Council resolve the matter.

2: Project Allegedly Not a PUD

Planner Bischoff alleged in his Staff Report that "the project did not meet the requirements for a PUD."

Applicant demonstrates below that in fact the BLDC does not define "Planned Unit Development", and that the PUD as submitted meets the stated purpose of the PUD (BLDC Section 116.010), and meets the general requirements for a Planned Unit Development submittal (BLDC Section 116.030).

3: Project Allegedly Inhibits Access to Adjoining Properties

The Staff Report alleges that "a street plan for this area [Dawson Tract] has not been adopted, and that therefore the approval of the proposal as submitted could inhibit access to adjoining properties."

In fact, Applicant had earlier submitted a document titled Neighborhood Circulation Plan for the Dawson Tract Area, providing a traffic analysis and plan for the entire Dawson Tract "loop road" area, given full development of this area. This submittal was in conformance with BLDC Section 172.020(B-2) requiring said Neighborhood Circulation Plan.

Further, testimony by Project Engineer Bossard quoted from NAHRF (National Association of Homebuilders Research Foundation) and AASHTO (American Association of State Highway and Transportation Officials) standards indicating that the proposed private street exceeds both standards of these professional organizations.

Further, it was known to Planner Bischoff that several of the traffic alternatives presented to the residents of the Dawson Tract area by City staff included alternatives that would allow the development of Oceanside Estates II as submitted. This fact was not presented to the Planning Commission.

4: Project Allegedly Affects Utility Service to Adjoining Properties

The Staff Report alleges (page 7) that the "topography of the area and the location of the sewer mains in Dawson Road and Passley Road are such that this project could severely affect the ability to provide sewer service and storm drainage to the center of the area between Dawson and Passley Road."

As part of the Development Condition requirements of the approval of Oceanside Estates I, Applicant's Project Engineer had presented the Preliminary Engineering Report—Dawson Tract Drainage Basin outlining the drainage basins of the Dawson Tract, the existing drainage facility, making recommendations for storm drainage of the area, and providing in Exhibit B, Dawson Tract Utility Service Concept Plan, a provision for utilization of the Dawson Tract area that

would support at least two of the traffic plan concepts presented by City staff to Dawson Tract residents. Further, Applicant's representatives had engaged in intensive discussions with City staff regarding same, and had agreed to provide storm drainage through the project to Culvert D, and had agreed to provide sanitary sewer easements on the east side of the subject property.

These facts had to be relayed to the Commission by the owner's representatives.

5: Staff Report Provided No Positive Action Alternative for the Planning Commission

Normally, Planning Commission and Councils are provided with a range of action alternatives, including approval, denial or postponement of action on the proposal. The approval alternative normally includes suggested Development Conditions. Only the "denial" option was presented in the Planning Commission Staff Report by Planner Bischoff. No Development Conditions were presented.

Applicant contends that this omission may have confused the Planning Commission about what their options were.

II

PROCEDURAL BACKGROUND

On January 5, 1993, Applicant's representatives submitted an application for Oceanside Estates, including both the West Side (Oceanside Estates I) and the East Side (Oceanside Estates II) as part of one application. After review by the Site Plan Review Committee, and at the request of Planning Director, John Bischoff, the Applicant split the proposal and on January 13, 1993, submitted application for Oceanside Estates, A Planned Unit Development and Subdivision consisting of 13 dwelling units on the west side of Dawson Road. This submittal was deemed incomplete. On February 10, 1993, a complete submittal was rendered, gained a favorable staff recommendation, and was unanimously approved by the Planning Commission on March 2, 1993, subject to certain conditions of development. These development conditions were accepted by Applicant, and the appeal period for such action has passed. Applicant is preparing Construction Documents for Oceanside Estates I, as approved, at this time.

On March 30, 1993, Oceanside Estates II was reviewed by the Subdivision Review Committee for a 21-dwelling unit Planned Unit Development and Subdivision, on the east side of Dawson Road. The matter was reviewed by the City of Brookings Planning Commission on April 20, 1993.

The Planning Commission received the Staff Report from Planning Director Bischoff, and the Applicant's presentation from Alex Forrester, Project Planner, and T. J. Bossard, Project Engineer. Proponent testimony was received, and there was no opponent

testimony. The Planning Commission deliberated, and the vote resulted in a tie. After discussion, the Planning Commission determined that a tie vote had to be the equivalent of denial, and a Final Order was so requested.

III

REASONS FOR APPEAL

Applicant requests appeal of Planning Commission action on File No. SUB-3-93/PUD for the following reasons:

APPEAL REASON NO. 1: TIE VOTE. BY PLANNING COMMISSION

The Final Order prepared by Planner Bischoff contains findings as though a denial motion was adopted by the Commission. In fact, no denial motion was adopted by the Planning Commission, due to lack of second for the motion. A favorable motion received a tie vote by the Commission.

After discussion, the Commission determined that in past history a tie vote by the Planning Commission of the City Council had the results of a denial to the Applicant.

The tie vote appeared to indicate a balance of opinion and not a preponderance of opinion for approval or denial of the project. Therefore, it is appropriate that the City Council resolve the matter.

APPEAL REASON NO. 2: PROJECT ALLEGEDLY NOT A PUD

Planner Bischoff, alleges in his Staff Report that as originally submitted "the project did not meet the requirements for a PUD." He further stated that "the project contained no actually commonly owned areas...", and that the Oceanside II project "did not contribute to or particularly benefit from the common area" in Oceanside I, previously approved (Staff Report, page 5).

Section 8.010 of the City of Brookings Land Development Code (BLDC) does not in fact define "planned unit development".

Section 116.010 of the BLDC states the purpose of a Planned Unit Development. This statement includes the following:

"These provisions [for a planned unit development] are intended to allow developers the freedom to design and construct projects whose objectives could be inhibited by strictly applying the provisions of this code, thereby providing more harmony with site conditions, aesthetics, economy and similar considerations than might otherwise be possible." (Emphasis added.)

Applicant contends that the intent of the design submitted by the owner fully realizes this stated purpose of the PUD regulations. Applicant contends that this fact was fully demonstrated during the hearing by the Applicant's representatives.

Section 116.030 of the BLDC states the general requirements for a planned unit development.

Section 116.030(A) requires that a PUD application be "for an area not less than four (4) contiguous acres of residentially zoned property".

The subject property, as stated in the Applicant's submittal, contains 6.15 acres. It is zoned R-1-6, a residential zone. Therefore, Applicant contends that the application meets this general requirement for a PUD.

Section 116.030(B) states that the PUD application shall not substitute for a zone change, and that the application "shall not be used to justify or create unauthorized uses within the underlying zoning classification..."

Applicant notes that no zone change was requested. The uses requested were for single-family, detached dwelling units on lots a quarter acre in size.

The underlying zone is the R-1-6 zone. Single-family dwellings are a permitted use in the R-1 zone (BLDC Section 20.020[A]). The R-1-6 zone has a minimum lot area of 6,000 square feet (BLDC Section 20.050). The proposed lot sizes average over 10,000 square feet. Therefore, Applicant contends that the proposed PUD did not create "unauthorized uses" within the underlying zone. Therefore, Applicant contends that the application meets this general requirement for a PUD.

Section 116.030(C) states that "requirements pertaining to area, density, yards or similar dimensions, standards and criteria of the underlying zoning classification...shall be used as a guide in determining the proposal's compliance with the purposes and intent of the land development code."

Applicant contends that the Applicant's submittal booklet, titled Oceanside Estates II, A Planned Community, Project Summary and Findings of Consistency with Criteria for Approval, Findings of Fact 3.11 through 3.13 (page 20-22) demonstrates that the proposal met or exceeded all requirements of "area, density, yards or similar dimensions, standards and criteria" of the R-1-6 zone.

Therefore, Applicant contends that the application meets this general requirement for PUD.

Section 116.030(D) states that no PUD is to be approved in an "R" district "if the housing density of the proposed development will result in an intensity of land use greater than that permitted in the 'R' district." A gross density calculation is used.

As stated in the Applicant's booklet, in Finding of Fact 3.14 (page 22), the potential gross density for the subject property is 44 dwelling units, compared to the requested PUD approval for 21 dwelling units, less than 50% of the allowable density.

Therefore, the Applicant contends that the application meets this general requirement for a PUD.

Applicant contends that the "criteria" of "commonly owned open space", "private roads", etc., as referenced by Planner Bischoff appear to be derived only from his experience in other states, and not from the Ordinance provisions for the City of Brookings, as found in the Brookings Land Development Code. Applicant submits that the proposal does in fact meet the requirements for a PUD under the Brookings Land Development Code, and that Planner Bischoff's prior experience are not the criteria required by law to satisfy the requisites for a PUD submittal.

Applicant has vigorously demonstrated both the rationale for a planned development, and has explained in great detail both the need for a planned development to meet the owner's development intent, and how the proposed project in fact meet this rationale in his submittal booklet, in his submitted Findings of Consistency with Criteria for Approval and in his testimony. Applicant's description far exceeds the City's requirements of the BLDC for identification as a PUD.

Applicant maintains that it was totally inappropriate for Planner Bischoff to introduce criteria for PUD qualification other than those criteria contained in the Ordinance, and that this introduction of criteria not supported by the Code possibly confused Planning Commission members, or cast doubt on the validity of this application. Therefore, Applicant requests that the City Council review this decision on appeal.

APPEAL REASON NO. 3: PROJECT ALLEGEDLY INHIBITS ACCESS TO ADJOINING PROPERTIES.

Planner Bischoff alleges in the Staff Report that "a street plan for this area [Dawson Tract] has not been adopted", and implies that the approval of the proposal as submitted could inhibit access to adjoining properties (page 7, Criterion 3).

Prior to submission of Oceanside Estates II, Applicant submitted a Neighborhood Circulation Plan for the Dawson Tract Area, a document that provides a traffic analysis and plan for the entire Dawson Tract "loop road" area. This submittal was in conformance with **BLDC Section 172.020(B-2)** requiring that public streets shall either meet typical City standards, or shall:

"conform to a neighborhood circulation plan approved or adopted by city council, upon recommendation of the planning commission, to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical." (Emphasis added.)

Applicant contends that this submittal document, and the additional testimony submitted by Project Engineer T. J. Bossard and Project Planner Alex Forrester at the hearing, more than meet the requirements of BLDC Section 172.020(B-2), and clearly demonstrates the "conditions" that make "conformance to existing streets impractical".

Section 172.020(C) of the BLDC indicates that city street standards for right-of-way width and street paving width are to be followed:

"unless otherwise indicated on the transportation element of the Comprehensive Plan or a neighborhood circulation plan separately adopted as a future street plan..." (Emphasis added.)

Further, **BLDC Section 172.020(T)**, discussing private streets, states that:

"unless otherwise specifically authorized as part of a street plan, a private street shall comply with the same standards as a public street." (Emphasis added.)

The "street plan" submitted was located on the Preliminary Plat map showing the private street serving the subject property. This "street plan" was also coordinated with the Neighborhood Circulation Plan required by **BLDC Section 172.020(B)** and **Section 172.020(C)**, as indicated above.

BLDC Section 172.040 deals with Neighborhood Circulation Plans. The section requires:

"a Neighborhood Circulation Plan shall be developed for appropriate areas of the City and urbanizable area..."

Applicant contends that the Neighborhood Circulation Plan for the Dawson Tract Area as submitted demonstrates why the Dawson Tract area is an "appropriate area" deserving of a Neighborhood Circulation Plan.

Section 172.040 goes on to state that:

"such plans shall identify the functional capacity, condition and design criteria of all applicable existing and projected street systems" (Section 172.040[B]).

The Neighborhood Circulation Plan for the Dawson Tract Area demonstrates projected average daily traffic (Exhibit 2), and further identifies street width based on "residential street design standards" developed by the National Association of Homebuilders Research Foundation, Inc., entitled "Building Affordable Homes: A Cost Savings Guide for the Builder/Developer, and published by the Department of Housing and Urban Development, 1982, in Washington, D.C..

Further, testimony by the Project Engineer Bossard, quoted from AASHTO (The American Society of State Highway and Transportation Officials) Standards, indicating similar street standards for a street carrying the projected traffic. The proposed private street exceeds both of these industry standards.

Therefore, Applicant contends these standards deserve a reasonable consideration.

On April 15, 1993, Planner Bischoff presented four alternative street plans to the Dawson Tract area neighbors at a neighborhood workshop on the Dawson Tract Neighborhood Circulation Plan. Two of these alternatives would accommodate the PUD proposal as submitted by Applicant. Both alternatives would accommodate access to adjoining properties, while at the same time accommodating the proposal as submitted by Applicant.

The fact of this accommodation was not related to the Planning Commission by Planner Bischoff, nor was it indicated in the Staff Report. It is possible that several of the Planning Commissioners could have changed their opinion had they had this information. Therefore, Applicant contends that it is appropriate for the City Council to review the Planning Commission action.

APPEAL REASON NO. 4: PROJECT ALLEGEDLY AFFECTS UTILITY SERVICE TO ADJOINING PROPERTIES

Planner Bischoff alleges in his Staff Report (page 7) that the "topography of the area and the location of the sewer mains in Dawson Road and Passley Road are such that this project could severely affect the ability to provide sewer service and storm drainage to the center of the area between Dawson and Passley Road."

In previous meetings with Planner Bischoff and the City Engineer, the Applicant's representatives had discussed their utilization plan for the Dawson Tract area. Further, in a submittal titled Preliminary Engineering Report, Dawson Tract Drainage Basin, dated April 12, 1993, (submitted as partial fulfillment of one of the development conditions of the approval of Oceanside Estates I), Applicant demonstrates that in fact the Applicant's proposed Neighborhood Circulation Plan can more than adequately service all of those areas left without sewer service. This Utility Service Concept Plan (see report, Exhibit B, last page) fits and would more than adequately service the Applicant's proposed Neighborhood Circulation Plan.

Applicant contends that the proposed Utility Service Concept Plan submitted in the Drainage Basin report will also service the staff "minimal" street plan proposal.

Further, as Applicant states in his application, and as Applicant's representatives have repeatedly stated in meetings with staff, Applicant was more than willing to provide a sanitary sewer easement along the east boundary of the subject property, providing for the utilization of areas of concern.

This information was not provided by Planner Bischoff. Therefore, Applicant contends there is a need for City Council review.

**APPEAL REASON NO. 5: STAFF REPORT PROVIDED NO POSITIVE ACTION
ALTERNATIVE FOR THE PLANNING COMMISSION**

Planner Bischoff did not provide in his Staff Report for any positive action by the Planning Commission, but only for denial. No development conditions were attached relative to the approval of said project.

This is the first Staff Report for any City or any project that Applicant's representatives have submitted to an Oregon City or County that has not provided for a variety of Planning Commission actions. Applicant contends that this omission by Planner Bischoff may have cast doubt in the minds of the Planning Commission, and that therefore the action needs review by the City Council.

Dated: April 26, 1993

SUB-3-93 - APPEAL
OCEANSIDE ESTATES II
STAFF RESPONSES TO APPELLANT'S DOCUMENT
DATED MAY 18, 1993

On April 20, 1993 the Planning Commission held a special meeting to consider the application for a 21 lot Subdivision/Planned Unit Development submitted by Michael Gorski Construction Co. Inc, and represented by Alex Forrester and Tim Bossard of T. J. Bossard and Associates. A motion to approve the application resulted in a tie vote and the application is therefore considered to be denied.

At that hearing, staff recommended denial of the project based on the following concerns:

- * The project did not meet the Standards for Approval as listed in Section 116.060 Planned Unit Development Approval, Standards for Approval, of the Land Development Code.
- * Since the project did not meet the Standards for Approval it could not be approved as a Planned Unit Development.
- * The project could be approved as a normal subdivision, however, as such the substandard street, street improvements, and overly long cul-de-sac could not be justified.
- * The city staff is studying a needed neighborhood street and utility corridor plan for the area between Dawson Rd. on the west, Passley Rd. on the east, Dawson Rd. on the north and Skyline Dr. on the South. The intent of this study and any resulting street plan is to insure that all properties within the area can be accessed and developed to the extent allowed by the underlying zoning.
- * Until a street plan is adopted by the City Council, any development in the area may have a detrimental effect on the ability to access or develop lots within the area.
- * At the time of the Commission Hearing staff had several concerns that the proposed project had not demonstrated how storm water entering the subject property was to be handled.
- * At the time of the Commission Hearing, staff was concerned that due to the topography of the area the project would not allow for the extension of future sewer mains and storm sewers to lots within the center of the street plan study area.

The new street in the proposed project is substandard in several ways in relation to the Land Development Code street standards. Justification for the narrow street is the applicant's contention that the project can be approved as a Planned Unit Development which allows flexibility in development standards. It is staff's opinion that the propose project does not meet the Standards of Approval listed in Section 116.060 for reasons listed later in this report. Staff has no objection to the proposed project as a standard subdivision, however, as a standard subdivision the narrow internal street can not be justified and therefore the street must meet the development standards of the Land Development Code.

The issues of utility corridors for storm and sewer mains can be resolved through discussion with the applicant's representative and the conditions of approval if the project should be approved as a Planned Unit Development or as a normal subdivision. The remaining issue of effect on a neighborhood street plan is addressed later in this report.

The proposed project is described in detail in both the Planning Commission staff report and applicant's findings document which are attached. The applicant's Neighborhood Street Plan document is also attached.

The following is a point by point response to the issues raised in the appellant's appeal document.

I. APPEAL SUMMARY

This Section of the appellant's document summarizes the various issues on which the appeal is based. Each of these issues in discussed in more detail later in the section of their document entitled REASONS FOR APPEAL. Staff's comments and response to these issues are in the section of this report that addresses the appellants Reasons For Appeal.

II. PROCEDURAL BACKGROUND

This section of the appellants document gives a brief description of the events leading to the April 20, 1993 Planning Commission hearing. This summary is correct but is incomplete. The summary neither provides the reason that staff asked that the project be split nor does it indicate why a special Planning Commission hearing was held to accommodate this application. The following are staff's comments in this regard.

As indicated, the application for the entire 34 lot Subdivision and Planned Unit Development (PUD) was submitted on January 5, 1993. At the time of submittal the applicant's representative asked that the hearing date be scheduled for the February 2, 1993 hearing. Staff informed the representative that this was not possible because the application must be reviewed by the Subdivision

Committee, and that staff tries to give the Committee members 10 days notice of the meeting date and that the hearing notice must be published and mailed no later than 20 days prior to the hearing date, which in this case would be January 13, 1993. The Subdivision Committee meeting was subsequently scheduled for January 13.

At the Subdivision Committee meeting staff had a number of concerns and/or comments on the proposed project. Most of these concerns were generic to all such developments and could be resolved through design and the conditions of approval. There were two issues which that were specific to the proposed project and could not be resolved via the conditions of approval. The first concern was that the project could not meet the standards of approval of a PUD pursuant to Section 116.060 Planned Unit Development Approval, of the Land Development Code. The second concern was related to the fact that staff had, at an earlier date, addressed the City Council on the need for a cohesive street plan for the area between Dawson Rd. on the west and Passley Rd. on the east and Dawson Rd. on the north and Skyline Dr. The City Council authorized the staff to proceed with the development of a street plan. Because a street plan for the area had not been adopted, staff was concerned that the 21 lot portion of the proposed subdivision may preclude the possibility of creating an efficient street plan for the study area.

The applicant's original proposal contained provisions to build Dawson Rd. to a 32 foot right-of-way with 26 feet of pavement between curbs and sidewalks on one side (See Exhibit 3A of the applicant's document entitled Neighborhood Circulation Plan for the Dawson Tract Area). At that time staff indicated that Dawson Rd. must have a 50 foot right-of-way with 30 feet of pavement and sidewalks on both sides to meet the requirements of the Land Development Code. The applicant's representative stated that the street plan adopted for the area could possibly have a narrower right-of-way for Dawson Rd. and decided that until a street plan was adopted they could not design both sides of the project and agreed to delay the 21 lot portion of the project located east of Dawson Rd. They also agreed to design Dawson Rd. to city standards with the provision that if an adopted street plan contained a narrower right-of-way for Dawson, they could fall back to that standard. Staff agreed to this proposal. Staff was under the impression that the agreement for the delay was for a reasonable period of time to establish a neighborhood street plan for the study area. The remaining 13 lots on the west side of Dawson would proceed to the March 2, 1993 Planning Commission Hearing as Oceanside Estates I (File No SUB-1-93/PUD).

When reviewed in the context of the site topography, the ocean front and physical constraints of the site and the more direct relationship of the proposed open space to the 13 lots, that portion project became easier to reconcile with Section 116.060

Standards for Approval and staff recommended approval at the at the March 2, 1993 Planning Commission hearing. Had the project proceeded to the Planning Commission as the original 34 lot project, it would have been much harder to make findings that satisfied the Standards of Approval. The Standards of Approval are discussed later in this report.

On March 16, 1993, a member of the firm representing the applicant submitted an application for the 21 lots on the east side of Dawson Rd., Oceanside Estates II, with the request that it be put on the agenda for the April 6, 1993 hearing. The Planning Director explained that the April agenda was not available because a Subdivision Committee meeting must be held and that the April hearing must be advertised on the March 17. The Planning Director also explained that he understood that the agreement was to delay the easterly 21 lots until a neighborhood street plan had been adopted for the Dawson Rd. area. The application was not submitted on that date. After a meeting with the applicant's representative staff agreed to hold a special meeting on April 20, 1993 and the application was filed on March 19, 1993. The plat map for the new 21 lot project showed Dawson Rd. as a 50 foot right-of-way, indicating that the applicant no longer considered a narrower right-of-way for Dawson as being feasible. The applicant's representative stated that the reason they could not wait longer is that nothing had been done on the neighborhood street plan since the March 2, hearing.

At the Subdivision Committee meeting for the 21 lot Oceanside Estates II, staff again raised the question of meeting the requirements for PUD approval under Section 116.060 and the issue of the Dawson Rd. neighborhood street plan; neither of which were resolved prior to the hearing.

III. REASON FOR APPEAL

Reason for Appeal 1. Tie Vote by Planning Commission

At the April 20, 1993 Planning Commission hearing there were six members of the Commission present. After presentations from the staff, applicant and public, and after discussion among the Commissioners, Commissioner Breuer made a motion to approve the application. Commissioner Ambrose seconded the motion. The vote resulted in a tie. At that point Commissioner Krebs made a motion to deny the application but there was no second. The Commission determined that a tie vote represented a denial of the application. There was no action on a final order.

On the day following the hearing staff conferred with the City Attorney who agreed that a tie vote represented a failed motion and thus a denial of the application. The City Attorney also expressed the opinion that to enable the applicant to appeal the Commissions decision a final order must be adopted. Accordingly staff

introduced a Final Order for this application at the May 4, 1993 Planning Commission hearing and it was adopted. The applicant is correct in that it is now appropriate for the City Council to decide this matter.

Reason for Appeal 2. Project Allegedly Not a PUD

In this regard the Planning Director admits to an error in semantics. The proposed project does meet the application requirements listed under Section 116.030 General Requirements, of the Land Development Code. The Planning Director should have stated that the project does not meet the Standards for Approval listed under Section 116.060. It is still the Planning Director's and staff's contention that the project does not meet these standards. The following is staff's response to the appellant's comments are as follows:

Section 8.010. This is correct; the Land Development Code does not have a definition of a Planned Unit Development.

Section 116.010. The applicant is only quoting a portion of the statement of purpose under this section of the Land Development Code. The entire statement reads as follows:

"The purpose of planned unit development approval is to allow and to make possible *greater variety and diversification in the relationships between buildings and open spaces in planned building groups*, while ensuring compliance with the purposes and objectives of the various zoning district regulations and the intent and purpose of these land development sections. *These provisions are intended to allow developers the freedom to design and construct projects whose objectives could be inhibited by strictly applying the provisions of this code, thereby providing more harmony with site conditions, aesthetics, economy and similar considerations than might otherwise be possible.* The use of these provisions is dependent upon the submission of a complete and acceptable conceptual masterplan accompanied by satisfactory assurances it will be carried out. Such conceptual, preliminary masterplan shall conform to and be in compliance with the goals and objectives of the comprehensive plan." The shaded portion of the purpose statement is the portion quoted in the applicant's appeal document which ignores what in staff's opinion is the key to the purpose of a PUD as indicated in *italics*.

It is staff's opinion that the intent of the purpose statement is stated in the first sentence "... to allow and to make possible greater variety and diversification in the relationships between buildings and open spaces in planned building groups,...". This implies that a PUD must have qualities of open space and building locations that are different than in what would commonly be found in a non PUD project located in the same zone.

For example, the Glenwood PUD is located on a 13 acre parcel in the R-1-6 Zone. This combination would allow a maximum of 95 units gross. A normal subdivision on this property would yield somewhat less units because of land needed for streets, topography and etc. The Glenwood Company took advantage of the PUD ordinance to gain the maximum number of units by creating a condominium project with 19 buildings with 5 units in each building. The exterior of each building and all of the land around the buildings are owned in common by a homeowners association. The benefit to the city for allowing this arrangement is that the condominiums provide lower cost housing than houses on individual lots and through the clustering of buildings, the area accommodated a maximum number of units while still maintaining open space areas that would not exist in a subdivision of 6,000 sq. ft. lots. (Benefit to the city and general public are a criteria of approval under Section 116.060 and is discussed later in this report.) In this case the flexibility allowed in development standards was the ability to create the maximum number of units, to cluster dwelling units into multi unit buildings and the use of private driveways to access the buildings, neither of which are allowed in the R-1-6 Zone except through a PUD. The Glenwood project reflects a "variety and diversification in the relationships between buildings and open spaces" that is not present if the property had been developed as a normal subdivision project.

When taken in total, the purpose statement of Section 116 implies that by creating something unique in its nature by being creative in the use of building and open space and/or in the nature of its benefit to the public, the city is willing to be flexible in certain development standards. The purposes of a Planned Unit Development is to give incentive to be creative. It is staff's opinion that the applicants subdivision is not creative because it contains no open space and the buildings are arranged as in any normal subdivision. The relationship of this project to the Oceanside Estates I project approved in March, will be discussed later in this report.

To rely solely on that portion of the purpose statement quoted in the applicant's appeal document, would be to say that the only purpose of the Planned Unit Development is to allow the developer to avoid the development standards of the Land Development Code.

There have been four Planned Unit Developments approved in the city besides Oceanside Estates I and II. All of these projects have clustered building arrangements which provide areas of commonly owned and accessed open space disbursed throughout the project. This sets a strong precedent as to what the city has considered in the past to be the appropriate use of the PUD.

Section 116.030 (A), (B), (C), and (D). As mentioned above the Planning Director admits to an error of semantics. The proposed

project does meet the general requirements for a PUD pursuant to Section 116.030.

The applicant's document makes the statement that "... the criteria of commonly owned open space, private roads, etc., as referenced by Planner Bischoff appear to be derived only from his experience in other states, and not from the Ordinance provisions for the City of Brookings as found in the Brookings Development Code." As can be seen in the discussion of the purpose statement above, open space is an important aspect of a PUD. In fact the purpose statement references only two physical attributes - open space and buildings -and the relationship between them.

Also, as mentioned above, there are four approved PUDs within the city limits, all of which have commonly owned open space, and private roads. There is only one PUD within the city that does not have commonly owned open space - Oceanside Estates I, the applicant's recently approved project. Three of these 5 PUD projects, including the applicant's, were approved under the present Planning Director. There is a strong precedent of PUD projects with commonly owned open space and until recently there were no PUD projects that did not contain commonly owned open space.

Section 116.060 Standards for Approval

Section 116.060 states "In granting approval for a planned unit development, the Planning Commission shall seek to determine, based upon evidence, both factual and supportive provided by the applicant, that:

A. The applicant has, through investigation, planning and programming, demonstrated the soundness of his proposal and his ability to carry out the project as proposed, and that the construction shall begin within 12 months of the conclusion of any necessary actions by the city, or within such longer period of time as may be established by the planning commission.

B. The proposal conforms with the comprehensive plan and implementing measures of the city in terms of goals, policies, location and general development standards.

C. The project will assure benefits to the city and the general public in terms of need, convenience, service and appearance sufficient to justify any necessary exceptions to the regulations of the zoning district.

D. There are special physical conditions or objectives of development which the proposal will satisfy so that a departure from standard zoning district regulations can be warranted.

E. That the project will be compatible with adjacent developments and will not adversely affect the character of the area.

F. The project will satisfactorily take care of the traffic it generates, both on and off-site, by means of adequate off-street parking, access points, and additional street right-of-way improvements.

G. That the proposed utility and drainage facilities are adequate for the population densities and type of development proposed and will not create major problems or impacts outside the boundaries of the proposed development site."

The applicant's Appeal Document does not make specific reference to the 7 Standards of Approval listed above. The document does have one paragraph that states "Applicant has vigorously demonstrated both the rationale for a planned development and has explained in great detail both the need for a planned development to meet the owner's development intent, and how the proposed project in fact meets this rational in his submittal booklet, in his submitted Findings of Consistency with Criteria for Approval and in his testimony. Applicant's description far exceeds the City's requirements of the BLCD for identification as a PUD." (Emphasis is the applicants)

It is staff's opinion that the proposed project does not meet two of the Standards for Approval listed above, Standards C, and D for the following reasons:

Standard C. Benefit to the city and general public.

This criterion implies that for the city to allow flexibility in the development standards of the Land Development Code, the proposed project must provide a benefit to the city and general public that is greater than the benefit provided by a normal project on the same property.

The only difference between the proposed project and a normal subdivision is that the proposed street consists of 22 feet of pavement in a 32 foot wide right-of-way and the cul-de-sac is 700 feet long. The project contains no open space areas and no clustering of buildings. The entire land area, other than the street, is divided into individual lots as in any normal subdivision. The applicant's justification for the substandard street is that the project is a PUD and should be allowed flexibility. As a normal subdivision the Land Development Code would require this project to have a 45 foot right-of-way with 30 feet of pavement from curb to curb and a maximum cul-de-sac length of 400 feet.

It is staff's position the proposed project provides no benefit to the city or the general public that is greater or more unique in nature than that which would be gained from a normal subdivision on the same property. The project therefore does not meet this standard and can not be approved as a PUD. The requested flexibility in development standards are not justified.

The applicant would have a valid argument that the subject 21 lots were originally submitted with the 13 lots of the Oceanside I project on the west side of Dawson Rd. and therefore should be considered as an extension of the original project. However, as mentioned in the Procedural Background Section of this report, staff had very much the same concerns for the ability of the project to be approved as a PUD when viewed as a whole. In the original 34 lot subdivision all of the land area, other than streets, was divided into individual lots. Twelve of the lots on the ocean side of Dawson Rd. extended to the water line along the beach. The only open space area provided within the project consisted of a nonuse easement over the portion of these 12 "ocean front" lots that is geologically unsuitable for development. The project also provides a path way across these lots that gives access to the beach.

The area subject to the nonuse easement is on the slope to the beach below the buildable portion of the lot. The 13 lots along the west side of Dawson Rd. benefit from this easement in that the area will not be cluttered with decks, gazebos etc. placed there by individual lot owners. The 21 lots on the east side of Dawson Rd. gain no direct benefit from this nonuse easement since it is below their line of sight and even without the easement any construction in that area would not obstruct their view. When taken in total the project does not provide the *greater variety and diversification in the relationships between buildings and open spaces in planned building groups* that is the purpose of the Planned Unit Development, particularly since the nonuse easement is on an undevelopable portion of the property that could not be used for buildings under any development scheme. The nonuse easement, the beach access path and the proposed private streets are the only features of the project that are used to support it as a PUD. All three of these features can be a part of a normal subdivision and are not dependent on a PUD.

When the applicant agreed to divide the property so that the 13 lot portion on the west side of Dawson Rd. stood alone, the staff could see that the project offered certain benefits to the city as a PUD. The land on the west side of the road, although 8.98 acres in size consists of severe physical constraints in terms of unbuildable slopes and the physical shape of the remaining buildable area. The only portion of the lot that is buildable is the 200 feet immediately adjacent to the road and on the top of stable areas approximately 600 feet west of the road on the northerly property boundary and 450 feet west along the south property line. Twelve

of the 13 lots in this project extend to the ocean. Two private streets provide access to the four westerly most lots and to five lots in the area adjacent to Dawson Rd.

If the property on the west side of Dawson Rd. were to be considered as if no relationship existed to property on the east side, the project takes on more of the attributes of a PUD. By using a PUD the developer could have asked for a higher density development with condominiums but chose a lower density. In this sense the city benefitted by having a less cluttered and impacted shore line. Also in this case the nonuse easement becomes much more significant in that it now relates directly to the 13 houses within the project by protecting the natural view to the ocean. The applicant benefitted by being allowed to have narrow private streets to serve the interior lots of the project. This is still marginal in terms of a PUD because all but the narrow streets can be accomplished in a normal subdivision. Staff was willing to interpret the project as a PUD because of the uniqueness of the topography and physical constraints of the site.

In staff's opinion the proposed 21 lot project, as designed is a normal subdivision. As such, the project does not provide sufficient benefit to the city or general public beyond that offered by a normal subdivision to justify approval of a PUD.

Standard D Special physical conditions or objectives.

Other than the fact that the proposed project has a 22 foot wide paved street within a 32 foot right-of-way in the form of a 700 foot long cul-de-sac, there are no special physical conditions or objectives to distinguish this subdivision from most of the normal subdivisions within the city. The project site is almost perfectly flat with not other unusual physical constraints that would require special attention. The entire area outside of the street is divided into individual lots, and the buildings are not clustered. If the applicant has development objectives other than a normal subdivision, it does not show in the design of the project except for the narrow streets. Narrow private streets can be a development objective, but they cannot be the only objective. As per the discussion of the purpose of a PUD and of Standard for Approval C above, to allow approval as a PUD, the project must contain attributes and benefits that set it apart from a normal project.

It is staff's opinion that the project site does not contain physical conditions or development objectives that warrant departure from the standards of development and therefore the project can not be approved as a PUD.

Reason for Appeal 3. Project allegedly inhibits access to adjoining properties.

The applicant is basing this "Reason for Appeal" on their own submittal entitled Neighborhood Circulation Plan for the Dawson Tract Area. The fact is that the city does not have an adopted street plan for the Dawson Tract area. Staff had and still has concerns that without an adopted street plan, early development may inhibit the city's ability to provide proper public access to all of the lots within the area between Dawson Rd. and Passley Rd. Staff is currently working to bring a street plan to the Planning Commission and then to the City Council for adoption.

The applicant's neighborhood circulation plan is a possible street plan for the area of concern (See Exhibit 4, in the applicants circulation plan). This plan consists of all cul-de-sac streets of various lengths extending from Dawson Rd. and Passley Rd. All of the proposed streets have a paved travel way of either 20 or 22 feet wide within a 21 or 27 foot right-of-way. This is less than minimum street standard allowed by the Land Development Code. The minimum is 30 feet of pavement between curbs and 5 foot wide sidewalks on both sides of the street within a 45 foot right-of-way.

Because of the topography of the area storm water and sewer mains serving the interior of the street study area must gravity flow to the south and west. When viewing the layout of the applicant's circulation plan with the need to gravity flow storm and sewage, it becomes apparent that the storm drainage system and sewer mains are forced to cross through easements on many lots to provide proper service to the area. Ideally storm and sewer mains should be placed within street rights-of-ways. This allows maintenance crews to access mains without having to move the cars, boats, shrubbery, sheds and gardens that inevitably find there way into such easements. In a project such as the applicant's, the homeowners association may be able to enforce the proper maintenance of such easement but there is no guarantee that all projects will have a homeowner's association.

It may be very possible to provide a street plan for the study area without providing a connecting street within the applicant's project site. Although the applicant's appeal document states that this fact was not told to the Planning Commission, the following exert from the recorded tape shows that it was:

Quote from Planning Commission Hearing Tape of April 20, 1993, in response to a question by Commissioner Ciapusci, "If I'm reading you correctly, and please stop me if I'm not, the only reason you are recommending denial is because the width of the street does not meet the code" Response from the Planning Director "Width of the street and the length of the cul-de-sac plus we have not adopted a street plan for this area up in here (pointing to the exhibit).

Now it might be very possible to allow a street in here (again pointing to the exhibit) that still allows access to the whole area but we do not know that. We do not have a street plan for this whole entire area." The Planning Director went on to list concern for utility corridors, particularly for storm water and sewage.

The point of this discussion is that wherever possible storm drain and sewage mains should be placed within street right-of-way and that these mains must gravity flow whenever possible. To be properly designed, a street plan for the Dawson Area must take these parameters into account to the best extent possible. Ideally there should be a street along the easterly boundary of the applicant's property to provide an in street sewer main to service the parcels to the north and east.

The applicant's appeal document uses standards from the National Association of Homebuilders Research Foundation, Inc. and from AASHTO (The American Society of State Highway and Transportation Officials) as justification of there use of a narrow street within their project and for adopting narrow streets throughout the study area. It should be noted that the title of the Homebuilders Association document is Building Affordable Homes and the Table quoted from AASHTO is from the section discussing standard for rural streets. The applicant's project is not an affordable home project. Furthermore, the Dawson Tract area is rapidly moving from a rural nature toward urban densities with each new subdivision because of the availability of water and sewer service.

The document entitled Neighborhood Circulation Plan for the Dawson Tract Area submitted by the applicant can not be used to justify narrow streets either within the applicant's project or in the Dawson Tract area because it has not been adopted by the city as a street plan. Also none of the streets within the plan meet the standards of the Land Development Code. Discussion with the City Attorney has indicated that it may not be possible for the city to adopt street standards for one section of the city that are different from other sections unless there are physical conditions, such as topography, that justify the need for the difference.

Reason for appeal 4. Project allegedly affects utility service to adjoining properties.

Generally these concerns are worked out in advance of the Planning Commission meeting. In this case staff's concerns for the proper sewerage and storm drainage of the area to the north and east of the subject property had not been satisfied prior to the Commission meeting. The applicant introduced new drainage and sewerage proposals to the Commission at the hearing and staff had no opportunity to review them. At the time of this report these concerns have not been resolved. The attached Conditions of Approval provide resolution to these concerns. See the attached Staff Report for a detailed discussion of the need for utility

easements and sewer mains along the easterly boundary of the subject property.

Reason for appeal 5. Staff report provided not positive action alternative for the Planning Commission.

Staff was recommending denial of the project based on the findings and conclusions stated in the Staff Report to the Planning Commission. The recommendation at the end of this report should alleviate concerns in this matter.

STAFF SUMMARY

1. Staff offers no argument to the statement that the project meets the requirements of Section 116.030 General Requirements. This does not change the staff's contention that the project can not be approved as a Planned Unit Development.
2. Section 116.010 Purpose, clearly states that purpose of the Planned Unit Development is to "...allow and to make possible greater variety and diversification in the relationships between buildings and open spaces in planned building groups..." The incentive for doing so is to allow flexibility in development standards.
3. To rely solely on the portion of the purpose statement quoted by in the applicant's appeal document, would be to say that the only purpose of the Planned Unit Development is to allow the developer to avoid the city's development standards.
4. The city has developed a strong precedent as to what has been considered in the past to be the appropriate use of the Planned Unit Development provision of the Land Development Code.
5. Section 116.060, Standards For Approval, lists seven standards to be met for Planned Unit Development approval. Two of these standards (C and D) have not been met.
6. It is staff contention that the proposed project does not meet Standard "C" in that the city or general public does not receive a benefit from the project that is greater than that which would be gained from a normal subdivision on the subject property. The project therefore cannot be approved as a PUD and the narrow street cannot be allowed.
7. It is staff contention that the proposed project does not meet Standard "D" in that there are no development objectives or physical conditions that are unique enough to justify any necessary exceptions to the development standards.

8. The subject project can be approved as a normal subdivision subject to the development standards of the Land Development Code.
9. When the project was originally submitted as one project with a total of 34 lots, it is staff contention that the entire project could not meet the provisions of Standard C and D. When split the 13 lot portion on the west side of Dawson Rd. took on marginal attributes of a PUD and received a recommendation for approval from staff.
10. The city does not have an adopted street plan for the Dawson Tract area. The applicant's circulation plan document for the Dawson Tract contains streets that do not meet the street standards of the Land Development Code. In fact the applicant's justification for narrow streets is from texts written either to help provide affordable housing or to establish rural road standards.
11. An area street plan should provide for the installation of storm and sewer mains within street rights-of-ways whenever possible and that storm and sewer mains should gravity flow.
12. To approve the proposed project as a PUD and therefore allow the proposed narrow street and overly long cul-de-sac, would set a precedent in that any future developer who thinks the city's development standards interfere with his desires could simply call the project a PUD and thus avoid the standards.

APPROVAL OF THE PROPOSED PROJECT AS A SUBDIVISION

Section 172.060,A of the Land Development Code states "The planning commission has the authority to approve, approve with conditions or deny the requested subdivision, based upon the following criteria:

1. Conformance with the comprehensive plan, and applicable development standards of this code, and state and federal laws.
2. Development of any remainder of property under the same ownership, if any, can be accomplished in accordance with this code.
3. Adjoining property under separate ownership can either be developed or be provided access that will allow its development in accordance with this code.
4. Conditions necessary to satisfy the intent of the land development code and comprehensive plan can be satisfied prior to final approval.

5. The proposed street plan affords the most economic, safe, efficient and least environmentally damaging circulation of traffic possible under existing circumstances.

6. The proposed name of the subdivision shall be approved by the commission, provided the name does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Curry County, except for the words "town", "city", "place", "court", "addition", or similar words unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name, or unless the applicant files and records the consent of the party who platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.

7. The proposed name of a street in the subdivision shall be approved by the commission provided it is not the same as, similar to or pronounced the same as the name of an existing street in the same zip code area, unless the street is approved as a continuation of an existing street. A street name or number shall conform to the established pattern for the area.

8. Streets that are proposed to be held for private use shall be distinguished from the public streets on the subdivision plat, and reservations and restrictions relating to the private streets are established."

The following is staff's analysis of the subdivision aspect of the proposed project in relation to the criteria listed above. Since all of the other criteria are related to the requirements of the Land Development Code, Criterion 1 will be discussed last.

Criterion 2. The proposed project will not create a remainder lot and thus does not apply.

Criterion 3. As mentioned above, when this project was originally submitted it contained a request to develop property on both sides of Dawson Rd. and at staff's request the applicant agreed to split the project until a neighborhood street plan was established for the area between Dawson Rd. and Passley Rd. Although it may be possible to provide access to all neighboring lots with the street proposed within the subdivision and through the street system provided in the document entitled Neighborhood Circulation Plan for the Dawson Tract Area, (attached) which was submitted by the applicant, a street plan for this area has not been adopted. It should be noted that all of the streets indicated in the applicants document are substandard in relation to the requirements of the Land Development Code.

The topography of the area and the location of the sewer mains in Dawson Rd and Passley Rd. are such that this project could severely affect the ability to provide sewer service and storm drainage to

the center of the area between Dawson Rd. and Passley Rd. Only the easterly portion of the lots along the west side Passley Rd. can be provided with gravity flow sewers. The westerly portion must be sewerred toward the west to a north south main along the back of these lots and those of the proposed subdivision. This main does not exist at this time and would require an easement along the back of the subject property and of the lots along the west side of Passley Rd. Ideally storm drainage from these lots should follow the same path. The subject project as proposed does not provide for the extension of sewer mains to the area north and east of the site. (See City Engineers Memo dated April 16, 1993, attached)

Criterion 4 and 5. See discussion under Criterion 1, below.

Criterion 6. The proposed name of this subdivision, Oceanside Estates II is the same as the approved project on the west side of the street. Since the proposed project is intended to be the extension of the earlier approval the name does not pose a conflict and meets the requirement of this criterion.

Criterion 7. The proposed name for the private street, Oceanside Dr. is very similar to that of Oceanview Dr. in the Harbor area and within the same zip code area. The City Council may wish to request a different name for this street.

Criterion 8. The private street is marked as such on the preliminary plat map.

Criterion 1. The Conditions of Approval for this project will required compliance with the development standards of the Land Development Code. The Conditions will require a street right-of-way of 45 feet with 30 feet of pavement from curb to curb and sidewalks on both sides. The Conditions will also require the length of the cul-de-sac to be no longer than 400 feet. Conditions for required utility corridors and storm drainage plans will insure that these concerns are met. With the proper utility corridors, a cul-de-sac street can be allowed within the subject property without adversely effecting the ability to access, provide services and to develop properties with in the area of the Dawson Tract street study area.

FINDINGS

1. The applicant is requesting a 21 lot subdivision and planned unit development (PUD) on two parcels totaling 6.17 acres.
2. The lots in the proposed subdivision range in size from 0.20 to 0.38 acres in size.
3. The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan.

4. The proposed project is the extension of the Oceanside Estates Subdivision and planned unit development on the opposite side of Dawson Rd. which was approved on March 2, 1993.
5. The city is in the process of preparing a street plan for the area between Dawson Rd. and Passley Rd. to insure that all lots in the area have an equal opportunity to be developed. As of the date of this report a neighborhood street plan for the Dawson Tract area has not been adopted.
6. Section 116.010 Purpose, of the Land Development Code states "The purpose of planned unit development approval is to allow and to make possible greater variety and diversification in the relationships between buildings and open spaces in planned building groups, while ensuring compliance with the purposes and objectives of the various zoning district regulations and the intent and purpose of these land development sections. These provisions are intended to allow developers the freedom to design and construct projects whose objectives could be inhibited by strictly applying the provisions of this code, thereby providing more harmony with site conditions, aesthetics, economy and similar considerations than might otherwise be possible. The use of these provisions is dependent upon the submission of a complete and acceptable conceptual masterplan accompanied by satisfactory assurances it will be carried out. Such conceptual, preliminary masterplan shall conform to and be in compliance with the goals and objectives of the comprehensive plan."
7. All of the land within the proposed subdivision/PUD, except for the street, is divided into individual lots. There is no open space within the subdivision and the buildings are not clustered.
8. Section 116.060 Standards for Approval, Standard "C" states "The project will assure benefits to the city and the general public in terms of need, convenience, service and appearance sufficient to justify any necessary exceptions to the regulations of the zoning district."
9. Standard D of the Standards for Approval states "There are special physical conditions or objectives of development which the proposal will satisfy so that a departure from standard zoning district regulations can be warranted."
10. The lots within the proposed subdivision are accessed by a cul-de-sac street which is 700 feet long with a 22 foot wide travel way within a 32 foot wide right-of-way.
11. The Land Development Code allows a maximum cul-de-sac street length of 400 feet with exceptions for "unusual circumstances".

12. The Land Development Code allows a minimum street right-of-way width of 45 feet with consideration for a narrower width if it can be "unquestionably justified".
13. Water and sewer mains exist in Dawson Rd. adjacent to the subject property, however, the City of Brookings has identified a limited maximum capacity in its wastewater treatment plant. This land use approval does not constitute a representation or commitment that capacity will exist in the wastewater treatment system of the City of Brookings to serve the development proposed. The availability of connection approvals to the wastewater treatment system are on a first come-first serve basis and regulated under the provisions of Ordinance No. 88-0-430.

CONCLUSIONS

1. The proposed use and the size of the lots within the subdivision are consistent with the underlying zoning and Comprehensive Plan designation.
2. When the application was originally submitted as one project including both sides of Dawson Rd., staff questioned the validity of the proposed PUD. The only common area was a non-use easement over the unbuildable rear portion of 12 of the total of 34 lots. The 21 lots on the east side of Dawson Rd. did not contribute to nor particularly benefit from the common area other than the ability to use a walking path to the ocean. The common area and the walking path can be elements of a normal subdivision and do not require PUD status.
3. When the applicant agreed to defer the portion of the development on the east side of Dawson Rd. until a neighborhood street plan could be developed, the remaining 13 lot portion, on the west side of Dawson Rd., took on marginal attributes of a PUD. The area created by the non-use easement was now more equally related to and of benefit to all of the lots within the project. Wording was also added to strengthen and protect the non-use easement. These factors, combined with the physical uniqueness of the property, allowed staff to justify the 13 lot project as a PUD.
4. Section 116.010 Purpose, of the Land Development Code clearly requires a diverse relationship between buildings and open space. As an incentive to provide unique projects the purpose statement allows flexibility in the application of the development standards of the Land Development Code. The proposed project does not offer qualities that are different than those of a normal subdivision of 21 lots. There is no open space or unique arrangement of buildings within the project.

5. The proposed project does not meet the requirements of Standard "C" of Section 116.060 of the Land Development Code in that as a PUD it does not provide the city or general public a benefit that is greater than the benefit provided by a normal subdivision of the same design.
6. The proposed project does not meet the requirements of Standard "D" of Section 116.060 of the Land Development Code in that the project site does not contain physical conditions and does the design objectives of the project do not warrant exceptions to the development standards. There are no physical conditions of the site that create unique development requirements and the design of the proposed project is not unique.
7. Approval of the proposed project as a Planned Unit Development would set a precedent that the only use of a PUD is to avoid the development standards of the Land Development Code.
8. The project cannot be approved as a Planned Unit Development because it does not meet the Standards for Approval. Exceptions to the development standards are therefore not justified.
9. The proposed project meets the criteria for approval of a subdivision pursuant to Section 172.060,A of the Land Development Code.
10. The project can be approved as a normal subdivisions under the provisions of Section 172.060 Major Partitions and Subdivisions, of the Land Development Code. As a normal subdivision the project is subject to the development standards of the Code.
11. The attached Conditions of Approval provide the requirements that must be fulfilled prior to recordation of the final map.

RECOMMENDATION

Staff recommends **DENIAL** of the Planned Unit Development, based on the findings and conclusions stated above.

Staff recommends **APPROVAL** of the Subdivision File No SUB-3-93, based on the findings and conclusions stated above and subject to the attached Conditions of Approval dated May 24, 1993.

Staff has prepared Final Orders to be considered at this meeting.

MEMORANDUM

DATE: 12 May 1993

TO: John Bischoff, Planning Director

FROM: Grant Cramond, City Engineer (C.2/5/93)

RE: SUB -3-93/PUD

The Community Development Department has reviewed the subject project and has the following recommended conditions of approval:

1. A sanitary sewer service extension shall extend north from the existing manhole in the proximity of the south east corner of the subject property approximately 440 feet to the north east property corner. Such an extension would provide service to the easterly tier of lots of the instant proposal as well as other properties to the east and to the north.

2. A 15 foot right-of-way dedication on the east property line shall be required for an eventual total 30 foot public utility corridor and intermittent rights-of-way purposes.

3. Storm drainage originating on and impinging upon the site shall be accommodated in conformance to City of Brookings standards. In particular storm drainage impinging upon the north property line and the east property line shall be intercepted, and conducted by underground facilities.

4. Dawson Road shall be dedicated to a minimum 25' from centerline (minimum 50 foot total right-of-way). Dawson Road shall be improved to City of Brookings standards.

5. All plans and improvements shall conform to City of Brookings Land Development Code, and the General Engineering Requirements and Standard Specifications for Street, Storm Drain, Sewer and Waterline Construction as well as all other applicable ordinances, standards, guidelines, and policies.

+ + + EOM + + +

BACKGROUND INFORMATION

The subject property consists of two lots of 3.00 and 3.17 acres that front on the east side of Dawson Rd. approximately 700 feet south of the intersection with Holmes Ct. The property is essentially flat with a gentle downward slope from the northeast corner to the southwest corner. The property has 520 feet of frontage on Dawson Rd. There is a notch in the northwest corner of the subject parcel, adjacent to Dawson Rd., formed by a 0.55 acre lot in different ownership (Tax Lot 4700 on Exhibit 1).

The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is vacant. The entire surrounding area is also in the R-1-6 Zone and is developed with single family houses on large lots intermingled with vacant lots. Most of the development along this portion of Dawson Rd. is located on the west or ocean side of the street. The easterly boundary of the subject property is adjacent to the row of long narrow 1+ acre parcels that are located along the west side of Passley Rd. The area between Dawson Rd. and the lots on the west side of Passley contains only two house adjacent to the south side of Dawson Rd. and there adjacent to the east side. The KURY radio station is located in the approximate center of the area. The area on the west side of Dawson Rd. opposite is the site of the recently approved, 13 unit, Oceanside Estates Planned Unit Development and is in the same ownership as the subject property.

Natural drainage for the area between Passley Rd. and Dawson Rd. is through a shallow drainage course that begins north of Dawson Rd. and just east of what is now Zia Ct. This course extends southward through the center of the area now defined by Dawson Rd. and Passley Rd. and then turns to the southwest toward the ocean. When Dawson Rd. was constructed, the east west section of the road apparently dammed the upper end of this drainage course which more than likely decreased the volume of water in the lower portion. Since the Cottage Court Subdivision has been constructed the water impounded behind the road is now diverted into a storm sewer system. The drainage course still acts to drain the central area however and drainage for the overall area must be handled as development occurs. Storm water in the area outside of this drainage sheet flows toward the southwest. The construction of Dawson Rd. again causes the runoff to temporarily pond along the south western boundary of the subject property. There is a culvert that crosses under Dawson Rd. near the southwesterly most corner of the subject parcel and carries water on to property in different ownership on the ocean side of the road.

Water and sewer mains are located in Dawson Rd. adjacent to the subject property. There is also a sewer line that extends north from Skyline Dr. to the southeast corner of the subject property and then turns east and then north again in the alignment of Passley Rd. The applicant should be aware that the city cannot

guarantee sewer service to the lot of this subdivision should it be approved.

PROPOSED SUBDIVISION/PLANNED UNIT DEVELOPMENT

The applicant is proposing a 21 lot subdivision in the form of a planned unit development (PUD). The lots will range in size from 0.20 acres (8,850 sq. ft.) to 0.38 acres (16,485 sq. ft.) with an average lot size of 0.26 acres (11,364 sq. ft.). The overall density of the project would be 3.4 dwelling units per acre. Four of the lots will front on and take access from Dawson Rd. Sixteen lots will be arranged around a long curved cul-de-sac that extends east from the Dawson Rd. at the northerly property line adjacent to the south side of Tax Lot 4700 (See Exhibit 2). The remaining lot has frontage on both the cul-de-sac street and Dawson Rd. and will take access from the cul-de-sac. Each of the lots has a building envelope that dictates where the houses will be constructed on the lot.

This subdivision is an extension of the Oceanside Estates I project, which was approved on March 2, 1993, located on the west side of Dawson Rd. When the Oceanside Estates project was originally submitted it included both the parcel on the west side of the road and the subject property as one overall project. At that time staff asked the applicant to defer the portion of the project on the east side of the road until the city had a chance to develop a neighborhood street plan for the area. This request was made due to concern by staff that any development on the east side of Dawson Rd. could potentially prevent development of other parcels. The applicant agreed to the delay while the city pursued the street plan. Both of the projects will be within the same homeowners association and residents in the subject project will have the ability to use the beach access path that is a part of the earlier project.

The cul-de-sac is proposed as a gated private street with a 22 foot paved travel way and 4 foot wide sidewalk within a 32 foot right-of-way. The cul-de-sac is approximately 700 feet in length and curves to the south and west at its end. The sidewalk will be on the south side of the street. Additional right-of-way along the Dawson Rd. frontage will be dedicated to the city to provide for an ultimate 50 feet of right-of-way.

Drainage for the proposed project will be integrated with that of the Oceanside Estates I project on the west side of Dawson Rd. Ultimately water from the subject property will be carried to the storm drain system in the Oceanside Estates I project and then to the ocean. The applicants drainage plan indicates that a portion of the storm water will be allowed to exit the southwest corner of the subject property as it does now through an existing culvert. All drainage plans must be reviewed and approved by the City Engineer prior to construction. Water and sewer mains will be

placed within the private street and an easement will be granted to the city for maintenance purposes.

ANALYSIS

Planned Unit Development

Section 116 Planned Unit Development, of the Land Development Code (LDC) allows the development of property with a certain amount of flexibility of standards. PUDs generally contain private roads and common open space belonging to a Homeowners Association with provisions for maintenance established through C, C & Rs. When evaluating the merits of a proposed Planned Unit Development the Planning Commission shall seek to determine that the project contains the following elements:

1. The applicant has, through investigation, planning and programming, demonstrated the soundness of his proposal and his ability to carry out the project as proposed, and that the construction shall begin within 12 months of the conclusion of any necessary actions by the city, or within such longer period of time as may be established by the planning commission.

2. The proposal conforms with the comprehensive plan and implementing measures of the city in terms of goals, policies, location and general development standards.

3. The project will assure benefits to the city and the general public in terms of need, convenience, service and appearance sufficient to justify any necessary exceptions to the regulations of the zoning district.

4. There are special physical conditions or objectives of development which the proposal will satisfy so that a departure from standard zoning district regulations can be warranted.

5. That the project will be compatible with adjacent developments and will not adversely affect the character of the area.

6. The project will satisfactorily take care of the traffic it generates, both on and off-site, by means of adequate off-street parking, access points, and additional street right-of-way improvements.

7. That the proposed utility and drainage facilities are adequate for the population densities and type of development proposed and will not create major problems or impacts outside the boundaries of the proposed development site.

The following is staff's analysis of the proposed project in regard to the provisions of Section 116 of the Land Development Code.

Criterion 1. Staff is satisfied that the applicant has the ability to construct the proposed project as described. The cost and depth of the work prepared prior to the application submittal indicate both that the applicant is intent upon finishing the project and that the project is feasible in terms of physical and market constraints.

Criterion 2. The proposed project is consistent with the Residential designation of the subject property by the Comprehensive Plan and with the policies of the plan which call for a variety of housing types and no undo restrictions on development. Although the city does have a greater need for lower income housing, this project was originally planed as part of the Oceanside Estates I project and the lot sizes and nature of the houses proposed are consistent with the original project. The proposed project is consistent with other development at the south end of Dawson Rd. which is taking the form of larger lots and higher priced homes.

Criterion 3 and 4. The proposed project does fill the ongoing demand for higher priced houses in the Brookings area. It is not readily apparent what other benefits in terms of need, convenience, service and appearance that this project satisfies for the city to justify exceptions to the regulations of the zoning district. Neither the proposed project or the project site demonstrate special physical conditions or objectives of development that warrant departure from the regulations of the zoning district.

When the original project, containing both sides of the road, was submitted staff was concerned that the project did not meet the requirements for a PUD. The project contained no actual commonly owned areas and what was offered as common area was a non-use easement over the rear portion of 12 of the 34 lots. The 21 lots on the east side of Dawson Rd. did not contribute to nor particularly benefit from the common area other than the ability to use a walking path to the ocean. The only attribute of a PUD was the request for private streets at sub-standard rights-of-way and improvements. Eight of the lots took access directly from Dawson Rd. rather than the private streets. Except for street widths and improvements, all of the other features could be accomplished through a standard subdivision.

When the applicant agreed to defer the portion of the development on the east side of Dawson Rd. until a neighborhood street plan could be developed, the remaining 13 lot portion, on the west side of Dawson Rd., took on more of the characteristics of a PUD. The area created by the non-use easement was now more equally related to and of benefit to all of the lots within the project. Wording was also added to strengthen and protect the non-use easement. These factors, combined with the physical uniqueness of the property, made it easier to justify the 13 lot project as a PUD.

The subject project contains no special conditions or requirements that can not be met through a standard subdivision, except for the request for narrow streets and reduced improvements. To justify the use of a PUD by relating the subject project to the 13 lot project on the west side of the road, weakens the argument that the entire project (both sides of the road) is a PUD. These are the same concerns that staff had when the project was first submitted and would have been raised if the project had not been split.

Criterion 5. There is no doubt that this and the Harris Beach Estates project are changing and affecting the character and nature of the Dawson Tract area. These two projects are setting the trend for development in the area. At this point staff can not make a statement as to whether this trend is an adverse impact. If the existing community wishes a different direction, it is up to them to inform the city.

Criterion 6. The proposed project does provide adequate off street parking and Dawson Rd. does provide adequate capacity for this and existing development in the vicinity. This project would also result in improvements to Dawson Rd. adjacent to the project site. The issue of on site circulation is related to Criterion 3 and 4 above and will be discussed in more detail under the subdivision analysis below.

Criterion 7. The proposed utility and drainage facilities appear to be adequate. Construction plan must be submitted to the City Engineer for review and approval prior to construction.

Subdivision

The planning commission has the authority to approve, approve with conditions or deny the requested subdivision, based upon the following criteria:

1. Conformance with the comprehensive plan, and applicable development standards of this code, and state and federal laws.
2. Development of any remainder of property under the same ownership, if any, can be accomplished in accordance with this code.
3. Adjoining property under separate ownership can either be developed or be provided access that will allow its development in accordance with this code.
4. Conditions necessary to satisfy the intent of the land development code and comprehensive plan can be satisfied prior to final approval.

5. The proposed street plan affords the most economic, safe, efficient and least environmentally damaging circulation of traffic possible under existing circumstances.

6. The proposed name of the subdivision shall be approved by the commission, provided the name does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Curry County, except for the words "town", "city", "place", "court", "addition", or similar words unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name, or unless the applicant files and records the consent of the party who platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.

7. The proposed name of a street in the subdivision shall be approved by the commission provided it is not the same as, similar to or pronounced the same as the name of an existing street in the same zip code area, unless the street is approved as a continuation of an existing street. A street name or number shall conform to the established pattern for the area.

8. Streets that are proposed to be held for private use shall be distinguished from the public streets on the subdivision plat, and reservations and restrictions relating to the private streets are established.

The following is staff's analysis of the subdivision aspect of the proposed project in relation to the criteria listed above. Since all of the other criteria are related to the requirements of the LDC, Criterion 1 will be discussed last.

Criterion 2. The proposed project will not create a remainder lot and thus does not apply.

Criterion 3. As mentioned above, when this project was originally submitted it contained a request to develop property on both sides of Dawson Rd. and at staff's request the applicant agreed to split the project until a neighborhood street plan was established for the area between Dawson Rd. and Passley Rd. Although it may be possible to provide access to all neighboring lots with the street proposed within the subdivision and through the street system provided in the document entitled Neighborhood Circulation Plan for the Dawson Tract Area, (attached) which was submitted by the applicant, a street plan for this area has not been adopted. It should be noted that all of the streets indicated in the applicants document are substandard in relation to the requirements of the LDC.

The topography of the area and the location of the sewer mains in Dawson Rd and Passley Rd. are such that this project could severely affect the ability to provide sewer service and storm drainage to

the center of the area between Dawson Rd. and Passley Rd. Only the easterly portion of the lots along the west side Passley Rd. can be provided with gravity flow sewers. The westerly portion must be sewerred toward the west to a north south main along the back of these lots and those of the proposed subdivision. This main does not exist at this time and would require an easement along the back of the subject property and of the lots along the west side of Passley Rd. Ideally storm drainage from these lots should follow the same path. The subject project as proposed does not provide for the extension of sewer mains to the area north and east of the site. (See City Engineers Memo dated April 16, 1993, attached)

Criterion 4 and 5. See discussion under Criterion 1, below.

Criterion 6. The proposed name of this subdivision, Oceanside Estates II is the same as the approved project on the west side of the street. Since the proposed project is intended to be the extension of the earlier approval the name does not pose a conflict and meets the requirement of this criterion.

Criterion 7. The proposed name for the private street, Oceanside Dr. is very similar to that of Oceanview Dr. in the Harbor area and within the same zip code area. The Commission may wish to request a different name for this street.

Criterion 8. The private street is marked as such on the preliminary plat map.

Criterion 1. As mentioned above in the criteria for a PUD, staff has serious concerns for the ability of the proposed project to qualify as a Planned Unit Development. A planned unit development allows for a certain amount of flexibility in the development standards in exchange for benefits gained by the city that otherwise would not be realized. As mentioned above the proposed project offers no benefits that could not be received through the use of a standard subdivision. The validity of the PUD calls into question the length and width of the proposed cul-de-sac street.

Section 172.020,N of the LDC allows a maximum length of 400 feet for a cul-de-sac street and provides the Commission the opportunity to extend the length under "unusual circumstances". The proposed cul-de-sac is approximately 700 feet in length. Section 172.020 of the LDC requires a standard street right-of-way of 50 feet. The code allows a 45 foot right-of-way when no more that 20 dwelling units are served by the street. This section also allows the Commission to "...accept a narrower right-of-way width [than those set forth above] where it can be shown by the developer to the satisfaction of the commission, that the topography or the small number of lots served and the probable future traffic development are such as to unquestionably justify a narrower width". The proposed cul-de-sac will serve 17 houses and would have a 22 foot wide travel way in a 32 foot right-of-way. Even within a PUD, the

desirability of a 22 foot wide street that is 700 feet long is questionable. If the proposed project can not be justified as a PUD, the longer narrower cul-de-sac street can not be justified. If the applicant would agree to develop the street to city standards and either shorten the cul-de-sac or loop the street back to Dawson Rd., the project would meet the code requirements. The project could still be a part of the Oceanside Estates I homeowners association and the street could still be private and gated. As a private street in may be possible to waive the sidewalk on one side. The only remaining question would be that of compliance with Criterion 3 as discussed above. It is staff's opinion that the issues of Criterion 3 could be resolved through the conditions of approval except for the neighborhood street plan.

Due to the issues raised in this report, staff is in a position of having to recommend the denial of a desirable project based on issues that could be easily resolved.

FINDINGS

1. The applicant is requesting a 21 lot subdivision and planned unit development (PUD) on two parcels totaling 6.17 acres.
2. The lots in the proposed subdivision range in size from 0.20 to 0.38 acres in size.
3. The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan.
4. The proposed project is the extension of the Oceanside Estates Subdivision and planned unit development on the opposite side of Dawson Rd. which was approved on March 2, 1993.
5. The subject project was originally submitted at the same time and as one project with the Oceanside Estates Subdivision but deferred at the city's request due to concerns of adequate circulation within the area between Dawson Rd. and Passley Rd. and the lack of a street plan for this area.
6. As of the date of this report a neighborhood street plan for the Dawson Tract area has not been adopted.
7. The proposed subdivision/PUD does not contain common area within its boundaries and relies on the first project for common area.
8. The criteria for approval of a PUD in the Land Development Code requires benefits to the city in exchange for flexibility in development standards.

9. The lots within the proposed subdivision are accessed by a cul-de-sac street which is 700 feet long with a 22 foot wide travel way within a 32 foot wide right-of-way.
10. The Land Development Code allows a maximum cul-de-sac street length of 400 feet with exceptions for "unusual circumstances".
11. The Land Development Code allows a minimum street right-of-way width of 45 feet with consideration for a narrower width if it can be "unquestionably justified".
12. Water and sewer mains exist in Dawson Rd. adjacent to the subject property, however, the City of Brookings has identified a limited maximum capacity in its wastewater treatment plant. This land use approval does not constitute a representation or commitment that capacity will exist in the wastewater treatment system of the City of Brookings to serve the development proposed. The availability of connection approvals to the wastewater treatment system are on a first come-first serve basis and regulated under the provisions of Ordinance No. 88-0-430.

CONCLUSIONS

1. The proposed use and the size of the lots within the subdivision are consistent with the underlying zoning and Comprehensive Plan designation.
2. When the application was originally submitted as one project including both sides of Dawson Rd., staff questioned the validity of the proposed PUD. The only common area was a non-use easement over the rear portion of 12 of the total of 34 lots. The 21 lots on the east side of Dawson Rd. did not contribute to nor particularly benefit from the common area other than the ability to use a walking path to the ocean.
3. When the applicant agreed to defer the portion of the development on the east side of Dawson Rd. until a neighborhood street plan could be developed, the remaining 13 lot portion, on the west side of Dawson Rd., took on more of the attributes of a PUD. The area created by the non-use easement was now more equally related to and of benefit to all of the lots within the project. Wording was also added to strengthen and protect the non-use easement. These factors, combined with the physical uniqueness of the property, made it easier to justify the 13 lot project as a PUD.
4. The subject project contains no special conditions or requirements that can not be met through a standard subdivision, except for the request for narrow streets and reduced improvements.

5. To justify the use of a PUD by relating the subject project to the 13 lot project on the west side of the road, weakens the argument that the entire project (both sides of the road) is a PUD. These are the same concerns that staff had when the project was first submitted and would have been raised if the project had not been split.
6. It is not readily apparent what benefits in terms of need, convenience, service and appearance that this project satisfies for the city to justify exceptions to the regulations of the zoning district. All of the benefits to the city that are gained by the proposed PUD can be gained through the same development using a standard subdivision.
7. To allow a project to be deemed a Planned Unit Development to allow substandard streets when it does not exhibit any of the attributes of a PUD, would set a precedent that could be used in all future subdivisions to avoid construction of standard street sections.

RECOMMENDATION

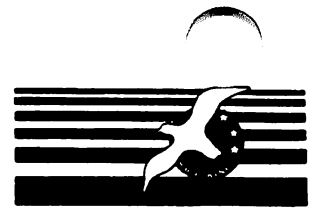
Staff recommends **DENIAL** of Subdivision/Planned Unit Development File No. SUB-3-93/PUD, based on the findings and conclusions stated above.

Staff has prepared a Final ORDER to be considered at this meeting.

KENT OWENS
Police Chief

POLICE DEPARTMENT

City of Brookings
898 Elk Drive
Brookings, Oregon 97415
(503) 469-3118



April 28, 1993

Alex Forester & Associates
303 N.E. E st.
Grants Pass, Oregon 97526

Reference Ocean View Estates

Dear Mr. Bossard:

I just finished listening to the taped record of the April 20, 1993 special planning commission meeting in Brookings. The presentation you made at that meeting misrepresented my position on the subject.

In our conversation we talked about the length of the cul-de-sac and the lighting. I told you I did not have a concern with the length of the street, nor the lighting, as long as it is well illuminated. In that same context I told you I had never seen a project like this one and had no frame of reference to draw from. I asked if you could refer me to a similar project somewhere else so I might be able to make a more informed assesment but you could not. Until my conversation with you, I had no knowledge about how long a cul-de-sac should be or the rationale that governs the standard.

It was implied that I had no opposition to the narrow street. That is not my position. Narrow streets are, in my opinion, dangerous and are a continual problem for police departments. They create safety and parking problems that could be avoided if the streets were built to a wider standard.

I hope this letter will clear up any misunderstanding we may have had.


Kent Owens
Chief of Police

cc: City Manager
City Council
Planning Commission
Community Development Director
City Engineer
Planning Director

May 5, 1993

Mr. Kent Owens
Chief of Police
City of Brookings
Brookings, OR 97415

Dear Chief Owens:

I received your letter today with regards to your review of the taped record of the April 20, 1993 special Planning Commission meeting in Brookings. As you know, we talked by phone on April 28, 1993 with reference to your concerns regarding misrepresentation by our comments used in the presentation.

In summary of our telephone conversation, I acknowledge your concerns, and again want to clarify that my main intent during my March 26 interview with you was to obtain your input with regards to Police access and enforcement capabilities on a gated street with the physical characteristics of length and width as we showed on our submittal documents. My notes indicate that your responses to **Police access and enforcement capabilities** was both positive, and in fact preferable, over other through-street layouts. I apologize for any inference of your acceptance of the street width relative to **parking capabilities**, and regret any inconvenience this may have caused you.

As we discussed, both the length of cul-de-sacs and width of streets are integrally linked with both police and fire access, and from our perspective, it is essential that both Police and Fire Representatives should be involved in the review process.

Although my notes do not reflect any input from you during our March 26 interview with regards to **safety issues** due to on-street parking, we understand from your April 28 letter that in your opinion, narrow streets are dangerous and cause continual problems for Police Departments. As I shared with you during that conversation, **our entire design intent is to eliminate the potential for parking on-street, which we agree creates a most hazardous situation.** (Please note that the City Street Standards of 30' width would only allow a travelled way of approximately 14' with cars parked both sides of the street). Our design, which provides a clear 22' wide travelled way (no parking either side), offers both a wider travelled way, and eliminates the potential for parked cars on street as an obstruction to motorists' view of pedestrian activities, and it eliminates the hazard of doors opening into on-coming traffic.



T.J. BOSSARD & ASSOCIATES
Civil & Structural Engineering

303 NE "E" Street
Grants Pass, Oregon 97526
503-479-4603
FAX: 503-476-8955

Mr. Kent Owens, Chief of Police
May 5, 1993
Page 2 of 2

Our design has insured no parking on the streets by way of ample off-street parking on each lot (5 parking spaces per lot) as well as creating a rigorous Restriction in the Covenants, Codes and Restrictions (CC&R's) of the Planned Unit Development.

It seems then, that the real issue is the ability to enforce the no parking on-street by way of the CC&R's. It is our contention, which is validated by many successful Planned Unit Developments state wide, that enforcement of no on-street parking in these developments with home values in excess of \$250,000 is not only possible, but is in fact preferred by the residents, and is supported by the self-policing of this restriction through the Homeowner's Association. (Even an occasional violation of parking one side would still offer a travelled way of 14', equal to the City Street Standards with parking both sides).

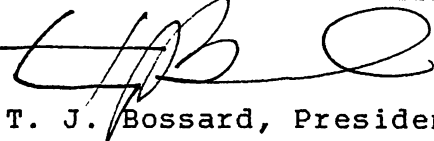
I have also included for your review a copy of our Neighborhood Circulation Plan, which describes in detail the nationally accepted Standards for the establishment of street widths as we show them in our Project. Please see page 7 Item 3B (2), Table 7-1 (page 9), and the enclosed copy of the American Association of State Highway and Transportation Officials (AASHTO), which further supports our proposed widths based upon accepted National Standards.

Finally, we also discussed during our April 28 conversation, the security gate and private street of our proposed access to the project. One of your concerns was the apparent requirement for police to respond to calls from the neighborhood regarding illegally parked cars within the proposed development. It appears to us that because of the controlled access of this street, that such calls would be minimal, and if they occurred, the Police Department could legitimately refer them to the authorized Representative of the Homeowner's Association.

We look forward to working with you in the future.

Sincerely,

T. J. BOSSARD & ASSOCIATES, INC.



T. J. Bossard, President

TJB:bb

enclosure (2)

cc: Dennis Cluff, City Manager
Planning Commission (6)

Width of Traveled Way, Shoulder, and Roadway

Graded shoulder width is measured from the edge of traveled way to the point of intersection of shoulder slope and foreslope. The minimum roadway width is the sum of the traveled way and graded shoulder width given in Table V-8. In mountainous terrain or sections with heavy earthwork the graded width of shoulder in cuts may be decreased 2 ft, but in no case should the roadway width be less than 18 ft.

Design Speed (mph)	Width (ft) for Design Volume					
	Current ADT less than 250	Current ADT 250-400	Current ADT Over 400	DHV 100-200	DHV 200-400	DHV 400 and Over
	Width of Traveled Way					
20	18	20	20	20	22	24
30	18	20	20	20	22	24
40	20	20	22	22	22	24
50	20	20	22	22	24	24
60	20	22	22	22	24	24
	Width of Graded Shoulder (Each Side)					
All Speeds	2	2	4	6	6	8

Table V-8. Minimum width of traveled way and graded shoulder.