

**CITY OF BROOKINGS
BROOKINGS COMMON COUNCIL MEETING
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon
SEPTEMBER 10, 1990 - 7:00 P.M.**

MINUTES

I. CALL TO ORDER

Mayor Hummel called the meeting to order at 7:01 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Council Present: Mayor Fred Hummel, Council President Fred Schutt, Councilors Nancy Brendlinger, Floyd James

Council Absent: Councilor Bill Henry

Staff Present: City Manager Dennis Cluff, Administrative Assistant Donna Van Nest, City Attorney Michael Gillespie, Planning Director John Bischoff, Community Development Director Leo Lightle, Chief of Police Kent Owens, Finance Director/Recorder Beverly Shields, Municipal Court Judge A. L. Stuart

Media Present: Bill Schlichting, Curry Coastal Pilot; Marge Barrett, KURY

IV. CEREMONIES/APPOINTMENTS

1. Proclamation - "Constitution Week"

Mayor Hummel proclaimed the week of September 17-23, 1990 "Constitution Week" in Brookings.

2. Proclamation - "Emblem Club Week"

Mayor Hummel proclaimed the week of September 16-22, 1990 "National Emblem Club Week" in Brookings.

V. MINUTES FOR APPROVAL

A. Approval of Council Meeting Minutes

1. August 13, 1990 Regular Council Meeting
2. August 22, 1990 Special Council Meeting

Councilor Brendlinger moved to approve the minutes of the August 13, 1990 Regular Council Meeting as corrected, and the August 22, 1990 Special Council Meeting, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James,
Brendlinger, Mayor Hummel

Nays: None

Motion carried; minutes of the August 13, 1990 Regular Council Meeting and the August 22, 1990 Special Council Meeting approved.

B. Acceptance of Planning Commission Meeting Minutes

1. August 7, 1990 Regular Planning Commission Meeting
2. August 22, 1990 Special Planning Commission Meeting

Councilor Brendlinger moved to accept the minutes of the August 7, 1990 Regular Planning Commission Meeting and the August 22, 1990 Special Planning Commission Meeting, which motion was seconded by Councilor Schutt. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James,
Brendlinger, Mayor Hummel

Nays: None

Motion carried; minutes of the August 7, 1990 and the August 22, 1990 Planning Commission Meetings accepted.

VI. SCHEDULED PUBLIC APPEARANCES

1. Request for letter of support for SWOCAC's request to Oregon Housing Agency for grant funds

Stephen Howard, representing Oregon Housing & Associated Services, requested a letter from the Council supporting the application submitted by Southwestern Oregon Community Action Council to the Oregon Housing Agency for Community Development Corporation 'capacity building' grant funds. Mr. Howard explained that these funds will help address the long term goal of meeting low income housing needs in Curry County.

Councilor Schutt moved to authorize the mayor to write a letter of support for the application for 'capacity building' grant funds by SWOCAC, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger,
Mayor Hummel

Nays: None

Motion carried; Mayor authorized to write a letter in support of the application submitted by Southwestern Oregon Community Action Council to the Oregon Housing Agency for Community Development Corporation 'capacity building' grant funds.

VII. PUBLIC HEARINGS

1. Appeal of Planning Commission decision denying a minor partition; Assessor's Map 41-13-32C, Tax Lot 1105; File No. M3-2-90; Applicant R.B. Miller Contractors, Inc.

Mayor Hummel announced that this hearing would be conducted as a quasi-judicial hearing.

Mayor Hummel opened the meeting at 7:28 p.m. and asked if any Councilor wished to disclose ex parte contact.

Councilor Brendlinger stated that she had spoken with the appellant's agent regarding the purchase of property from him but that no property has been purchased and no business transaction is being contemplated.

Planning Director John Bischoff presented the staff report and the staff recommendation to approve Appeal No. APP-1-90, based on findings and conclusions and subject to specific conditions of approval. (The staff agenda report and the Final ORDER and Findings of Fact document are attached and made a part of these minutes.)

Charles Simpson, representing the appellant, R.B. Miller, presented his case.

Mayor Hummel asked if anyone else wished to speak in favor of the minor partition. There being no response, Mayor Hummel asked if anyone wished to speak in opposition.

Sharon Mariott, Marine Drive, stated that she did not wish to speak in opposition but wished to ask the question of who will maintain Marine Drive and what protection will there be from mud slides? The question was raised of ownership of the roadway.

Gay Swigert, Marine Drive, submitted nine photographs for the record (Exhibit "A") of a mud slide which occurred several years ago on Marine Drive, which was caused by the development of the hillside in question.

A copy of a Quitclaim Deed (Exhibit "B") was submitted as evidence that Marine Drive had at one time been granted to the city.

There being no further testimony, Mayor Hummel closed the hearing at 8:00 p.m.

Councilor Schutt moved to approve Appeal No. APP-1-90 and Minor Partition M3-2-90, as recommended by staff, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; Appeal No. APP-1-90 and Minor Partition M3-2-90 approved; R.B. Miller, Applicant.

Councilor Schutt moved to adopt the Final ORDER and Findings of Fact document as corrected, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; Final ORDER and Findings of Fact document for File No. M3-2-90 adopted as corrected.

VIII. COMMUNICATIONS

A. Mayor

1. Mayor Hummel announced that the entire membership of the Curry Tri-Cities Council will meet on Wednesday, September 12, 1990 in the Brookings council chambers at 7:00 p.m.
2. Mayor Hummel announced that the City of Brookings, the Mayor, Councilor Schutt, Councilor Brendlinger and Councilor Henry have been served with notices of a suit filed by former City Manager Roy Rainey. Mayor Hummel also announced that an Executive Session will be held following the regular council meeting to discuss possible litigation regarding this suit.
3. Consideration of solid waste franchise termination notice

Councilor James moved to postpone this agenda item to the Wednesday night Curry Tri-Cities Council meeting, which motion was seconded by Councilor Schutt. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; consideration of solid waste franchise termination notice postponed to the Wednesday night Curry Tri-Cities Council meeting.

B. Council

1. Establishment of committee to review commission ordinances

Mayor Hummel noted that Councilor Brendlinger has volunteered to serve on this ad hoc committee as a representative of the City Council.

Councilor Brendlinger moved to set up an ad hoc committee to review the ordinances establishing the Planning Commission, Parks & Recreation Commission, Golf Board and Committee for Capital Improvements, which motion was seconded by Councilor Schutt. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; ad hoc committee to review the ordinances establishing the Planning Commission, Parks & Recreation Commission, Golf Board and Committee for Capital Improvements approved.

Councilor Brendlinger moved to authorize the Mayor to contact the Chairperson of the Planning Commission, Parks & Recreation Commission, Golf Board and Committee for Capital Improvements to determine who will serve on the ad hoc committee from each organization, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; Mayor authorized to contact the Chairperson of the Planning Commission, Parks & Recreation Commission, Golf Board and Committee for Capital Improvements to determine who will serve on the ad hoc review committee from each organization.

C. Planning Commission

None.

D. Chamber of Commerce

None.

E. Golf Board

Jim Cole, Chairman of the Brookings-Harbor Golf Board, announced that South Coast Lumber Company has donated an additional 40-50 acres of land to their original donation of approximately 117 acres for the proposed golf course. Mr. Cole requested that the Council authorize the Mayor to sign the power of attorney and the City apply to Curry County for a lot line adjustment for the new property and the necessary zone changes.

Councilor Schutt moved to authorize the Mayor to sign the power of attorney and to authorize staff to apply to Curry County for a lot line adjustment and the necessary zone change, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; Mayor authorized to sign the power of attorney and staff authorized to apply to Curry County for a lot line adjustment and the necessary zone change for the additional Jack Creek property.

F. City Manager

1. Oak, Railroad, Del Norte Intersection Improvements

City Manager Dennis Cluff advised that this intersection is confusing and difficult for some drivers. In the near future Railroad will become a more heavily traveled roadway from the Oak St. traffic signal to the Brookings Town Center (Fifth St. traffic signal.) Mr. Cluff explained that a review of this intersection strongly suggests that Oak/Railroad Streets be the through streets, traveling both directions. Mr. Cluff presented Council with four alternative traffic patterns for this intersection, and recommended either Diagram A or D as the best configuration. Chief of Police Kent Owens recommended alternative "A" with a pole stop on Del Norte.

Following review of the four alternative traffic patterns, Councilor Brendlinger moved to approve an amended version of alternative "A", with no stop sign on southbound Oak Street and a pole stop sign on westbound Del Norte, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James,
Brendlinger, Mayor Hummel

Nays: None

Motion carried; amended alternative "A", with no stop sign on southbound Oak Street and a pole stop sign on westbound Del Norte approved.

2. Discussion of proposed makeup of police union

City Manager Dennis Cluff reported that the Teamsters Local 57 has clarified their proposed composition of the police union. They desire the wording "all full-time police officers, all full-time detectives and all dispatchers." This is a language clarification that describes the normally allowed police union group. Staff recommends that Council accept this composition of the proposed police union, and communicate such back to the ERB.

Councilor Schutt moved to approve the amended language, "all full-time police officers, all full-time detectives and all dispatchers," which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; amended language, "all full-time police officers, all full-time detectives and all dispatchers," approved for the proposed union composition of the police union.

3. Request for payment - Marv's Utility Specialists

This matter deferred to Executive Session.

4. Request for payment - Tidewater Contractors

City Manager Dennis Cluff advised that Tidewater Contractors is requesting payment in the amount of \$16,060.05 for work completed on the Fifth Street and Chetco Avenue Street Improvements project. Gary Dyer, Consulting Engineer, is recommending that the payment be approved.

Councilor James moved to approve payment of \$16,060.05 to Tidewater Contractors for work completed on the Fifth Street and Chetco Avenue Street Improvements project, which motion was seconded by Councilor Schutt. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; payment of \$16,060.05 to Tidewater Contractors for work completed on the Fifth Street and Chetco Avenue Street Improvements project approved.

5. Request for payment - Riedel International

City Manager Dennis Cluff advised that Riedel International is requesting payment in the amount of \$191,335.83 for work completed on the wastewater treatment plant outfall construction between August 6, 1990 and September 5, 1990. Brown and Caldwell Engineering recommends that the payment be approved.

Councilor Brendlinger moved to approve payment of \$191,335.83 to Riedel International for work completed on the wastewater treatment plant outfall construction between August 6, 1990 and September 5, 1990, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; payment of \$191,335.83 to Riedel International for work completed on the wastewater treatment plant outfall construction between August 6, 1990 and September 5, 1990 approved.

6. Request for payment - Wildish Building Company

City Manager Dennis Cluff advised that Wildish Building Co. is requesting payment in the amount of \$327,861.00 for work completed on the wastewater treatment plant upgrade construction between August 1, 1990 and August 31, 1990. Brown and Caldwell Engineering recommends that the payment be approved.

Councilor Schutt moved to approve payment of \$327,861.00 to Wildish Building Co. for work completed on the wastewater treatment plant upgrade construction between August 1, 1990 and August 31, 1990, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James,
Brendlinger, Mayor Hummel

Nays: None

Motion carried; payment of \$327,861.00 to Wildish Building Co. for work completed on the wastewater treatment plant upgrade construction between August 1, 1990 and August 31, 1990 approved.

7. Change Order No. 1 - Riedel International

City Manager Dennis Cluff explained that this change order will deduct \$5,000 from the total cost of the wastewater outfall project and will extend the final completion date 21 days for restoration and cleanup. Brown and Caldwell Engineering recommends that the Council approve this change order.

Councilor Brendlinger moved to approve Change Order No. 1 from Riedel International, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James,
Brendlinger, Mayor Hummel

Nays: None

Motion carried; Change Order No. 1 from Riedel International approved.

8. Change Order No. 3 - Wildish Building Company

City Manager Dennis Cluff advised that Change Order No. 3, (Proposed Contract Modification No. 4) consists of changing from the existing 208 volt service to 440 volt service and several extra adjustments to make the specified equipment fit in the existing pump station, and Change Order No. 3 (Proposed Contract Modification No. 8 was due to an oversight in the specifications on the voltage specified versus the voltage available. Brown and Caldwell Engineering recommended that the change order be approved. The change order will increase the total cost of the project by \$6,812 but the original contract amount is still under by \$22,204.

Councilor Schutt moved to approve Change Order No. 3 from Wildish Building Co., which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; Change Order No. 3 from Wildish Building Co., approved.

9. Request for authorization to purchase vehicle - police department

Police Chief Kent Owens explained that \$6,200 was budgeted in the 1990-91 budget for the purpose of buying an unmarked vehicle for the police department. Chief Owens indicated that he checked five local vehicles ranging from 1984 through 1987. He selected a 1987 Mazda 626 at Shoreline Motors for \$6,000.00. It is clean, fuel efficient, and should have a good resale value. Mazda has a track record of being dependable. Chief Owens requested authorization to purchase the vehicle if it is still available.

Councilor Brendlinger moved to authorize the purchase of the 1987 Mazda 626 at a total cost of \$6,000, or another like vehicle for the same price if the Mazda is no longer available, which motion was seconded by Councilor Schutt. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; purchase of the 1987 Mazda 626 at a total cost of \$6,000, or another like vehicle for the same price if the Mazda is no longer available, authorized.

G. Community Development Director

1. Acceptance of Klupenger waterline

Community Development Director Leo Lightle advised that Donald and Myrna Klupenger have installed a 6-inch waterline, with all appurtenances, on Thompson Road. The project was inspected and the appropriate testing completed. Mr. and Mrs. Klupenger have posted the appropriate warranty amount. The project is complete and upon Council action water would be available. Mr. Lightle requested that the Council accept the waterline into the city system.

Councilor Brendlinger moved to accept the Klupenger waterline into the city system, and to change the letter of credit to include the words "and is irrevocable", which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; Klupenger waterline accepted into the city system, and the letter of credit changed to include the words "and is irrevocable".

2. Extension of refuge lane - Chetco Avenue north of Fifth Street intersection - owners request

Community Development Director Leo Lightle explained that the realignment of the Fifth Street intersection and the relocation of the northern highway access necessitates the extending of the center refuge lane north of the project.

Staff requested that Council authorize the removing of parking spaces, with the property owners consent, in front of the Texaco Station and the A & W Restaurant on Chetco Avenue.

Councilor Schutt moved to authorize staff to take steps to remove parking in front of the Texaco Station and the A & W Restaurant on Chetco Avenue, with the owners consent, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; staff authorized to take steps to remove parking in front of the Texaco Station and the A & W Restaurant on Chetco Avenue, with the owners consent.

H. City Attorney

None.

J. Contract Review Board

None.

IX. CALL FOR BIDS

None.

X. REPORT ON BIDS

1. Infrared asphalt heater

Community Development Director Leo Lightle indicated that as authorized by Council at the August Council meeting, bids were opened at 9:00 a.m., September 5, 1990 for an infrared asphalt heater. Only one bid was received, that being from Pac West Equipment Sales Company. As City staff has previously discussed with the City Council, this unit will help facilitate street repairs. The unit, by reheating on the ground, will help eliminate seam and allow for re-using most of the existing asphalt (if it is of good quality) and will allow us to pre-order and store asphalt. Mr. Lightle requested that Council award the bid for the infrared asphalt heater to Pac West Equipment Sales Company at a total cost of \$44,500.

Councilor Brendlinger moved to award the bid for the infrared asphalt heater to Pac West Equipment Sales Company at a total cost of \$44,500, which motion was seconded by Councilor Schutt. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel

Nays: None

Motion carried; bid for the infrared asphalt heater awarded to Pac West Equipment Sales Company at a total cost of \$44,500.

2. City Manager vehicle

City Manager Dennis Cluff advised that As authorized by Council at the August Council meeting, bids were opened at 8:30 a.m., September 5, 1990, for a vehicle to be used in the administrative branch of the city. Mr. Cluff noted that two bids were received, as follows:

Coast Auto Center - 1990 Chev. Corsica - \$10,698.00
Bayview Ford - 1990 Ford Taurus - \$14,300.00

Staff recommended that Council award the bid to Coast Auto Center at a total cost of \$10,698.00 for a 1990 Chevrolet Corsica.

Councilor Schutt moved to award the bid for the administrative vehicle to Coast Auto Center for a 1990 Chevrolet Corsica at a total cost of \$10,698.00, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger,
Mayor Hummel

Nays: None

Motion carried; bid awarded to Coast Auto Center for a 1990 Chevrolet Corsica at a total cost of \$10,698.00.

XI. FINAL ORDERS

None.

XII. ORDINANCES

None.

XIII. RESOLUTIONS

None.

XIV. UNSCHEDULED PUBLIC APPEARANCES

Ken MacLeod spoke.

Don Jaklewicz spoke.

XV. APPROVAL OF VOUCHERS

Councilor Brendlinger moved to approve the vouchers in the amount of \$674,014.13, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger,
Mayor Hummel

Nays: None

Motion carried; vouchers in the amount of \$674,014.13 approved.

EXECUTIVE SESSION ORS 192.660(1)(h), 192.660(1)(i)

Mayor Hummel recessed the council meeting at 10:07 p.m. to conduct an executive session for the purpose of discussing pending litigation.

Mayor Hummel reconvened the council meeting at 11:52 p.m.

VIII.F.3 Request for payment - Marv's Utility Specialists (continued)

Councilor Schutt moved to approve payment to Marv's Utility Specialists for work completed on the water intake in the amount of \$48,334.94, which motion was seconded by Councilor James. The clerk called the roll with the following results:

Ayes: Councilors Schutt, James, Brendlinger, Mayor Hummel


Nays: None

Motion carried; payment to Marv's Utility Specialists for work completed on the water intake in the amount of \$48,334.94 approved.

XVI. ADJOURNMENT

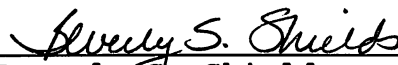
Councilor Schutt moved to adjourn the council meeting, which motion was seconded by Councilor James; motion carried unanimously.

Mayor Hummel adjourned the meeting at 11:55 p.m.



Fred Hummel
Mayor

ATTEST:



Beverly S. Shields
City Recorder

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT:	Appeal	REPORT DATE:	August 8, 1990
FILE NO:	App-1-90	ITEM NO:	VII.1 (Continued
RELATED CASE:	M3-2-90		from Aug. 13,
HEARING DATE:	Sept. 4, 1990		1990, Item X.5)
		ADDENDUM:	August 29, 1990

GENERAL INFORMATION

APPLICANT: Miller Contractor Inc.

REPRESENTATIVE: Charles A. Simpson

REQUEST: An appeal of the Planning Commission's decision to deny a minor partition to create three lots.

TOTAL LAND AREA: 3.10 acres.

LOCATION: Between Marina Heights Road and Marina Dr. (Pipeline Road) approximately 1/2 mile east of Old County Road.

ASSESSOR'S NUMBER: Map No. 40-13-32C, Tax Lot 1105

ZONING INFORMATION

EXISTING: R-1-6, Single Family Residential, 6,000 sq. ft. minimum lot size.

PROPOSED: R-1-6

SURROUNDING: North, East, South, West - R-1-6

LAND USE INFORMATION

EXISTING: Vacant

PROPOSED: Residential uses

SURROUNDING: Scattered residential uses on medium to large sized lots.

PUBLIC NOTICE: Hearing notice published in the local paper and mailed to property owners within 250 feet of the subject site.

BACKGROUND INFORMATION

The applicant is appealing the Planning Commissions denial of a minor partition on a 3.10 acre parcel located between Marina Heights Road on the west and Marine Dr. (Pipeline Road) on the east and approximately 1/2 mile east of Old County Road. The proposed minor partition would create three lots 0.95, 1.00 and 1.32 acres in size. The property is zoned R-1-6 and is presently vacant. Surrounding properties are also zoned R-1-6 and are developed with scattered residential uses. Water service is available to the site but sewer service is not available at this time.

The subject property slopes steeply downward from Marina Heights road on the west, flattens somewhat in the center section and then slopes steeply down to Marine Dr. on the east. The parcel also slopes more gently from a high point in the north to a low in the south. The parcel adjacent to the southerly boundary of the subject property was minor partitioned in September of 1989 and is presently vacant. When this partition was approved a 15 foot wide utility easement was created extending westerly from Marine Dr. to the middle of the property and then northerly to boundary of the subject property. The end of this utility easement is centered on the lot line between Lot A and Lot B of the subject minor partition (See Exhibit 3). The topography of this parcel is similar to that of the subject property. The parcel adjacent to the northerly boundary of the subject property consists of 9.61 acres and is presently vacant. Although larger, the topography of this parcel is also similar to that of the subject parcel.

The Commission heard this case on May 1, 1990 and again on June 5, 1990 and at the last meeting voted to deny the partition. The reasons for the denial were based on the findings and conclusions presented in the Staff Report (see attached) and are as follows:

Findings

1. The applicant has applied for a three lot minor partition on a 3.10 acre parcel.
2. The property is zoned R-1-6 and is designated Residential in the Comprehensive Plan.
3. Water service is available to the site but sewer service is not available.
4. The topography of the site is such that there is a steep drop from the easterly edge of Marina Heights Road onto the property.
5. As of this writing the applicant has not indicated how access from Marina Heights Road to Lot A can be accomplished.

Conclusions

1. The proposed minor partition is consistent with the zoning and the Comprehensive Plan.
2. The topography of the site is such that it may not be possible to provide access to Lot A from Marina Heights Road.
3. Because of topographical concerns, particularly access to Lot A, this parcel should be divided through the use of a major partition to provide proper access to all parcels.

Staff has two basic concerns for the division of this property which are related to the topography of the site. The first concern is that the property drops steeply from the edge of Marina Heights Rd. along the entire frontage of Lot A and there is reason to doubt that viable driveway access can be provided to Lot A from Marina Heights Road. At staff's request the applicant's representative submitted drawings from an engineer indicating how a driveway may be constructed to Lot A. However, staff did not receive these drawings until June 4, 1990, the day before the June 5th hearing and they were faxed to the City Engineer for review and comment. The City Engineer's comments were faxed back to the city after 5:00 PM on June 5th and not received by staff until the next day. When the staff report was amended for the June 5th meeting (which was before the applicant submitted their engineer's drawings) the applicant's representative had stated that they did not want another continuance and therefore the staff report recommended that the minor partition be denied. Since the City Engineer's comments had not yet been received, staff would have supported a request by the applicant's representative for a continuance at the Commission hearing.

When the City Engineer's comments were received, however, there were still questions about the feasibility of a driveway to Lot A. These questions have not been answered at the time of this writing. If a driveway cannot be provided from Marina Heights Road to Lot A, the only other access to the lot would be through the use of the 15 foot utility easement which accesses off of Marine Dr., passes through two other lots and is approximately 390 feet long. Policy 1 of Goal 12 of the Comprehensive Plan states "The City will develop a system of streets that provides adequate access to all property in terms of utilities and fire and police protection." It was staff's opinion that if the only access to Lot A was via a 15 foot wide, 390 foot long utility easement that passes through two other lots, the requirements of Goal 12 can not be fulfilled. Access would be taken from a street which does not abut the lot and the actual entrance to the utility easement is a considerable distance from the lot it is serving. These conditions could cause confusion and delay response by emergency vehicles. Without the ability to take access off of Marina Heights Rd., Lot A would become what is essentially a land locked parcel.

The second concern is for the ability to access the 9.61 acre parcel located directly north of the subject property. Land Development Code Section 176, Land Divisions, Subsection 176.050, A, 3, Minor Partitions, requires that "Adjoining property under separate ownership can either be developed or be provided access that will allow its development in accordance with this code." Because of the topography of the area, staff is concerned that the proposed minor partition may not allow the parcel adjacent to the north to be accessed and/or developed to the appropriate extent. Since this parcel is greater than 9 acres in size, the most desirable development would be in the form of a subdivision which would require a street into or through the property. Like the subject property, the parcel to the north drops steeply from Marina Heights Road., flattens out somewhat in the center and the drops again to Marine Drive. The property also slopes from a high point in the north to a low point in the south.

Because of the steepness of the drops from Marina Heights Rd. and onto Marine Dr. there is some question as to whether it is feasible to construct a road from either of these streets into or through the property. There is, however, an existing trail, apparently created by off road vehicle activity, that leaves Marine Drive in the alignment of the 15 foot utility easement mentioned earlier and extends through the subject property into the center of the nine acre parcel and back out to Marine Dr. This trail tends to traverse the flatter center portion of the area and apparently would have provided an alignment for an interior loop road for the entire area and greatly increased the ability to develop the subject property as well as the parcels to the south and north. Lot A, for example would have public access from this road and thus would not need Marina Heights Rd or a 390 foot easement. The minor partition on the south side of the subject property, however, has greatly reduced the ability to create this loop road.

After the June 5, 1990 hearing, the applicant and his representative were told that if they could indicate that a driveway was feasible for Lot A and that it was feasible to construct a road into (a cul-de-sac) or through the 9.61 acre parcel on the north, staff would not contest their appeal to the City Council. The applicant's engineer has submitted drawings of a possible cul-de-sac alignment from Marina Heights Road into the 9 acre parcel. The City Engineer has reviewed these drawings and has several concerns that have not been resolved as of this writing.

APPLICANTS BASES FOR APPEAL

See attached documents titled NOTIFICATION OF APPEAL which includes the applicant's Bases For Appeal, Matters of Petition For Review and Exhibits.

Staff comments on the Applicant's Matters of Petition For Review.

Matter A: The Planning Director did meet with the applicant's representative on the site on April 26, 1990 and at that time and did determine that it may be possible to provide an access road into or through the 9 acre parcel directly north of the subject property. However, as he became more familiar with the area and its topography, including the realization that a drive way to Lot A of the proposed partition, from Marina Heights Rd., may not be feasible, it became apparent the utility easement was meant to be the access to Lot A. This realization refocused concern back to issues of access to both the subject property and the adjoining parcel to the north and the Staff Report was written in that regard. The applicant's representative was informed of these concerns prior to the Planning Commission meeting.

Matter B: Staff determined the a driveway to Lot A may not be feasible and asked the applicant's representative to provide evidence that a driveway could be constructed from Marina Heights Rd. to serve Lot A. As mentioned above the engineers report was submitted on the June 4, 1990 and the City Engineer's comments were not received until the morning of June 6th. Because the request for this information was made so late, staff would have supported another continuance to allow time for the review but was under the impression that the applicant did not want the case continued again.

Section 172.110.E does encourage joint access at a property line, however, staff's interpretation of this subsection does not include a 390 foot long easement which bisects one lot before it shares a common property line with two other lots. Regardless of Section 172.110.E, if a driveway to Lot A cannot be constructed the creation of this lot would not be allow through the provisions of Section 132.060 Access which states "Except as permitted by other provisions of this code, no lot shall contain any building used in whole or in part for residential purposes unless said lot abuts a street, dedicated and improved as a public right-of-way, other than an alley, for a distance of at least 20 feet. The 20 feet access must be available but need not be used if safe, adequate and usable ingress and egress is otherwise provided. If the latter access is used, approval must be obtained from the site plan committee." (Underline added for emphasis). If access from Marina Heights Rd. cannot be provided, the primary access is not available and secondary access cannot be used.

FINDINGS OF FACT

1. The applicant is requesting a minor partition of a 3.10 acre parcel to create three parcels of approximately 1 acre each.
2. The subject parcel is located between Marina Heights Rd. and Marine Dr. approximately one half mile east of Old County Road.

3. The property slopes steeply down from Marina Heights Rd. on the west, flattens in the center and then slopes steeply down to Marine Dr. on the east. The property also slopes more gently from a high point in the north to a low point in the south.
4. Section 132.060, Access, of the Land Development Code requires that each lot used for residential purposes must have at least 20 feet of usable access which abuts a public road.
5. Section 176.050 Minor partitions, Subsection A.3, requires that the Planning Commission consider the ability to access and develop adjoining property in separate ownership when approving a minor partition.
6. Staff has asked the applicant to submit evidence that a driveway can be constructed to provide access from Marina Heights Rd. to Lot A of the proposed minor partition.
7. Materials submitted by the applicant in regard to the driveway to Lot A were reviewed by the City Engineer. Concerns expressed by the City Engineer have not been address at this time.
8. The minor partition request was denied at the Planning Commission meeting on June 5, 1990, based on access to Lot A and access to the 9± acre parcel directly north of the subject parcel.
9. After the Planning Commission hearing the applicant was asked to submit evidence that the 9± acre parcel directly north of the subject property can be accessed pursuant to Section 176.050, Subsection A.3.
10. Materials submitted by the applicant in regard to access to the 9± acre parcel directly north of the subject lot were reviewed by the City Engineer. Concerns expressed by the City Engineer have not been addressed at the time of this writing.

CONCLUSIONS

1. Until such time that the concerns for access to Lot A of the proposed of the minor partition and for access to the adjoining property on the north, are address and evaluated a decision to approve or deny this partition cannot be made.
2. The issue should be continued for a reasonable length of time to allow the applicant to resolve the concerns expressed by the City Engineer.

ADDENDUM AUGUST 29, 1990

On August 20, 1990 a representative from the City Engineer met with the applicants engineer on the site to review the feasibility of placing a driveway from Marina Heights Dr. into Lot A of the proposed minor partition and the feasibility of placing a access road to the adjoining parcel to the north. This inspection resulted in two letters from the City Engineer Dated August 27, 1990 stating that they have found that both the driveway and the access road are feasible and can be constructed (See attached letters). Therefore staff withdraws all opposition to the appeal and to the minor partition.

FINDINGS

1. The applicant is requesting a minor partition of a 3.10 acre parcel to create three parcels of approximately 1 acre each.
2. The subject parcel is located between Marina Heights Rd. and Marine Dr. approximately one half mile east of Old County Road.
3. The property slopes steeply down from Marina Heights Rd. on the west, flattens in the center and then slopes steeply down to Marine Dr. on the east. The property also slopes more gently from a high point in the north to a low point in the south.
4. Section 132.060, Access, of the Land Development Code requires that each lot used for residential purposes must have at least 20 feet of usable access which abuts a public road.
5. Section 176.050 Minor partitions, Subsection A.3, requires that the Planning Commission consider the ability to access and develop adjoining property in separate ownership when approving a minor partition.
6. Staff has asked the applicant to submit evidence that a driveway can be constructed to provide access from Marina Heights Rd. to Lot A of the proposed minor partition.
7. Materials submitted by the applicant in regard to the driveway to Lot A were reviewed by the City Engineer. A letter from the City Engineer dated August 27, 1990, indicates that the driveway can be constructed.
8. Material submitted by the applicant in regard to the access of the adjoining parcel to the north has been reviewed by the City Engineer. A letter from the City Engineer dated August 27, 1990 indicates that access to the adjoining parcel can be constructed.

CONCLUSIONS

1. The proposed minor partition is consistent with the Comprehensive Plan and with the Land Development Code.
2. Proper access can be provided to all lots of the proposed minor partition.
3. Access can be provided to the adjoining parcel to the north of the subject parcel.
4. Water service can be provided to the parcel but sewer service cannot be provided at this time.
5. The proposed lots are large enough to support septic systems.

CONDITIONS OF APPROVAL

1. The applicant shall execute and record the attached Deferred Improvement Agreement providing for the construction of curb, gutter, sidewalk, and pavement to match existing pavement, plus any required underground storm drainage facilities along the Marina Heights Road and Marine Road (pipe line road) frontage abutting the subject parent parcel. Such agreement shall be filed and recorded prior to the signature by the Chairman of the Planning Commission being affixed to the minor partition map.
2. Included in the Deferred Improvement Agreement shall be a condition that the owner/applicant, and successors in interest of the owner, shall agree to participate in the formation of an LID for the construction/installation of a sanitary sewer collection system including payment of proportionate share of costs incurred thereby and agree to abandon any installed septic systems servicing the subject resulting parcels and connect to such sewer collection system if constructed within 300 feet of the subject parcels.
3. The owner/applicant shall deed to the City of Brookings, unencumbered, the easterly 50 feet of the existing 65 foot wide, north-south easement commonly referred to as Marine Drive, Pipeline Road or Reservoir Road No. 2, and serving the abutting parcels to the east and north to provide a future public right-of-way street improvement project. The remaining 15 feet of the easement will remain in its present status. Also, for the same purposes, deed to the city the existing 25 foot wide roadway easement along the property's western boundary for future improvement.

4. Prior to the final approval of the minor partition map, the owner/applicant shall provide the city a certificate from the Curry County Sanitarian that the three resulting parcels may be feasibly served by an on-site sewage disposal system.
7. The owner/applicant shall:
 - A. File a survey map with the Curry County Surveyor within 90 days of approval and signature of the parcel map by the City of Brookings and failure to file same within said time period shall render the approval null and void.
 - B. File the deeds and/or descriptions resulting from the minor partition approval creating the parcels with the Curry County Assessor's Office within 10 working days of filing the survey map with the Curry County Surveyor.
 - C. With in 10 days after filing the survey map with the county surveyor, the owner/developer shall provide the city two (2) blueline prints of the survey map.

RECOMMENDATION

Staff recommends **APPROVAL** of Appeal No. APP-1-90 and Minor Partition M3-2-90 based on findings and conclusions to be presented above and subject to the conditions of approval listed above.

BEFORE THE PLANNING COMMISSION
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON

In the matter of Planning Commission)	Final ORDER
File No. M3-2-90 a request for a minor)	and Findings of
partition; applicant Miller)	Fact
Contractors Inc.; represented by)	
<u>Charles A. Simpson.</u>)	

ORDER granting approval of an application for a minor partition of a 3.10 acre parcel located between Marina Heights Drive and Marine Drive approximately one-half mile east of Old County Road; Assessors Map No. 40-13-32C, Tax Lot 1105; Zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size; three lots of approximately one acre in size.

WHEREAS:

1. The Planning Commission has duly accepted the application filed in accordance with Section 176.050 Minor Partitions, of the Land Development Code which authorizes the Planning Commission to approve, approve with conditions or deny a request for minor partition, based upon evidence that the proposal meets the following criteria:

A. Conformance with the Comprehensive Plan, and applicable development standards of this code, and state and federal law

B. Development of any remainder of property under the same ownership, if any, can be accomplished in accordance with this code.

C. Adjoining property under separate ownership can either be developed or be provided access that will allow its development in accordance with this code.

D. Conditions necessary to satisfy the intent of the Land Development Code and Comprehensive Plan can be satisfied prior to final approval.

2. The Brookings City Council has duly considered the applicants appeal of the Planning Commissions denial of the above described application on the agenda of its regularly scheduled public hearing on September 10, 1990; and

3. Recommendations were presented by the Planning Director in the form of a written Staff Agenda Report dated August 8, 1990, and an addendum dated August 29, 1990, and by oral presentation, and evidence and testimony was presented by the applicant and the public at the public hearing; and,

4. At the conclusion of said public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, accepted the Staff Agenda Report and approved the request for the subject minor partition and directed staff to prepare a Final ORDER and Findings of Fact to that affect.

THEREFORE, LET IT BE HEREBY ORDERED that the application of minor partition on the subject parcel **STANDS APPROVED**, subject to conditions listed below.

LET IT FURTHER BE OF RECORD that the Planning Commission in approving this application for minor partition hereinafter supported by the following findings of fact and conclusions:

FINDINGS OF FACT

1. The applicant is requesting a minor partition of a 3.10 acre parcel to create three parcels of approximately 1 acre each.
2. The subject parcel is located between Marina Heights Rd. and Marine Dr. approximately one half mile east of Old County Road.
3. The property slopes steeply down from Marina Heights Rd. on the west, flattens in the center and then slopes steeply down to Marine Dr. on the east. The property also slopes more gently from a high point in the north to a low point in the south.
4. Section 132.060, Access, of the Land Development Code requires that each lot used for residential purposes must have at least 20 feet of usable access which abuts a public road.
5. Section 176.050 Minor partitions, Subsection A.3, requires that the Planning Commission consider the ability to access and develop adjoining property in separate ownership when approving a minor partition.
6. Staff has asked the applicant to submit evidence that a driveway can be constructed to provide access from Marina Heights Rd. to Lot A of the proposed minor partition.
7. Materials submitted by the applicant in regard to the driveway to Lot A were reviewed by the City Engineer. A letter from the City Engineer dated August 27, 1990, indicates that the driveway can be constructed.

8. Material submitted by the applicant in regard to the access of the adjoining parcel to the north has been reviewed by the City Engineer. A letter from the City Engineer dated August 27, 1990 indicates that access to the adjoining parcel can be constructed.

CONCLUSIONS

1. The proposed minor partition is consistent with the Comprehensive Plan and with the Land Development Code.
2. Proper access can be provided to all lots of the proposed minor partition.
3. Access can be provided to the adjoining parcel to the north of the subject parcel.
4. Water service can be provided to the parcel but sewer service cannot be provided at this time.
5. The proposed lots are large enough to support septic systems.

CONDITIONS APPLICABLE PRIOR TO FINAL APPROVAL

The conditions of this map approval will be applied prior to and as a condition of final plat approval in order to satisfy the intent of the Land Development Code and Comprehensive Plan.

CONDITIONS OF APPROVAL

1. The applicant shall execute and record the attached Deferred Improvement Agreement providing for the construction of curb, gutter, sidewalk, and pavement to match existing pavement, plus any required underground storm drainage facilities along the Marina Heights Road and Marine Road (pipe line road) frontage abutting the subject parent parcel. Such agreement shall be filed and recorded prior to the signature by the Chairman of the Planning Commission being affixed to the minor partition map.
2. Included in the Deferred Improvement Agreement shall be a condition that the owner/applicant, and successors in interest of the owner, shall agree to participate in the formation of an LID for the construction/installation of a sanitary sewer collection system including payment of proportionate share of costs incurred thereby and agree to abandon any installed septic systems servicing the subject resulting parcels and connect to such sewer collection system if constructed within 300 feet of the subject parcels.

3. The owner/applicant shall deed to the City of Brookings, unencumbered, the easterly 50 feet of the existing 65 foot wide, north-south easement commonly referred to as Marine Drive, Pipeline Road or Reservoir Road No. 2, and serving the abutting parcels to the east and north to provide a future public right-of-way street improvement project along with sufficient slope easement as required for road construction. The remaining 15 feet of the easement will remain in its present status. Also, for the same purposes, deed to the city the existing 25 foot wide roadway easement along the property's western boundary for future improvement. [As per City Council action September 10, 1990]
4. Prior to the final approval of the minor partition map, the owner/applicant shall provide the city a certificate from the Curry County Sanitarian that the three resulting parcels may be feasibly served by an on-site sewage disposal system.
5. The owner/applicant shall:
 - A. File a survey map with the Curry County Surveyor within 90 days of approval and signature of the parcel map by the City of Brookings and failure to file same within said time period shall render the approval null and void.
 - B. File the deeds and/or descriptions resulting from the minor partition approval creating the parcels with the Curry County Assessor's Office within 10 working days of filing the survey map with the Curry County Surveyor.
 - C. Within 10 days after filing the survey map with the county surveyor, the owner/developer shall provide the city two (2) blue-line prints of the survey map.

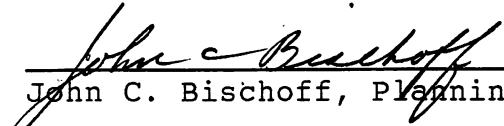
Based upon the above and the supportive evidence and proposed findings of fact above listed, the City Council granted approval of Minor Partition File No. M3-2-90.

Accepted and approved this 10th day of September, 1990.



Fred Hummel, Mayor

ATTEST:



John C. Bischoff, Planning Director