

AGENDA
CITY OF BROOKINGS
Common Council Meeting
Brookings City Hall, Council Chamber
898 Elk Drive, Brookings, Oregon
Monday, August 28th, 7:00 p.m.

> **REVISED 8/25/06** <

(Adds item "A" under Regular Agenda and item "F" under Urban Renewal Agency).

A meeting of the **Urban Renewal Agency** will follow immediately after the Common Council meeting.

I. Call to Order

II. Pledge of Allegiance

III. Roll Call

IV. Ceremonies/Appointments/Announcements

A. Ceremonies

1. Employee anniversary - 15 years: John Cowan [pg. 5]
2. Employee anniversary - 25 years: Bob Schaefer [pg. 7]

V. Public Hearings

A. An appeal of the Planning Commission's approval of File No. APPC-2-06, an appeal of the Site Plan Committee decision regarding required yard setbacks and height for a water tank; located at the *Pacific Terrace Subdivision* at Marina Heights Loop and Marina Heights Road in the SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size) zone; Assessor's Map No. 40-13-32CC, Tax Lot 1501; Gary and Meta Kent, Harry and Sherry Gallaty, Michael and Ellen Winger, and Eric and Mollie Eastaff; appellants. Criteria used to decide this case can be found in Sections 156-Appeal to the City Council, 80.050-Action of the Site Plan Committee, and 80.060-Appeals, of the Brookings Municipal Code. [pg. 9]

B. An appeal of the Planning Commission's approval of File No. CUP-7-06, a request for a Conditional Use Permit for a dwelling group on a .82 acre parcel, located at 19 Tanbark Road; Assessor's Map 41-13-08BB, Tax Lot 2000; R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) zone; Tom Appleby, appellant; and representative for "Friends of Tanbark Point", File No. APP-3-06. Criteria used to decide this case can be found in Sections 20.110-Dwelling groups, 136-Conditional Use Permits, 100-Hazardous Building Site, and 156-Appeal to the City Council, of the Brookings Municipal Code. [pg. 141]

- VI. **Oral Requests and Communications from the Audience**
 - A. **Committee and Liaison reports**
 - 1. **Chamber of Commerce**
 - 2. **Council Liaisons**
 - B. **Public Comment** – limited to a maximum of 5 minutes per person
A **public comment card**, located near the southern council door, **must be completed and turned into the Administrative Assistant** prior to the beginning of the meeting or prior to approaching the podium to speak.
- VII. **Regular Agenda**
 - A. Discussion and possible action authorizing the Mayor to sign a statement in opposition of measure # 48 in state wide voter's pamphlet. (*Mayor Pat Sherman*) [supplemental packet]
- VIII. **Consent Calendar**
 - A. **Approval of Council Meeting Minutes**
 - 1. Meeting of August 14, 2006 [pg. 221]
- IV. **Remarks from Mayor and Councilors**
 - A. **Council**
 - B. **Mayor**
- X. **Adjournment**

**URBAN RENEWAL AGENCY
Regular Meeting**

Immediately following the City Council Meeting

- I. **Call to Order**
- II. **Roll Call**
- III. **Minutes of: August 14, 2006 [pg. 225]**
- IV. **Regular Agenda –**
 - A. Discussion and consideration for funding approval of Facade Improvement Program application submitted by Gary and Karen Kerr for Azalea Lanes, located at 410 Oak Street. (*Dale Shaddox, City Manager*) [pg. 227]
 - B. Discussion and consideration for funding approval of Facade Improvement Program application submitted by Ted Fitzgerald for Fitzgerald Financial, located at 624 Fleet St. (*Dale Shaddox, City Manager*) [supplemental packet]
 - C. Discussion and consideration for funding approval of Facade Improvement Program application submitted by Rick Bishop for Bernie Bishop Mazda. (*Dale Shaddox, City Manager*) [supplemental packet]

- D. Discussion and consideration for funding approval of Façade Improvement Program application submitted by Kim Jones, Ken Asztalos and Catherine Steigerwald for Colours Gallery located at 509 Chetco Avenue. (*Dale Shaddox, City Manager*) [supplemental packet]
- E. Discussion and consideration for funding approval of Façade Improvement Program application submitted by Kim Jones, Ken Asztalos for Curry Collections located at 704 Chetco Avenue. (*Dale Shaddox, City Manager*) [supplemental packet]
- F. Request for financial partnering – alley improvements – alley south of Chetco Avenue, Oak Street north to existing paving. (*Dale Shaddox, City Manager*) [supplemental packet]

V. Adjournment

Supplemental Packet

Monday, August 28, 2006

City Council Meeting

Regular Council Meeting

<u>Section</u>	<u>Item</u>	<u>Heading</u>	<u>Page #</u>
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Urban Renewal Agency Meeting

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BABIN & KEUSINK

PROFESSIONAL CORPORATION

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BROOKINGS, OREGON 97415-0800

CHRISTOPHER KEUSINK

JOHN C. BABIN*

*ALSO LICENSED IN CALIFORNIA

(541) 469-5331 • FAX (541) 469-9865

August 25, 2006

RECEIVED
AUG 25 2006 1:00 P.M.
CITY OF BROOKINGS CM

Dianne Snow
Planning Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

RE: Pacific Terrace PUD
File # PUD-1-04

Dear Ms. Snow:

This letter will supplement material submitted to the City of Brookings in connection with the water tank located on the Pacific Terrace PUD. While numerous materials have been submitted, the first formal materials submitted which have culminated in the scheduled City Council hearing on August 28, 2006, was my letter to Mr. Bischoff dated May 19, 2006 preceded by my letter to Mr. Wilcox dated May 10, 2006. Hopefully this letter and the materials submitted herewith will help to clarify matters for the staff and the City Council. They are intended to be considered as evidence by the City Council on the appeal of the Planning Commission decision in this matter.

1. Interpretation of the Code

The matter submitted to the Planning Commission at their June hearing on this matter does involve interpretation of the Code in at least two respects.

As previously noted, code section 17.116.080 provides flexibility for developments that qualify as a planned unit development. The Planning Commission may authorize "standards of site area and dimension, site coverage, yard spaces.... distance between structures... not equivalent to the standards prescribed within the regulations for the district within which the planned unit is located..."

By requiring the applicant, in condition number 41, to construct the water tank at the location shown in the preliminary plat map, and then by also requiring the applicant to construct the water tank according to specifications supplied and/or approved by the engineer as required by condition number 46, the Planning Commission was authorizing the applicant to construct the water tank without being confined by the height and/or setback limits referred to. The Planning Commission had authority to excuse such compliance on this PUD under Brookings Municipal Code Section 17.116.080 et. seq. The Planning Commission's unanimous Final Order confirms this interpretation.

According to public works director, Donald Wilcox's testimony at the time of the June hearing before the Planning Commission, the only type of tank that will satisfy the requirements now being imposed on the Bruce Bros., is an underground water tank. Clearly, an underground water tank is an entirely different animal than the water tank described in condition number 41 of the original Planning Commission approval. If the Planning Commission had intended to require an underground water tank they would have specified as such in the conditions of approval. Since an underground tank was not specified, the Planning Commission at its June hearing confirmed that the water tank as constructed was the water tank that they intended to be constructed despite complaints thereafter by staff regarding height and setback limitations. Therefore it is clear that an underground tank was not intended as a condition of the approval of this PUD.

For the City or staff to require an underground tank, or a different tank from that constructed, would constitute a change of conditions of approval, a move that the Planning Commission specifically rejected at their June hearing.

An alternate interpretation of BMC 17.128.030 was made in the letter of May 19, 2006. That section provides exceptions to height regulations. There are two classes of exceptions to height regulations for water towers: those that are not less than 50 feet from every lot line and all other cases. In all other cases the height of the water tank shall not exceed one and one-half times the height limitation set forth in the applicable zoning district. Since the height limitation in the SR zone is 30 feet, the applicable height limitation of this water tank is 45 feet. Since the water tank is less than 45 feet, it meets the height limitations specified by the Brookings Municipal Code.

2. Vested Rights

Additionally, the Planning Commission clearly based their decision allowing the placement of the water tank, with the height and setback variations, on a determination that the applicant had a vested right to have the water tank accepted by the City as constructed. The findings and conclusions of the Planning Commission set forth the basis of the vested rights argument.

The premise for the conclusion that the applicant has a vested right to have the water tank accepted are in the conclusion of the Planning Commission themselves. The Planning Commission concluded that the lot in which the required tank was to be placed was depicted on the approved preliminary plat map with the size and shape. They concluded that the setback should've been determined at the time the foundation forms were inspected. The evidence is clear that the City staff provided the specifications for the size of the water tank and had a representative on the site of the construction every single day of its construction. The Planning Commission further concluded that the evidence suggested that the capacity of the tank was determined to serve the entire area rather than just the approved PUD. Thus, they required the tank to be too large to meet setback requirements. Its final conclusion that "it is unreasonable to require removal and re-construction of the tank" is a clear and specific acknowledgment of the vested right of the applicant to have their substantial work and investment accepted by the City of Brookings.

Again it is worth noting, that there is no time limit in the Brookings Municipal Code for the presentation of a request to the City of Brookings, for a determination of the vested right of an applicant with regard to the construction of public improvements on a subdivision or planned unit development.

The applicant would like to take this opportunity to present additional evidence to the City Council that supports the finding that the applicant does have a vested right as specified above.

The additional documentation attached to this letter shows substantial improvements made by the Bruce Bros. in the building of the water tower. At the time of the hearing before the Planning Commission the water tower was substantially complete. There were only valves to be installed. Valve approval was waiting on the outcome of the hearings regarding the water tank. The evidence shows that the applicant relied on the language in the conditions of approval regarding the placement of the tank and the construction of the tank to make expenditures of substantial sums towards its construction. The findings of the Planning Commission recognized that the Commission specified the lot on which the water tank was to be placed at the time that the Planning Commission approved the placement and the tank was depicted on the approved preliminary plat map with size and shape. There was no hint or mention that the water tank was to be an underground tank.¹ The material submitted as attachment A shows the type of expenditures and the amount of the expenditures on the water tank by the applicant. The total amount of the expenditures is \$504,702.00 which was made in reliance on the actions of the City.

To the extent that the applicant reasonably relied upon the representations of the City that the tank was to be placed in the location specified on the preliminary plat and to be built according to specifications and dimensions supplied by and approved by the City Engineer, it would be unreasonable for the City now to change their position and claim that the water tank is not built according to City of Brookings requirements. This argument is akin to an equitable estoppel that should be applied against the City of Brookings to prevent them from working a substantial injustice to the applicants in their efforts to comply with the previously enunciated Brookings position and requirements.

3. Timeliness of Appeal

Since there was no clear indication of a final administrative decision conveyed by City staff to the Bruce Bros., there should be no issue regarding timeliness of the request for proceedings. The memorandum dated August 11, 2006 clearly specifies that it is in the jurisdiction of the City Council to consider the appeal and reach the merits of the evidence and arguments being presented to it. The City Council should consider a number of factors before making this determination.

¹ Based on comments by the Public Works Director at the Planning Commission hearing and the City Manager during settlement negotiations, it appears to be the position of the City that they are requiring the tank to be constructed underground.

The letter dated May 2, 2006, from Mr. Wilcox to Mr. Wise was not received by the undersigned, in his office, as the attorney for the applicant, until May 4, 2006. A copy of the May 2, 2006 letter is attached to this submittal as attachment B. The original of this letter clearly shows in colored ink a date stamping as received on May 4, 2006. It also clearly shows color marking on the cc to John Babin. The attached affidavit of John C. Babin also explains the date stamping procedure used by the staff in our office. The affidavit will help the City Council understand how our law office can ascertain the date of receipt of documents. In this case the document was received on May 4, 2006 and therefore the "Notice of Appeal" was filed within 15 of the Wilcox May 2, 2006 letter.

The City Council shouldn't count the timeliness of the appeal from May 2, 2006. The May 2 letter itself was ambiguous and unclear. The undersigned wrote on May 10, 2006 specifically asking for clarification of the May 2 letter and stated as follows: "Until you specify the basis of your decision, the applicant can not determine whether your decision can or should be appealed pursuant to Section 16C of the Brookings Development Code."

The letter concluded by saying, "Please provide a response to this letter within 48 hours of delivery. If you can not provide a response within that time, please contact the undersigned immediately."

The May 10 letter pointed out numerous ambiguities of Mr. Wilcox's May 2 letter. It asked for clarification of these issues and clearly indicated intent to take the matter to the Planning Commission. It politely asked Mr. Wilcox for a response as soon as possible and if he could not respond within 48 hours to please contact the undersigned immediately. That May 10 letter was hand delivered to the City of Brookings and Mr. Wilcox's office. Mr. Wilcox did not respond until May 19 by faxed letter, a copy of which is enclosed, which does address the questions of May 10 and continues the dialogue.

As a matter of policy the City Council should extend the time to file the appeal for the nine days that Mr. Wilcox failed to respond to the hand delivered letter of May 10, 2006. It should be the policy of the City of Brookings to resolve matters without the necessity of an appeal. The letter of May 10 was a request for clarification to determine if an appeal was absolutely necessary. It was also a request for the City staff to consider alternatives to the action they appeared to be taking. The City Council should encourage those efforts and allow the additional time requested to resolve ambiguities and explore potential resolutions before a party is required to file an administrative appeal which could involve a hearing at the Planning Commission, City Council, and before the Oregon Land Use Board of Appeals and even thereafter to the Oregon Court of Appeals. The City Council should encourage efforts to clarify and resolve rather than to begin this long, arduous, time consuming, and perhaps expensive process.

It should be noted that the planning staff and Planning Commission accepted the letter of May 19, 2006, placed the matter on the calendar and fully considered the issues presented to it at the

June hearing. The letter to Mr. Wilcox certainly can be seen as a letter that initiates discussion with the developer and should be considered not to be a final determination or decision as it leaves certain issues open and asks the developer to submit revised engineer's plans without providing specifications for those revised engineered plans.

Furthermore, the letter of Mr. Wilcox dated May 2, 2006 provides no evidence that it is a final administrative decision subject to appeal pursuant to Brookings Municipal Code Section 17.156.020. For the letter dated May 2, 2006 to be considered such an administrative decision it should have clearly stated so in the heading of the letter. Furthermore, such administrative decisions normally state at the bottom that the affected party has certain rights of appeal and specifies the rights of appeal. The letter dated May 2, 2006 does not specify that the affected party has rights of appeal or the time limit for filing the appeal.

Without such language on the documentation, clearly identifying it as an administrative decision subject to appeal, the affected party is left to guess as to its exact import. It is not fair, appropriate, or equitable to hold the affected party to such requirements when the material being submitted to the affected party lacks such essential information.

4. Minor Change to Subdivision Approval

The May 19, 2006 letter and other materials show that, at most, the Bruce Bros. were asking for consideration of a minor change in the conditions of approval of the subdivision rather than only appealing an administrative decision. See BMC §17.116.110.

In my letter to Mr. Wilcox dated May 10, 2006, I queried and requested that Mr. Wilcox consider changes and amendments to the conditions of approval to accommodate the existing structure on the lot specified. This request was made under Brookings Land Development Code Section 116.030C which is the current Brookings Municipal Code Section 17.116.030C. That letter specifically stated as follows:

Has the City in fact considered an amendment of the conditions of approval? You should be aware that the Land Development Code provides for relaxed standards for a planned unit development, which this subdivision is. Specifically, Section 116.030C provides that the requirement standards, and criteria of the underlying zone classifications shall be used as a guide in determining the proposal's compliance with the purposes and the intent of the land development code. Has the City staff considered such an amendment to the conditions of approval? The applicant is certainly entitled to an explanation of this consideration by the City.

Finally, you have requested revised engineered plans for the water storage reservoir. You have requested that the revised plans show that the reservoir can be constructed in accordance with zoning requirements that provide sufficient storage required to meet minimum domestic and fire flow requirements. You have provided reference to the zoning requirements in your letter. However, you have not specified the

Dianne Snow
Planning Director
August 25, 2006
Page 6

storage requirements to meet minimum domestic and fire flow requirements. Please specify these flow requirements.

This request was reiterated and repeated, almost verbatim in the letter of May 19. Section 4 of that letter, referring to "PUD Standards of Approval", requested that "the Planning Commission honor the flexibility of the planned unit development as provided in Section 116. The Planning Commission should authorize any flexibility that is required to allow the water tank to be approved as constructed."

The Planning Commission did in fact agree with the position of the applicants. The adopted findings acknowledged that the Planning Commission previously did approve the change in setback requirements for the internal lots. Planning Commission concluded "Although the actual physical size of the required tank was not known at the time of approval, it should've been determined whether a tank of the required size and capacities could be placed on the lot within the required setbacks prior to the approval of the final plat map." The Planning Commission found that the Commission and the staff approved the PUD, approved the specific location of the water tank and provided the applicant with the specifications for the construction of the water tank. The commission, in essence, approved the variation in the height and setback requirements in accordance with the water tank that was constructed in the location that it was constructed in.

While the applicant was hoping that the Planning Commission would make specific findings regarding the detail of the variation, with regard to the height and setback variations, they did not do so in its Final Order and Findings of Fact. Therefore, the applicant now specifically requests that the City Council authorize and approve a minor change to the Pacific Terrace PUD pursuant to Brookings Municipal Code §17.116.080 and § 17.116.110 to allow the water tank as constructed on the site constructed with a height of 34 feet and a setback from Marina Heights Loop Road of 7.3 feet and approximately 9 feet from the rear property line.

Since there is no time limit specified in the City Codes for minor changes to subdivisions, the Bruce Bros.'s request for consideration of these items cannot be considered untimely.

The City Council should reconsider these requests at this time. If the City Council fails to consider this request for minor change, as specified in the letters dated May 10, May 19 and this letter, the applicant might be required to initiate a separate request for such consideration. Forcing the applicant into such a procedure would be inefficient, duplicative, and a waste of City staff's and the City Council member's time.

5. Fire Chief William Sharp

Conspicuous by his absence in this matter is any comment from Fire Chief William Sharp. The undersigned is personally aware that Chief Sharp has a definite opinion on the water tank and that his comments have been made in memos that he submitted to the City staff regarding the water tank. Based on his opinions, one can safely assume that he was in favor of at least the storage capacity in the water tank that was constructed primarily due to the deficient conditions for water

Dianne Snow
Planning Director
August 25, 2006
Page 7

supply and water storage for firefighting capacity in the Marina Heights area.

The undersigned then made three written requests to inspect public records, written comments, staff reports, memorandums or letters in the file referencing comments by fire Chief William Sharp regarding the water tank. One request was dated June 13, 2006, one was dated June 19, 2006 and the other was dated June 26, 2006. We have received no written response to these requests but have been advised verbally that the City has no such documents.

6. Planning Commission

As you are aware the Planning Commission decision in this case was a unanimous four to zero decision. It's findings and conclusions spell out the nature of the decision. The nature of their decision and opinions on the matter are made clear from a review of the transcript of their discussion and decision at the hearing of June 15, 2006. For your benefit copies of excerpts of their discussion and decision are attached to this submittal. The applicant also intends to offer the entire excerpted testimony from the Planning Commission hearing as an exhibit at the time of the hearing on August 28, 2006, separately.

As mentioned, I am providing this material to you to be used as evidence at the hearing on the Pacific Terrace PUD water tank scheduled for August 28, 2006. I understand that the City Councilors have already received a written packet of material regarding the hearing that was supplied by you. I will be making an attempt to separately deliver this letter and the enclosed material, separately to the individual Councilors, prior to the Monday hearing. I will also be faxing a copy of this material to James Spickerman who has recently asked me to direct any of my communications to the City regarding Bruce Bros., and the quasi judicial land use proceedings. I look forward to being able to resolve the pending issues regarding the water tank with the City at their meeting on the 28th.

Sincerely,



John C. Babin

JCB:jkm
enclosures

pc: James Spickerman

BRUCE BROS INC.
WATER TANK CONSTRUCTION EXPENSE
 AS OF THE MONTH ENDED AUGUST 24, 2006

	<u>EXPENSE INCURRED</u>
<u>ENGINEERING</u>	
Stuntzer Surveying	\$ 22,682.00
T. J. Bossard	
Tank	33,063.00
Water system	39,675.00
Don Hoag & Associates	348.40
HGE (City of Brookings)	7,367.00
City Inspector (on-site)	1,794.00
Dan Warden	1,656.00
Total Engineering expense	\$ 106,585.40
<u>FOUNDATION</u>	
Rebar (United Rentals)	\$ 4,754.40
Concrete (Freeman Rock, Inc.)	7,723.30
Rock & Aggregate	1,437.00
Add'l pumping (Powell Concrete Pumping)	1,746.75
Add'l pumping (PAC Rim, Inc.)	695.00
Add'l pumping (Fritts Construction and Concrete Pumping)	465.00
Piping (P&S Construction - "hot tap")	4,450.00
Preparation Work (Mossback Excavation, Inc.)	6,360.00
Total Foundation expense	\$ 27,631.45
<u>WATER TANK</u>	
Tank & Assembly of (Aquastore NW, Inc.)	\$ 119,800.00
<u>LABOR & MATERIALS</u>	
Bruce Bros. Inc. crew (labor)	\$ 13,800.00
Bruce Bros. Inc. (administrative support)	47,170.11
Site preparation (Freeman Contracting, Inc.)	8,300.00
Pipes & Fittings (United Pipe & Supply)	9,203.09
City Mandated Change [angle at which pipes connect to tank]	2,490.00
Water vault (United Pipe & Supply)	15,000.00
Tank valve (G&S systems)	9,000.00
Total Materials expense	\$ 104,963.20
<u>LANDSCAPING</u>	
Ken Cairn Sagar (plans)	\$ 1,510.50
Plants & labor (Brookside Nursury)	
Fencing	895.00
	\$ 2,405.50
<u>PERMITS</u>	
Retaining Wall (City of Brookings)	\$ 251.99
TOTAL TANK CONSTRUCTION EXPENSE	\$ 361,637.54

BRUCE BROS INC.
TANK SITE ACQUISITION COST
AS OF THE MONTH ENDED AUGUST 24, 2006

TANK SITE

Purchase of 1055 Marina Heights Loop	\$ 385,694.05
Total square feet of 1055 Marina Heights Loop	12,932
Total square feet of tank site	<u>5,382</u>
Total square feet purchased	18,314
 Tank site % of total square feet purchased	 29.387

Purchase price of Tank Site (\$385,694.05 x 29.387%)	\$ 113,345.28
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EASEMENTS & ADDITIONAL LAND PURCHASES

Don Jaklewicz & Melody Bateman	\$ 2,811.00
20 ft. strip (land purchase)	
Annex (Western Land Use Services)	5,117.55
Annex application (City of Brookings)	725.00
Lot Line Adjustment (First American Title Insurance)	2,681.00
Byron Brimm easement (First American Title Insurance)	1,398.63
Byron Brimm easement [Legal]	3,500.00
Byron Brimm easement [Improvements]	7,500.00
Easement (Curry County Recorder)	36.00
Legal (Babin & Keusink)	<u>5,950.00</u>
Total Easements & Additional Land Purchases cost	\$ 29,719.18

TOTAL TANK SITE ACQUISITION COST	<u>\$ 143,064.46</u>
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BRUCE BROS INC.
SUMMARY OF COSTS FOR THE WATER TANK
AS OF THE MONTH ENDED AUGUST 24, 2006

WATER TANK SITE ACQUISITION	\$	143,064.46
WATER TANK CONSTRUCTION		<u>361,637.54</u>
TOTAL WATER TANK COSTS	\$	<u><u>504,702.00</u></u>

CITY OF BROOKINGS



May 2, 2006

Richard Wise
Bruce Bros. Inc.
PO Box 61
Brookings, OR 97415

Re: Pacific Terrace

Dear Mr. Wise:

We have received on April 24, 2006 and performed a preliminary review of sheet 9 of 32 of the plans titled PACIFIC TERRACE P.U.D. ON-SITE IMPROVEMENTS - AS BUILT prepared by T.J. Bossard, Inc. dated 3/6/06 and sealed but not signed by the Engineer.

Based on the information provided in the above referenced submittal, the water reservoir is not in compliance with the Zoning requirements outlined below:

ZONING REQUIREMENTS FOR THE WATER TANK AT PACIFIC TERRACE

- The property is located in the SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size zone).
- The SR zone requires a 20 foot front and rear yard setback and a 10 foot side yard set back.
- The setbacks do not change with building height.
- Maximum building height in the SR zone is 30 feet.
- This applies to all structures.
- Under the provision of Section 132.030 Exceptions to building height, of the Land Development Code, a water tank can be up to 45 feet high but requires a 50 foot setback on all sides at any height above 30 feet.

Please submit revised Engineered plans for a water storage reservoir that can be constructed in compliance with Zoning Requirements and provide sufficient storage required to meet minimum domestic and fire flow requirements for this development.

Sincerely,

Donald Wilcox, PE
Public Works Director

~~Enclosure~~

c: John Babin, Dale Shaddox, Bill Sharp, John Bischoff, file

898 Elk Drive
Brookings, OR 97415
www.brookings.or.us

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Fax: (541) 469-3650

America's
Wild Rivers
Coast

BABIN & KEUSINK

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CHRISTOPHER KEUSINK

JOHN C. BABIN*

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(541) 489-5331 • FAX (541) 489-9865

May 10, 2006

Hand Delivered

Donald Wilcox
Public Works Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

RE: Pacific Terrace

Dear Mr. Wilcox;

Your letter specifies the zoning requirements for the water tank and concludes that the "water reservoir is not in compliance with the Zoning requirements." Your letter does not specify in what respects the water tank is not in compliance with the requirements that you specify. Please specify the manner in which the water tank does not comply with the Zoning requirements. For instance, what height did you determine the water tank to be? Does the height of the water tank violate the maximum building height in the SR zone? Does the water tank violate any setback requirements? If it does violate setback requirements please specify in detail which setback requirement is violated. Until you specify the basis of your decision, the applicant cannot determine whether your decision can or should be appealed pursuant to section 160 of the Brookings Development Code.

Reconstruction of the water tank seems to be a drastic remedy to be requested by the City, especially in light of the fact that the water tank that is in place now was constructed only after close consultation with City staff. There are numerous documents in the file that the City did approve of the current structure for the water tank. Given this history, the applicant is surprised that the City is not proposing an amendment to the conditions of approval to accommodate the existing structure.

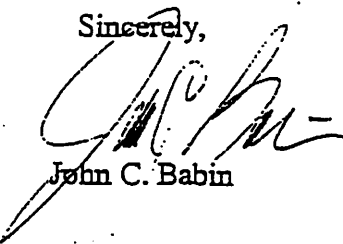
Has the City in fact considered an amendment of the conditions of approval? You should be aware that the Land Development Code provides for relaxed standards for a planned unit development, which this subdivision is. Specifically, Section 116.030C provides that the requirement standards, and criteria of the underlying zone classifications shall be used as a guide in determining the proposal's compliance with the purposes and the intent of the land development code. Has the City staff considered such an amendment to the conditions of approval? The applicant is certainly entitled to an explanation of this consideration by the City.

Mr. Donald Wilcox
Re: Pacific Terrace
May 10, 2006
page 2

Finally, you have requested revised engineered plans for the water storage reservoir. You have requested that the revised plans show that the reservoir can be constructed in accordance with zoning requirements that provide sufficient storage required to meet minimum domestic and fire flow requirements. You have provided reference to the zoning requirements in your letter. However, you have not specified the storage requirements to meet minimum domestic and fire flow requirements. Please specify these flow requirements.

This letter is being hand delivered to the City of Brookings offices. Please provide a response to this letter within 48 hours of delivery. If you cannot provide a response within that time, please contact the undersigned immediately.

Sincerely,



John C. Babin

pc: client

Dale Shaddox, by hand delivery
John Trew

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1800 • 517 CHETCO AVE
BROOKINGS, OREGON 97415-0800

CHRISTOPHER KEUSINK

JOHN C. BABIN*

*ALSO LICENSED IN CALIFORNIA

(541) 469-5331 • FAX (541) 469-9885

May 19, 2006

hand delivery

John Bischoff
City Planner
City of Brookings
898 Elk Drive
Brookings, OR 97415

RE: NOTICE OF APPEAL
Pacific Terrace PUD
File No. PUD-1-04

Dear Mr. Bischoff;

I have received a fax (Exhibit 1) from Mr. Wilcox indicating his inability to respond to my letter of May 10, 2006 (Exhibit 2) which was hand delivered to the City of Brookings. Unfortunately, he states he did not receive the letter until May 15, 2006, even though it was hand delivered to City offices on May 10, 2006. Regrettably, the Bruce Brothers are unable to wait additional time for an explanation of the criterion for his decision and by this letter we are giving the City of Brookings a notice of intent to appeal from his administrative decision under Section 160 of the Brookings Land Development Code. A filing fee of \$75.⁰⁰ is enclosed.

BACKGROUND

As you may be aware, the plans and product menu for the AquaStore water reservoir were submitted to the City and stamped received by Diane Snow on January 19, 2005 (Exhibit 3). Letters which can certainly be interpreted as "letters of approval" from Mr. Nored were received on January 6, 2005 (Exhibit 4) and January 20, 2005 (Exhibit 5). Footings for the foundation were constructed after City approval on February 6, 2006. Installation of the aquastore tank was begun on February 13, 2006 after inspection and approval by the City Building Department. After further submissions and approvals (Exhibit 6) construction was completed after further inspections and approvals by city staff on February 23, 2006 (Exhibit 7). At that meeting City staff offered no specific deficiency of the water reservoir. Representatives of the Bruce Brothers, including the undersigned, met with members of the city staff at City Hall on April 18, 2006 to discuss issues raised by the city staff with regard to the water reservoir. Failures to approve and delays by City staff concerning the water reservoir and other aspects of this development have placed the financial viability of this project in

serious jeopardy. This summary includes only a partial history of the events. Even to date there has been no response and the Bruce Brothers can not wait any longer for response to my letter dated May 10, 2006 and must appeal the administrative decision immediately.

BASIS FOR APPEAL

1. Planning Commission Has Twice Previously Approved Site for Water Reservoir

When the Planning Commission approved the original PUD, on August 2, 2004 condition No. 41 specifically provided "a water tank should be constructed in the location shown on the preliminary plat map and connected to the city's water system. If the engineers determine that a different site is more appropriate, then a tank shall be constructed in that location".

In July 2005 the applicant applied to the Planning Commission for a minor change to the previously approved plan unit development. The application for the minor change was approved in August, 2005 the Planning Commission again approved the location of the water reservoir, this time based on the re-design Izaiha Drive. The site plan specifically showed the new location of Izaiha Drive, the new configuration of lot 29, and the placement of the water tank on the portion of lot 29 dedicated to public utilities was specifically shown on the site plan (Exhibit 8). The Planning Department had this detailed plan on July 11, 2005 (Exhibit 8). The findings adopted by the Planning Commission after its meeting on August 2nd specifically found "site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code (Exhibit 9). Eight of the findings also modified setbacks for lots within the PUD, specifically for lot 29 and the lot for the water tower.

In fact, the conclusions specifically stated that the new internal street layout, which included the new design for lot 29 and the placement of the water tower" is a much better design than the originally approved system in that it provides two full access points to the project rather than one full access and one emergency access".

From these facts it is clear that the planning department and the planning commission approved the specific location for the water reservoir on the applicable lot on at least two separate occasions.

2. Water Storage Tank is Correctly Designed

The water storage tank, as it sits on its current location, is currently designed to meet minimum sufficient storage requirements to satisfy domestic and fire flow requirements for this development. The data providing the basis for the storage and flow requirements was presented to the City on earlier (Exhibit _____ to be sent).

NOTICE OF APPEAL

John Bischoff
City Planner
May 19, 2006
Page 3

Mr. Nored's letter dated January 6, 2005, (Exhibit 4) from paragraph No. 11 acknowledged "project owners are currently finalizing their choices for the proposed water reservoir. Details will be provided under a separate cover." (See paragraph No. 11).

In Mr. Nored's letter dated January 20, 2005 (Exhibit 5) Mr. Nored acknowledged "we have worked with the design engineer on the separation of the two pressure bands (on the water tank), the pressures that are available to serve all lots in the proposed subdivisions". The letter further stated "the system as proposed will function and meet City standards, and will serve the property well". (emphasis supplied).

Based upon these and other comments by the City and its staff, the applicant finalized plans for the water reservoir, and began installation in February 2006. It has been inspected by Dennis Barlow of HGE chronicle inspections on February 6, 15, 21, 2006. These inspections approval of the construction and installation at every step of the way.

For the Public Works Director to issue a letter dated May 2, 2006 requesting revised engineer plans for water storage reservoir appears to be absolutely incredible and inconsistent with the City Planning Department, Planning Commission, and the City Engineer.

3. Height Regulations

BLDC, section 132, provides exceptions to height regulations elsewhere in the land development code for water towers and tanks and other structures. Section 132.030 is clearly intended as a general and comprehensive exception to height regulations of all zones, see for instance BLDC 40.050E.

Section 132.030A provides for unlimited heights of water towers and tanks if they can meet certain conditions. If they cannot meet those conditions, Section 132.030B provides that height limitation of water towers and tanks shall be 1 ½ times the height limitations set forth in the applicable zoning district. Since height limitations in the SR zone is 30 feet, the applicable height limitations of this water tank is 45 feet. Even after repeated requests, the Public Works Director has failed to show that the water reservoir does not meet height requirements.

4. PUD Standards of Approval

Section 116 of the BLDC is applicable to this development since it was approved by the Planning Commission as a Planned Unit Development as File No. PUD-1-04. The purpose of section 116 is stated as follows:

"The purpose of planned unit development is to allow and to make possible greater variety and diversification in the relationship between buildings and open spaces in planned building groups, while insuring

NOTICE OF APPEAL

John Bischoff
City Planner
May 19, 2006
Page 4

compliance with the purposes and objectives of the various zoning district regulations and the intent and purpose of these land development sections”.

Section 116.080 provides: various to be authorized
“The planning Commission may authorize standards of site area and dimensions, site coverage, yard spaces, height of structures, distances between structures equivalent to the standards prescribed within the regulation for the district which the planned unit development is located.”

Unfortunately, the Public Works Director was not able to provide requested specifications citations to the BLDC which the water reservoir is alleged to have violated, but demanded instead complete reconstruction of the tank already in place. Reconstruction of the water tank seems to be a drastic remedy to be requested by the City, especially in light of the fact that the water tank that is now in place was constructed only after close consultation with city staff approval that has been document in letters from the City Engineer. There are numerous other documents in the file that showed that the City did approve the current design for the water tank and it has already been shown that the Planning Commission approved of its placement. Given this history, the Planning Commission should honor the flexibility of the planned unit development as provided in Section 116. The Planning Commission should authorize any flexibility that is required to allow the water tank to be approved as constructed.

Request is made that this matter be placed before the Planning Commission at its next available meeting for an appeal pursuant to Section 160 of the Brookings Land Development Code,

Sincerely,


John C. Babin

JCB:llh

c: client

NOTICE OF APPEAL

RECEIVED

MAY 23 2006

CITY OF BROOKINGS



May 19, 2006

John Babin
Babin & Keusink
PO Box 1600
Brookings, OR 97415

Re: Pacific Terrace

Dear Mr. Babin:

I am responding to your letter dated May 10, 2006. According to the plans referenced in my May 2, 2006 letter, the reservoir front yard setback is ~7.5 feet and the rear yard setback is ~9 feet, which does not meet the minimum setback requirement of 20 feet. Also according to the plans, the reservoir height is 34 feet as determined by the methodology described in the City of Brookings Land Development Code which exceeds the maximum height allowed of 30 feet. Your statement that the reservoir was constructed only after close consultation with city staff is partially correct in that the materials and gallonage of the reservoir were discussed, however City staff has been requesting a plot plan and design plans for this reservoir site many times since February 2005. We finally received the plot plan on April 24, 2006 and are yet to receive complete design plans. Also, as I advised Mr. Wise when he delivered the above referenced plans, these plans cannot be reviewed officially as they do not meet the submittal requirements of having an Oregon Registered Engineer's signature. In addition, I have not received any submittals for any of the other plan review issues as requested in my May 2, 2006 letter.

Approval to construct any improvements for this development cannot be issued until complete design plans are submitted and approved. Please feel free to contact John Bischoff, Planning Director for the City of Brookings if you have any questions regarding setbacks or maximum heights or wish to pursue what your letter refers to as amendments to the requirements of the City's Land Development Code. Please contact me directly if you have any questions regarding any proposed changes in size, materials or design from the currently proposed plans.

Sincerely,

Donald Wilcox, PE
Public Works Director

c: Richard Wise, Dale Shaddox, John Bischoff, LauraLee Gray, file

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1600 • 517 CHETCO AVE
BROOKINGS, OREGON 97415-0600

CHRISTOPHER KEUSINK

JOHN C. BABIN
*ALSO LICENSED IN CALIFORNIA

(541) 469-5331 • FAX (541) 469-9865

June 13, 2006

Hand Delivered

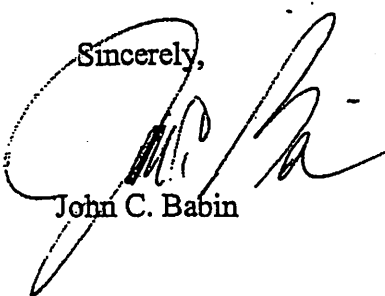
Dale Shaddox
City Manager
898 Elk Drive
Brookings, OR 97415

REQUEST TO INSPECT PUBLIC RECORDS

Request is hereby made for inspection of the following records:

Any written comment(s) by Fire Chief, Bill Sharp, including staff reports, memorandums, or letters concerning the Pacific Terrace PUD, located in Brookings, Oregon, also referred to as Planning File PUD-1-04, including but not limited to, any comments pertaining to the water tank/water reservoir located within the above-mentioned PUD. Please have these documents available for inspection at 9:00 a.m. on June 15, 2006 at your office.

Sincerely,


John C. Babin

JCB:llh

c: client
Bill Sharp

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1800 • 517 CHETCO AVE
BROOKINGS, OREGON 97415-0800

CHRISTOPHER KEUSINK

JOHN C. BABIN*

*ALSO LICENSED IN CALIFORNIA

(541) 469-5331 • FAX (541) 469-9865

June 19, 2006

Hand Deliver

Mr. Dale Shaddox
City Manager
City of Brookings
898 Elk Drive
Brookings, Oregon 97415

RE: Request to Inspect Public Records - Amended Request

Dear Mr. Shaddox;

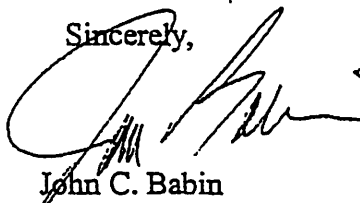
I previously requested to inspect public records with my letter dated June 13, 2006. Upon appearance in your office at 9:00 a.m., June 15, 2006 I was directed to the Planning Department where I was handed a file to review. I was also advised by John Bischoff, Planning Director, that he had made a search for the records requested and that he was not able to find them. However, he was aware of written comments, staff reports, memorandums or letters from Public Works Director, Don Wilcox, referencing comments by Fire Chief, Bill Sharp.

Therefore, this letter will amend my previous request to inspect public records. Please allow me to inspect written comments, staff reports, memorandum, or letters authored by Public Works Director, Don Wilcox, which refer to any oral comments by Fire Chief, Bill Sharp pertaining to the water tank/water reservoir located in the Pacific Terrace PUD.

Please note that the custodian of public records duties, with regard to inspection, are contained in ORS 192.430 and ORS 192.440. Please further note at this time I am only requesting to inspect and copy the specific records identified.

Please have these documents available for inspection at your office on June 22, 2006 at 9:00 a.m.

Sincerely,



John C. Babin

JCB:llh

c: Client; Bill Sharp; John Trew

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JOHN C. BABIN*

*ALSO LICENSED IN CALIFORNIA

P.O. BOX 1600 • 517 CHETCO AVE
BROOKINGS, OREGON 97415-0800

CHRISTOPHER KEUSINK

(541) 469-5331 • FAX (541) 469-9865

June 26, 2006

Mr. Dale Shaddox
City Manager
City of Brookings
898 Elk Drive
Brookings, OR 97415

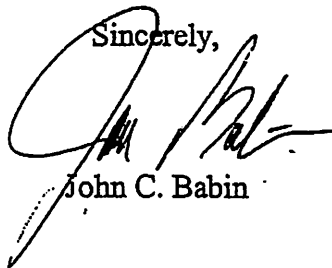
RE: Previous Requests to Inspect Public Records

Dear Mr. Shaddox;

I appeared at City Hall at 9:00 a.m. on June 22, 2006 to inspect public records pursuant to my amended request of June 19, 2006. At that time, I was further advised by John Bischoff that the Planning Department that an additional search had been made for the records requested and that he was not able to find them.

Therefore, based on my two (2) requests without any result I am concluding that there are no written comments by Fire Chief, Bill Sharp regarding the matters addressed in my two previous requests to inspect.

Sincerely,



John C. Babin

JCB:llh

c: Client
Bill Sharp
John Trew

1 didn't own property -- you know, I assume that piece, it
2 looks like, separated from the rest of the property, I
3 think.

4 MR. BISCHOFF: Well, it was created as a separate
5 lot on the final map, yes.

6 COMMISSIONER YOK: Okay.

7 COMMISSIONER DUNDOM: Is it the highest point of
8 the property?

9 MR. WISE: Yes.

10 (Excerpted further testimony of Don Wilcox concluded)

11
12 PLANNING COMMISSION DISCUSSION AND DECISION

13 COMMISSIONER DUNDOM: Public testimony is closed
14 on Planning Commission File APC-2-06. We will now proceed
15 with Planning Commission discussion and decision.
16 Comments, questions.

17 COMMISSIONER MARKHAM: This is a very difficult
18 decision. One feeling I have is that the Bruce Bros. are
19 experienced builders. You would think that they would be
20 very cognizant of the setback requirements. You would
21 think they would be very cognizant of the setback
22 requirements. On the other hand, there seem to be an
23 unbelievable amount of paperwork going back and forth
24 between so many different agencies that it seems the
25 setback was never even mentioned.

1 And I think -- was the assumption that -- What
2 was the assumption about the setback, that their being
3 experienced builders would know the setback requirements,
4 or was it something that the City was required to put in
5 writing? That is confusing me. And the height -- the
6 height requirement is very confusing, too. You would think
7 that if they knew it was going to be that tall, they would
8 have lowered it in the ground.

9 As you said before, it's not unusual to put a
10 water tank underground or partially underground, but, on
11 the other hand, this is such a tremendous investment,
12 it's -- I can't, you know -- What do you guys think?

13 COMMISSIONER DUNDOM: Mr. Hedenskog.

14 COMMISSIONER HEDENSKOG: My turn?

15 COMMISSIONER DUNDOM: It can be.

16 COMMISSIONER HEDENSKOG: Well, that will come off
17 my little list here. List number A point is: Why would a
18 builder build something at a cost of \$150,000 and
19 jeopardize his subdivision over it?

20 No. 2 on my list, the building heighth, according
21 to our development code, there is an interpretation in
22 building heighth. Building heighth of/average of the
23 vertical distance measured from the highest peak of the
24 roof to the finished grade at the center of all four sides
25 of the building. There's room for interpretation.

1 And aside from the fact that the retaining wall
2 is ten feet away from the tank, if you would overlook that,
3 the tank is virtually set into the ground at least eight
4 feet to the street side, okay?

5 COMMISSIONER MARKHAM: Sure doesn't look that way
6 in the pictures.

7 COMMISSIONER HEDENSKOG: The retaining wall is
8 eight feet, I can assure you. I measured it myself. It's
9 ten feet located from the edge of the tank. And then
10 there's a six-foot fence on top of the eight-foot wall.
11 The eight-foot wall comes up to the street level in most
12 parts, not on the lower south side, but at the midpoint of
13 the tank it comes clear up to the street level. So the
14 tank is virtually in the ground by eight feet. And maybe
15 that tank can't have dirt put against it for various
16 reasons or not, but I see the tank -- I can say the tank is
17 in the ground by eight feet.

18 The setback to the south line is -- I'm willing
19 to excuse that. It's to the subdivision -- its own
20 subdivision line. I'm willing to excuse that.

21 I am convinced that that tank was sized for
22 additional capacity to help alleviate some of the fire
23 protection problems in the Marina Heights system for
24 existing homes in that area, that this developer was asked
25 to supply at his cost additional fire suppression to

1 people's homes that already exist. And I can't prove that,
2 but you're going to have a heck of a time arguing me out of
3 it.

4 I know for a fact in some of my development
5 planning meetings, Chief Sharp has said overly many times
6 that the Marina Heights' water suppression storage system
7 is grossly undersized, and I feel that the City probably
8 asked this builder to supply additional water capacity to
9 fire suppress in that area over and above his own
10 subdivision.

11 That tank is about double what was required for
12 the subdivision that was done up on Parkview by
13 Kessler-Mahar. I believe that was a 70,000 gallon tank,
14 and the number of lots was well over 20 on that
15 subdivision. This subdivision is about 28 lots, and its
16 tank is required to be 158,000 gallons. That's funny math.
17 I think it points directly to the fact that this builder
18 has built that tank to help the neighborhood for fire
19 suppression.

20 I would like to comment on the unfortunate,
21 unfriendly attitude that has gone on between the City and
22 this builder. I don't -- I'll stop right there. It's very
23 unfortunate.

24 My point No. 6 is: I was present on the July
25 Planning Commission. We did approve the changes to this

1 subdivision. The tank was shown on that site. The site
2 was designed for that tank. It specifically says that it
3 was a 158,000 gallon tank. That was discussed in that
4 meeting. Maybe the heighth wasn't discussed.

5 I think the planning process has been served in
6 this entire subdivision and for the neighborhood.

7 COMMISSIONER DUNDOM: End of discussion?

8 COMMISSIONER HEDENSKOG: End of discussion.

9 COMMISSIONER DUNDOM: Mr. Yok.

10 COMMISSIONER YOK: Well, like I was trying to
11 point out, I do feel that -- I'm not sure the height, but
12 the pipe coming out of the tank basically goes underground
13 by coming straight out, so basically since it's
14 underground, it's got to be -- the tank's got to be sunk
15 into the ground. I'm not sure if it would actually still
16 meet the 30-foot limit or not, but, I mean, it would be
17 really close, I feel. So I don't really see that as a
18 valid argument.

19 I see the setback problems as being an argument,
20 and in reading through all the material, I did see a lot of
21 animosity between the builder and the City, which I know
22 that he asked for approval plans, and it just seemed like
23 they weren't -- they didn't come too hastily. I didn't
24 really like that.

25 But I see also that the entrances coming in from

1 Marina Heights, so that's making a 20-foot setback from
2 there, so if it would have come in from Isabella on the
3 other side, you would have had the 20 feet because there
4 was quite a bit of room on that side.

5 I feel that the City was in agreement with Bruce
6 Bros. on that. This is my own feeling. That's just
7 reading stuff in, but they made a comment about the color
8 and they made comments about other things, of how the
9 fittings were, but nothing was said about the placement of
10 the tank. Nothing even asked for that.

11 So I think what happened, I see in the packet,
12 there was a lot of letters given on March 9th which were in
13 opposition of the tank, and it looks like on March 15th
14 there was a red tag put on it. I think that it was done
15 in -- because of public outrage, I guess, to the tank going
16 up.

17 Anyway, like I say, that's just my reading of it,
18 and I think that's real unfortunate when you have the
19 go-ahead to do something, and then you get shut down after
20 it's done. You know, I don't know really what to do, but I
21 guess that's my feeling.

22 COMMISSIONER DUNDOM: Thank you. Well, we have
23 three parties to try to make happy, and I think we're going
24 to be lucky if we can get two out of three. After reading
25 through this several times and trying to make a time line

1 in my own mind and with the help of the applicant -- the
2 appellant, I mean, it seems clear that there was -- and I'm
3 not pointing fingers at Mr. Wilcox because he kind of came
4 in late on this thing, but I think that there was -- there
5 was perceptions by both parties. Those perceptions, in my
6 feeling, should have been backed up by a site visit and a
7 close eye kept on this thing because it is going to be part
8 of the infrastructure of our city water system.

9 Now, when Laura Lee Gray goes out and inspects,
10 as I mentioned earlier, a homesite, she checks to make sure
11 that the setbacks are met from the front property line,
12 it's got to be a minimum 20 feet, whatever the side yard
13 setbacks are, before concrete is poured, and at many other
14 times during that -- the building of that home she's there
15 making sure it's done correctly.

16 And I feel like the City's dropped the ball here,
17 and -- by not being on the site more, especially -- I mean,
18 this didn't just happen. I think there was a -- This thing
19 has been kind of brewing, and both sides maybe got a little
20 bullheaded, but I feel like Bruce Bros. tried to do what
21 they thought the City wanted them to do, and it just didn't
22 seem to be enough.

23 And as an aside, this has got nothing to do with
24 this, I don't know how any developer could do a development
25 in this City. Ever since H G E was hired, I thought how

1 can this ever work? Having an engineer in Coos Bay, you've
2 got stuff in the mail, faxes, phone calls. The paper
3 shuffle would frustrate anybody involved on either side.
4 That is just an aside.

5 But I feel like we have a tank that's an eyesore,
6 and the public is -- they do have a gripe. Technically
7 there isn't an ordinance. I drove up and looked. There's
8 still an ocean view from the impacted folks, but they have
9 to kind of look around the tank to see it. It isn't
10 pretty, no water tank is pretty, but I don't feel like
11 tearing it down and moving it is a solution. It just
12 doesn't make any sense.

13 Perhaps if we could -- through engineering if we
14 could take one or two tiers off and still meet all the
15 requirements for the City and for the fire flows and the
16 water for the subdivision and the other lots that will be
17 served that are already built on, that might be a way to
18 kind of work through this, but that's my view.
19 Commissioners.

20 COMMISSIONER HEDENSKOG: Mr. Chair, I make a
21 motion that we uphold the appeal for APC-2-06.

22 COMMISSIONER YOK: I'll second it.

23 _____: Commissioner Dundom.

24 COMMISSIONER DUNDOM: Aye.

25 _____: Commissioner Hedenskog.

1 COMMISSIONER HEDENSKOG: Aye.

2 _____: Commissioner Markham.

3 COMMISSIONER MARKHAM: Aye.

4 _____: Commissioner Yok.

5 COMMISSIONER YOK: Aye.

6 MR. BISCHOFF: We'll bring a final order to you
7 at the next -- the July 11th meeting.

8 (Excerpt of Planning Discussion and Decision concluded)

9

10

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23

24

25

Pat Sherman
898 Elk Dr
Brookings, OR 97415

August 21, 2006

Dear Mayor Sherman,

Mayors and city leaders need to act now to let the voters of Oregon know how bad Measure 48 (TABOR) will be for our cities and our state.

Measure 48, another ill conceived anti-government initiative, will rip billions from the state's budget, crippling education, health care, corrections, and other essential state services. Furthermore, state shared revenues, essential to cities of all sizes will dry up. This double whammy of cuts to state programs and shared revenues will hinder each of our cities efforts at economic development, job creation, public safety services, etc. This measure, in some cases, will force the state to turn away federal money.

In short, Measure 48 will limit our ability as city leaders to meet the needs of the citizens that elected each of us.

The City Leaders of Oregon, a Political Action Committee, is committed to supporting the mission and goals of the Oregon Mayors Association and the League of Oregon Cities. We are sponsoring a statement in opposition to Measure 48 in the statewide voters' pamphlet.

Surveys have shown Mayors and city leaders have very high credibility. When we speak with one voice, we are even more powerful. Add your voice in opposition to this measure. Please complete the enclosed endorsement form and fax it to 503-922-4096 by Saturday, August 26th.

To fill out the endorsement form correctly, check the "Measure Argument" option and write "Measure 48, City Leaders of Oregon PAC" on the designated line. On the bottom portion of the form, in the white space provided, write you name and "Mayor of."

Example: John McArdle, Mayor of Independence

Please remember to sign and date the form. In order for your endorsement to be listed on the statement of opposition, we must receive your completed endorsement form by August 26th.

Together we can continue to protect the rights of our cities.

Sincerely,



John McArdle, Mayor of Independence
Chair, City Leaders of Oregon PAC

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Per
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City Leaders of Oregon PAC * P.O. Box 232 * Independence, OR 97351

The Oregonian

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On Measure 48, Saxton hits his limit

The Republican candidate for governor comes out against a spending limit, taking a difficult but responsible stand

Monday, August 07, 2006

It was only four terse paragraphs, but Ron Saxton's announcement Friday that he is opposed to Measure 48, a state spending limit, said volumes about the Republican candidate for governor and the ballot measure he could not bring himself to support.

It said clearly that Saxton, even though he has swerved to the political right in his second GOP campaign for governor, is not a captive of those who seek only to cut taxes and government spending, even at the cost of damaging Oregon schools, universities and, ultimately, the state's economy.

It was also a powerful statement about Measure 48, the Taxpayer Bill of Rights, or Tabor, proposal brought to the Oregon ballot by out-of-state anti-government groups. When the best-known fiscal conservative seeking the highest political office in Oregon this year cannot embrace a proposed spending limit, you know that it is ill-conceived.

Give Saxton credit: Measure 48 put him between a rock and a hard place with political groups and many voters that he desperately needs to win in November. He tried for a time to avoid taking a clear position on the Tabor measure, but now he has.

"... I will not be supporting Initiative (48)," he said at the end of his written statement. Rather than put a gimmicky amendment into the state constitution, Saxton said Oregonians should bring fiscal accountability to their state the old-fashioned way -- by electing a fiscally conservative governor. "The best spending limit is a governor who himself acts as a spending limit," he wrote, "a governor who demonstrates that he is himself willing to responsibly manage voters' tax dollars."

Saxton stopped there, without doing his state the further service of explaining all that is wrong with Measure 48. The initiative is modeled on a measure that badly damaged Colorado's schools and state services before voters there lifted the spending cap, even though that meant forgoing \$3.7 billion in anticipated tax refunds.

Like the Colorado measure, Measure 48 would allow state spending to increase only at the rate of inflation and population growth, ignoring every other factor that could drive up costs for schools and state services.

This limitation is a proven disaster in Colorado, where the state found itself unable to maintain bridges and roads, or adequately fund schools, universities and health care. Under Tabor, Colorado's high school graduation rate dropped to 48th in the country, in-state college tuition jumped 21 percent in four years and child vaccination rates plummeted to the lowest in the nation. After Gov. Bill Owens, like Saxton, a Republican, led the campaign to suspend the Tabor law, he told reporters, "I can't imagine what Colorado would have looked like if we lost."

Saxton, meanwhile, tried to imagine what Oregon would look like with a Tabor law. In the end, he could not stomach it, even though that meant crossing his conservative Republican base and getting hammered on talk radio by the same people he's been regularly accused of pandering to.





That says something you need to know about Ron Saxton.

And it says everything you need to know about Measure 48.

INSIDE Opinion

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- » Letters
- » Guest Comments
- » Jack Ohman
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MORE EDITORIALS

Revised August 4, 2006

It Ain't No "Rainy Day Amendment"

The Measure 48 TABOR proposal would make recessions worse and undermine any rainy day fund that the Legislature might create

By Michael Leachman and Chuck Sheketoff

Oregon's TABOR proposal - Measure 48 - would place an arbitrary spending growth scheme in Oregon's constitution. Although proponents refer to it as the "rainy day amendment," Measure 48 does not create a rainy day fund. By including unemployment insurance in the scheme, Measure 48 would make recessions worse and undermine any rainy day fund that the Legislature may later create.

Had Measure 48 been in effect in Oregon during the last recession:

- Four out of every five dollars of the increase in spending promised under the limit would have been spent on unemployment benefits, forcing schools, health care, and other public services to shoulder deeper cuts.
- State services for which demand rises in recessions, such as the Oregon Health Plan, would have been incapable of keeping up with rising needs.

These cuts would have happened even if Oregon also had a rainy day fund, because unemployment spending uses most of the allowable increase, and spending from a rainy day fund is also limited by the Measure 48 TABOR scheme.

Measure 48 is modeled on Colorado's "taxpayer bill of rights," commonly referred to as "TABOR." Last November, Colorado voters suspended use of TABOR for five years after Republican Governor Bill Owens, business leaders, and the state legislature agreed that TABOR was damaging Colorado's universities, health care system, road maintenance, and other crucial public services.

Like Colorado's TABOR, Oregon's Measure 48 restricts spending growth to population growth plus inflation, an unsustainable level that would force deep and unpopular cuts in schools and other public services no matter how well the economy performs.

If Measure 48 had passed in 1990:

- Oregon would have had to cut \$7.3 billion (24 percent) from the current 2005-07 budget cycle.
- The cut would be equivalent to eliminating all state funding for K-12 education, all state funding for Oregon Health Plan payments, all state funding for the Department of Corrections including all state funding for prisons, and all state funding for services provided by the Department of Agriculture, the State Police, and the Department of Environmental Quality, combined.

Related Documents

Download this Executive Summary (pdf).

Download the full report (pdf).

City of Brookings
898 Elk Drive
Brookings, OR 97415



COUNCIL AGENDA REPORT

To: Brookings Urban Renewal Agency Board of Directors (mtg. of 8/28/06)

From: City Manager

Date: August 22, 2006

Re: Facade Improvement Program Application: Gary and Karen Kerr, Azalea Lanes (410 Oak Street)

Subject: Azalea Lanes Application for Matching Grant Funds under the Urban Renewal Agency Facade Improvement Program.

Recommendation: The recommendation of the Urban Renewal Advisory Committee (URAC) is as follows:

“Approve the application for Matching Grant Funds submitted for Azalea Lanes (410 Oak Street) and authorize the City Manager to sign the Project Agreement and disburse funds in accordance with the approved Program Guidelines, in the amount of \$ 20,000).”

Background /Discussion: This application was submitted under the funded and approved Facade Improvement Program. URAC reviewed and approved the application on August 22, 2006. Attached you will find a summary report providing project details and exact funding requirements, as well as a copy of the application as submitted by the applicant.

Financial Impact(s): Urban Renewal Agency funds were included in the adopted budget in the total amount of \$140,000 for Fiscal Year, 2006/07. If approved, this project would utilize \$20,000 of those budgeted funds.

City Manager Review and Approval for placement on Council Agenda:

Dale Shaddox, City Manager

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



PROJECT SUMMARY SHEET

Applicant: Gary and Karen Kerr – Azalea Lanes, 410 Oak Street

Action: Approved: XXX Denied

Approved Project Description / Basis for Denial:

- PREPARATION AND MATERIALS (\$10,870)
- ENGINEERING (\$1,400)
- NEW GLASS ENTRY DOOR (\$1,600)
- NEW EXTERIOR SIDING AND PAINT (\$25,855)
- RELATED ELECTRIC AND PLUMBING WORK (\$1,500)
- TOTAL: \$41,225
- NOTE: EXCLUDES SIGNS AND LANDSCAPING WORK

Estimated Completion Date: 90 DAYS AFTER APPROVAL

Total Project Amount: \$41,225

FIP Match Amount: \$20,000

By: _____

Date: _____

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



APPLICATION

1. Applicant Information:

Name: Azalea Lanes - Gary and Karen Kerr

Address: 410 Oak Street PO Box 999

Phone: Work- 469-4244 Home- 469-3335 Cell- 661-1824
661-1825

Legal Form: Sole Proprietorship ☐ Partnership ☐ Corporation ☒

Profit ☒ Non-Profit ☐

SSN: _____ Tax ID No: 93-1134350

2. Building / Business to be Rehabilitated:

Name: Azalea Lanes

Address: 410 Oak Street

Tax Map & Lot Number : Map #41-13-05CB Tax lot 10400 + 10401
(R14436, R14499, + P27651)

3. Owner of Property (If other than applicant):

Name: _____

Street: _____

City: _____ State: _____ ZIP: _____

4. Brief Description of Exterior Facade Improvements:

See attached sheet with summary.

All pictures and bids attached.

Brookings Urban Renewal Agency – Facade Improvement Application

5. Estimated Total Cost of Facade Improvements: 42,322.03

6. In addition to proposed improvements, is there other work proposed?

Yes: ☒ No: ☐

Estimated Total of Other Work: \$ 8,000 Landscaping

Total Estimated Cost of All Work: \$ 51,322.03

7. Source of Matching Funds: Business creditline.

8. The Brookings Urban Renewal Agency will review the proposed Facade Improvements Proposal and advise the applicant of any recommended changes. Some proposed improvements may not be funded by the agency.

Certification By Applicant

The applicant certifies that all information provided in this application is true and complete to the best of the applicant's knowledge and belief. If the applicant is not the owner of the property to be rehabilitated, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into the agreement to perform the work proposed in this proposal. Evidence of this authority must be attached.

[Signature]
Applicant Signature

8-15-06
Date

[Signature]
Property Owner Signature

8-15-06
Date

Return application with any required attachments to:

City of Brookings
Urban Renewal Agency
898 Elk Drive
Brookings, OR 97415

City of Brookings
898 Elk Drive
Brookings, OR 97415



COUNCIL AGENDA REPORT

To: Brookings Urban Renewal Agency Board of Directors (mtg of 8/28/06)

From: City Manager

Date: August 22, 2006

Re: Facade Improvement Program Application – Ted Fitzgerald – Fitzgerald Building (624 Fleet Street)

Subject: Ted Fitzgerald, Fitzgerald Building (624 Fleet Street) Application for Matching Grant Funds under the Urban Renewal Agency Facade Improvement Program.

Recommendation: The recommendation of the Urban Renewal Advisory Committee (URAC) is as follows:

“Approve the application for Matching Grant Funds submitted for the Fitzgerald Building (624 Fleet Street) and authorize the City Manager to sign the Project Agreement and disburse funds in accordance with the approved Program Guidelines, in the amount of \$430.”

Background /Discussion: This application was submitted under the funded and approved Facade Improvement Program. URAC reviewed and approved the application on August 22, 2006. Attached is a Project Summary Report defining the approved project and exact funding requirements, as well as a copy of the original application as submitted by the applicant.

Financial Impact(s): Urban Renewal Agency funds were included in the adopted budget in the total amount of \$140,000 for Fiscal Year, 2006/07. If approved, this would utilize \$430 of those budgeted funds.

City Manager Review and Approval for placement on Council Agenda:


Dale Shaddox, City Manager

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



PROJECT SUMMARY SHEET

Applicant: Ted Fitzgerald – Fitzgerald Building, 624 Fleet Street

Action: Approved: XXX Denied

Approved Project Description / Basis for Denial:

- EXTERIOR ORNAMENTAL IRON WORK FAÇADE IMPROVEMENTS

Estimated Completion Date: 60 days after approval

Total Project Amount: \$860

FIP Match Amount: \$430

By: _____

Date: _____

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



APPLICATION

1. Applicant Information:

Name: Fleet Street Properties, LLC
Address: 624 Fleet Street, Brookings, OR 97415
Phone: Work- 541 464-7761 Home- 541 464-3691 Cell- 541 661-4418
Legal Form: Sole Proprietorship ☐ Partnership ☒ Corporation ☐
Profit ☒ Non-Profit ☐
SSN: N/A Tax ID No: 20-4207687

2. Building / Business to be Rehabilitated:

Name: Fitzgerald Building
Address: 624 Fleet St., Brookings, OR 97415
Tax Map & Lot Number: 41-13 06DA TL 10400

3. Owner of Property (If other than applicant):

Name: Norma Fitzgerald, Michael E. Fitzgerald
Street: P.O. Box 1350
City: Brookings, State: OR ZIP: 97415

4. Brief Description of Exterior Facade Improvements: Install ornamental railing on existing courtyard's street-facing block wall, to improve facade, increase uniformity of street-side decorations, discourage vandalism.

Brookings Urban Renewal Agency – Facade Improvement Application

5. Estimated Total Cost of Facade Improvements: \$ 860⁰⁰

6. In addition to proposed improvements, is there other work proposed?

Yes: ☐ No: ☒

Estimated Total of Other Work: \$ N/A

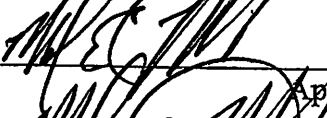
Total Estimated Cost of All Work: \$ N/A

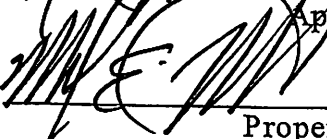
7. Source of Matching Funds: ~~\$\$\$~~ Owners' private funds

8. The Brookings Urban Renewal Agency will review the proposed Facade Improvements Proposal and advise the applicant of any recommended changes. Some proposed improvements may not be funded by the agency.

Certification By Applicant

The applicant certifies that all information provided in this application is true and complete to the best of the applicant's knowledge and belief. If the applicant is not the owner of the property to be rehabilitated, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into the agreement to perform the work proposed in this proposal. Evidence of this authority must be attached.

 Norma Stzgerald 8/18/06
Applicant Signature Date

 Norma Stzgerald 8-18-06
Property Owner Signature Date

Return application with any required attachments to:

City of Brookings
Urban Renewal Agency
898 Elk Drive
Brookings, OR 97415

City of Brookings
898 Elk Drive
Brookings, OR 97415



COUNCIL AGENDA REPORT

To: Brookings Urban Renewal Agency Board of Directors (Mtg. of 8/28/06)

From: Urban Renewal Advisory Committee (URAC)

Date: August 18, 2006

Re: Façade Improvement Program Application – Bernie Bishop Mazda

Subject: Bernie Bishop Mazda Application for Matching Grant Funds under the Urban Renewal Agency Façade Improvement Program

Recommendation: The Urban Renewal Advisory Committee has recommended approval of the application, and therefore the recommendation to the Urban Renewal Agency Board of Directors is to:

“Approve the Application for Matching Funds Submitted by Bernie Bishop Mazda and Authorize the City Manager to Sign the Funding Agreement and Disburse Funds In Accordance with the Approved Program Guidelines, in the amount of \$10,750.”

Background /Discussion: This application was submitted under the recently approved and funded program. The URAC, at a special meeting of 8/22/06, recommended approval for funding in the amount of \$10,750. (The total project cost is expected to be \$21,500)

Financial Impact(s): Urban Renewal Agency funds were included in the adopted budget in the total amount of \$140,000 for Fiscal Year 2006/07. If this project is approved the Board would be providing a matching grant of \$10,750.

City Manager Review and Approval for placement on Council Agenda:


Dale Shaddox, City Manager

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



PROJECT SUMMARY SHEET

Applicant: Rick Bishop – Bernie Bishop Mazda

Action: Approved: XXX Denied

Approved Project Description / Basis for Denial:

- REMOVE AND REPLACE THE CEDAR SHAKE FACING OF THE EXISTING MANSARD ROOF ON THREE SIDES OF THE AUTOMOBILE DEALERSHIP LOCATED AT 365 WHARF STREET

Estimated Completion Date: 90 DAYS FROM APPROVAL

Total Project Amount: \$21,500

FIP Match Amount: \$10,750

By: _____

A handwritten signature, likely of the applicant or a representative, written over a horizontal line.

Date: _____

8/24/06

Asking matching
Fund of \$10,750.00

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



APPLICATION

1. Applicant Information:

Name: Rich Bishop
Address: P.O. Box 1062
Phone: Work- 469-3126 Home- 469 Cell- 661-2392
Legal Form: Sole Proprietorship ☐ Partnership ☐ Corporation ☒
Profit ☒ Non-Profit ☐
SSN: 542-82-5051 Tax ID No: 930632840

2. Building / Business to be Rehabilitated:

Name: DEALER SHIP
Address: 365 W HART ST, Brookings OR 97415
Tax Map & Lot Number: 41 13 6DA/9200

3. Owner of Property (If other than applicant):

Name: Phyllis Bishop
Street: 419 BUENA VISTA LT P.O. BOX 1318
City: Brookings State: OR ZIP: 97415

4. Brief Description of Exterior Facade Improvements:

Rehab All FACADE - Rebuild AS nec.
Refurbish

Brookings Urban Renewal Agency – Facade Improvement Application

5. Estimated Total Cost of Facade Improvements: \$ 2,500.⁰⁰

6. In addition to proposed improvements, is there other work proposed?

Yes: ☐ No: ☒ Not At This Time

Estimated Total of Other Work: \$ 0

Total Estimated Cost of All Work: \$ 2,500.⁰⁰

7. Source of Matching Funds: Cashed out by Rich

8. The Brookings Urban Renewal Agency will review the proposed Facade Improvements Proposal and advise the applicant of any recommended changes. Some proposed improvements may not be funded by the agency.

Certification By Applicant

The applicant certifies that all information provided in this application is true and complete to the best of the applicant's knowledge and belief. If the applicant is not the owner of the property to be rehabilitated, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into the agreement to perform the work proposed in this proposal. Evidence of this authority must be attached.

GL Rich
Applicant Signature

8-11-06
Date

Phyllis J. Bishop
Property Owner Signature

8-11-06
Date

Return application with any required attachments to:

City of Brookings
Urban Renewal Agency
898 Elk Drive
Brookings, OR 97415

City of Brookings
898 Elk Drive
Brookings, OR 97415



COUNCIL AGENDA REPORT

To: Brookings Urban Renewal Agency Board of Directors (mtg. of 8/28/06)

From: City Manager

Date: August 22, 2006

Re: Facade Improvement Program Application: Colours Gallery, 509 Chetco Ave.

Subject: ColoursGallery Application for Matching Grant Funds under the Urban Renewal Agency Facade Improvement Program.

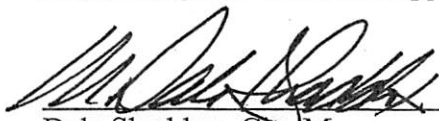
Recommendation: The recommendation of the Urban Renewal Advisory Committee (URAC) is as follows:

“Approve the application for Matching Grant Funds submitted for Colours Gallery and authorize the City Manager to sign the Project Agreement and disburse funds in accordance with the approved Program Guidelines, in the amount of \$ 1,350.”

Background /Discussion: This application was submitted under the funded and approved Facade Improvement Program. URAC reviewed and approved the application on August 22, 2006. Attached you will find a summary report providing project details and exact funding requirements, as well as a copy of the application as submitted by the applicant.

Financial Impact(s): Urban Renewal Agency funds were included in the adopted budget in the total amount of \$140,000 for Fiscal Year, 2006/07. If approved, this project would utilize \$1,350 of those budgeted funds.

City Manager Review and Approval for placement on Council Agenda:


Dale Shaddox, City Manager

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



PROJECT SUMMARY SHEET

Applicant: Kim Jones – Colours Gallery, 509 Chetco Avenue

Action: Approved: XXX Denied


Approved Project Description / Basis for Denial:

- INSTALL NEW AWNING ON FRONT FACE OF BUILDING

Estimated Completion Date: 60 DAYS FROM APPROVAL

Total Project Amount: \$2,700

FIP Match Amount: \$1,350

By:  Date: 8/24/06

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



APPLICATION

1. Applicant Information:

Name: Kim Jones & Ken Asztalos Catherine Steigerwald

Address: 14760 Oceanview Dr Brookings

Phone: Work- 612-1212 Home- 712-1212 Cell- 661-1600

Legal Form: Sole Proprietorship ☐ Partnership ☒ Corporation ☐

Profit ☐ Non-Profit ☐

SSN: 547-88-4701 Tax ID No: ~~R1209444~~ R 12526

2. Building / Business to be Rehabilitated:

Name: Colours Gallery (old Brookings Office)

Address: 509 Chetco Ave

Tax Map & Lot Number : 4113-05CB-6800

3. Owner of Property (If other than applicant):

Name: Same

Street: _____

City: _____ State: _____ ZIP: _____

4. Brief Description of Exterior Facade Improvements:

Awning

Brookings Urban Renewal Agency – Facade Improvement Application

5. Estimated Total Cost of Facade Improvements: \$ 2700⁰⁰

6. In addition to proposed improvements, is there other work proposed?

Yes: ☐ No: ☒

Estimated Total of Other Work: \$

Total Estimated Cost of All Work: \$ 2700⁰⁰

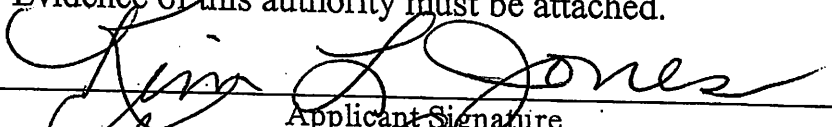
7. Source of Matching Funds: Personal

8. The Brookings Urban Renewal Agency will review the proposed Facade Improvements Proposal and advise the applicant of any recommended changes. Some proposed improvements may not be funded by the agency.

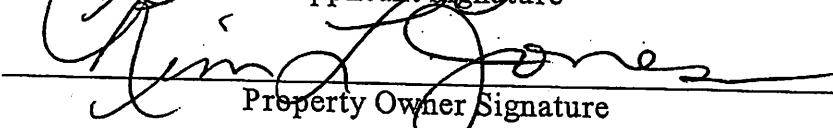
Certification By Applicant

The applicant certifies that all information provided in this application is true and complete to the best of the applicant's knowledge and belief. If the applicant is not the owner of the property to be rehabilitated, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into the agreement to perform the work proposed in this proposal.

Evidence of this authority must be attached.


Applicant Signature

8-16-06
Date


Property Owner Signature

8-16-06
Date

Return application with any required attachments to:

City of Brookings
Urban Renewal Agency
898 Elk Drive
Brookings, OR 97415

City of Brookings
898 Elk Drive
Brookings, OR 97415



COUNCIL AGENDA REPORT

To: Brookings Urban Renewal Agency Board of Directors

From: City Manager

Date: August 22, 2006

Re: Facade Improvement Program Application – Kim Jones - Curry Collections Building, 704 Chetco Avenue

Subject: Kim Jones, Curry Collections Building Application for Matching Grant Funds under the Urban Renewal Agency Facade Improvement Program.

Recommendation: The recommendation of the Urban Renewal Advisory Committee (URAC) is as follows:

“Approve the application for Matching Grant Funds submitted for the Curry Collections Building (704 Chetco Avenue) and authorize the City Manager to sign the Project Agreement and disburse funds in accordance with the approved Program Guidelines, in the amount of \$ 20,000.”

Background /Discussion: This application was submitted under the funded and approved Facade Improvement Program. URAC reviewed and approved the application on August 22, 2006. Attached is a Project Summary Report defining the approved project and exact funding requirements, as well as a copy of the original application as submitted by the applicant.

Financial Impact(s): Urban Renewal Agency funds were included in the adopted budget in the total amount of \$140,000 for Fiscal Year, 2006/07. If approved, this would utilize \$20,000 of those budgeted funds.

City Manager Review and Approval for placement on Council Agenda:


Dale Shaddox, City Manager

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



PROJECT SUMMARY SHEET

Applicant: Kim Jones - Curry Collections Building, 704 Chetco Avenue

Action: Approved: XXX Denied

Approved Project Description / Basis for Denial:

- BUILDING EXTERIOR FACADE REMODEL, INCLUDING AWNING REMOVAL, NEW SIDING, PAINTING, REPLACEMENT ROOF GUTTERS

Estimated Completion Date: MARCH, 2007 INCLUDING OTHER OWNER FINANCED IMPROVEMENTS

Total Project Amount: \$42,440

FIP Match Amount: \$20,000

By: _____

Date: _____

CITY OF BROOKINGS

Urban Renewal Agency

FACADE IMPROVEMENT PROGRAM



APPLICATION

1. Applicant Information:

Name: Kim Jones & Kenneth Asztalos
Address: 14760 Oceanview Dr
Phone: Work (541) 412-8424 Home- (541) 412-1212 Cell- (541) 661-1600 *
Legal Form: Sole Proprietorship ☐ Partnership ☒ Corporation ☐
Profit ☐ Non-Profit ☐
SSN: 547-88-4701 Tax ID No: R 20948

2. Building / Business to be Rehabilitated:

Name: Curry Collections
Address: 704 Chetco Avenue
Tax Map & Lot Number : 4113-OGDA-11400

3. Owner of Property (If other than applicant):

Name: - Same -
Street: _____
City: _____ State: _____ ZIP: _____

4. Brief Description of Exterior Facade Improvements: See attached construction bid,

Brookings Urban Renewal Agency – Facade Improvement Application

5. Estimated Total Cost of Facade Improvements: \$ 42,440⁰⁰

6. In addition to proposed improvements, is there other work proposed?

* Yes: ☒ No: ☐

Estimated Total of Other Work: \$ 25,000⁰⁰

Total Estimated Cost of All Work: \$ 67,440⁰⁰

7. Source of Matching Funds: personal

* New pitched roof. Plans to be submitted to City of Brookings * Estimated completion date March, 2007

8. The Brookings Urban Renewal Agency will review the proposed Facade Improvements Proposal and advise the applicant of any recommended changes. Some proposed improvements may not be funded by the agency.

Certification By Applicant

The applicant certifies that all information provided in this application is true and complete to the best of the applicant's knowledge and belief. If the applicant is not the owner of the property to be rehabilitated, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into the agreement to perform the work proposed in this proposal. Evidence of this authority must be attached.

Kim L. Jones Kenneth C. Jones 8-21-06
Applicant Signature Date

Kim L. Jones Kenneth C. Jones 8-21-06
Property Owner Signature Date

Return application with any required attachments to:

City of Brookings
Urban Renewal Agency
898 Elk Drive
Brookings, OR 97415



COUNCIL AGENDA REPORT

To: Urban Renewal Agency Board of Directors (mtg. of 8/28/06)

From: City Manager

Date: August 25, 2006

Re: Proposal for Cost Sharing – Alley Improvements Behind 1349 Chetco Avenue

Subject: Proposal from adjacent property owners to financially partner with the Agency to pave the alley south of Chetco Avenue from Oak Street north to the existing pavement.

Recommendation: It is recommended that the Board approve a motion to authorize budgeted funds for capital projects in the Agency budget to participate in 50% of the costs of paving the alley south of Chetco Avenue, in the amount of \$1,815.50 (total project cost of \$3,631).

Background /Discussion: At present there is considerable activity and interest in improving private properties in the Urban Renewal Project Area through the Façade Improvement Program. Some of the businesses making improvements are also beginning to utilize alley frontage as access to their business. This proposal was generated by Bob Minshew of the Gallery Restaurants, where the new restaurant complex utilizes the alley for one of its primary public access points.

However, the public alley along this stretch is gravel, and not well maintained. There should be paving along this stretch but the City has not had available funding to make this improvement. Mr. Minshew has partnered with the other businesses backing on to this alley with a proposal to the City/Agency to offer to pay half the cost of paving if the Agency would approve paying for the other half of the paving.

That is the reason this item is being brought to your attention for possible action.

The other important factor is that the paving season will soon be gone. The contractor is willing to schedule this small project now, but this a small window of opportunity from both workload and weather standpoints.

Financial Impact(s): The Agency cost share will be \$1,815.50. This can be taken from already budgeted funds for capital projects in the current fiscal year budget. The costs of street trees, benches and trash receptacles is below the budgeted amount by about \$12,000, so we can use the remaining balance for this work.

City Manager Review and Approval for placement on Council Agenda:


Dale Shaddox, City Manager

minshew / (T.W.)

Job#
CONTRACT #SMALLORW-01
TIDEWATER CONTRACTORS, INC.
OREGON CCB #29995
P.O. BOX 1956, BROOKINGS, OREGON 97415
(541) 469-5341 ~ (541) 469-5543

Redi-Mix - Asphalt - Sand & Gravel - Excavation - Road Building Equipment Rental

Contracting Party	Phone #	Office	Cell #	Date
Bob Minshew	412-7275	412-8687		5-4-06-
Mailing Address		Job Name		
1349 Chetco Ave.		Prep & Pave		
City, State, Zip Code		Job Location		
Brookings, Or. 97415		Alley Behind 1349 Chetco		

STARTING/COMPLETION OF THE JOB:

Unless otherwise specified, starting will be deemed to occur when Contractors personnel or equipment commences work at the site, all agreements contingent upon any accidents or delays beyond our control.

Contracting Party will consider job complete after review with Foreman and no "Punch List" or corrective items are needed.

DESCRIPTION OF THE WORK TO BE PERFORMED:

TWC agrees to perform the specified construction and/or improvement work required under the drawings and specifications for the job as presented to TWC for the purposes of preparing this quotation. Any alteration or deviation from said specifications involving extra cost will be executed only upon a written change order signed by both parties.

TWC uses a soil sterilize agent, but it is not guaranteed to kill weeds nor is TWC responsible for weed growth through asphalt.

Based on the Area Reviewed Approximately 2,549 Sq. Ft.

A) Grade to Drain and Compact Existing Rock Base.

B) Supply, Place and Compact to 2" Hot Mix Asphalt.

PRICE AND TERMS: \$3,631.00

Unless otherwise agreed to in advance, payment of 1/2 of the total amount will be given to the Prep Crew Foreman upon completion of his work and the remainder to Paving Foreman upon completion of job. You will receive an invoice by mail for your records. In the event of a "Punch List" or corrective items to be completed later, Contracting Party and Contractors Foreman will agree in good faith on an amount to be withheld by Contracting Party pending final completion.

PERMITS AND LICENSES:

Contractor warrants that it holds the correct licenses to do the work. Contracting Party will obtain all other permits, locates, surveying and licenses.

For an extra charge, the Contracting Party has the right to require the contractor to have a payment and performance bond.

PROMPT SIGNING:

For this contract to be binding the contracting party shall sign and return this contract no later than 30 days from date on contract. You the contracting party may cancel this transaction at any time prior to midnight of the third business day.

(Please Read Attached Literature for Further Information Regarding Contract)

TIDEWATER CONTRACTORS, INC.

BY: Fred Balda
TITLE: Estimator
DATE: 5-4-06

CONTRACTING PARTY

BY: _____
TITLE: _____
DATE: _____

August 28, 2006
Brookings City Council

Re: APP-3-06

I am Tom Appleby. I own the property located at 24 Seascapes Court, Brookings, Oregon. I have provided written justification for this appeal. Our attorney also addressed the issues of not allowing multiple family units, sold as condominiums, within an R-1-6, single family zone. Both letters were attached to our appeal.

I speak for a group of thirteen concerned neighbors who reside on Tanbark Point, known as the Friends of Tanbark Point.

We recommend that the City Council reverse the Planning Commission's decision and thereby reject the application for file #CUP-7-06.

1. The Access Road is Too Long and Violates 17.112.030.B.4

The Brookings Code states that the access road **may not** be greater than 200 feet long. The access road for the proposed development is **greater than 400 feet long**. (See City of Brookings Planning Commission Staff Agenda Report, Item No. 8.1, dated June 30, 2006: Exhibit No. 2) Thus, the Planning Commission's approval is inconsistent with this substantive provision of the current Brookings Code as well.

2. The Approved Sites are Too Small And Violate 17.112.020.D

The Brookings Code states that the minimum lot width **shall be** 15 feet greater than required by the applicable zoning district. The R-1-6 zoning requires the minimum lot width to be 60 feet (BMC 17.20.060). Therefore, the minimum lot width is **required to be 75 feet**. The site for Unit #1 is only 40 feet wide. The site for Unit #2 is only 55 feet wide. Neither site meets the above requirement. (See City of Brookings Planning Commission Staff Agenda Report, Item No. 8.1, dated June 30, 2006: Exhibit No. 3) Hence, the Planning Commission's approval violates the Brookings Code by permitting construction on sites that are too small by today's standards.

3. Too Many Rear Lots in Violation of 17.112.030.D

The Code states that "**no more than one** parcel or lot shall be created to the rear of another parcel or lot which fronts on a street in a residential district." The proposed development already has **four lots** to the rear of lot #1600 (in violation of the law). There are already five single-family dwellings serviced by the private driveway, informally named "Otter Terrace." Adding two additional dwellings brings the total number of non-complying structures to seven. Hence, the Planning Commission's approval violates the Brookings Code by permitting construction on sites that are too small by today's standards.

Even though the Planning Department considers these deviations as preexisting conditions to the current codes, the City Council should not exacerbate these conditions, which are currently unacceptable for forming new lots, by allowing additional structures as part of a dwelling group on this existing rear lot.

4. The Planning Commission Failed to Consider Neighborhood Character in Violation of 17.20.110

There is a specific paragraph in Section 17.20.110, independent of any technical requirements. The code states "Neighborhood Character. The development of dwelling groups **shall respect** the character of both the neighborhood in which it is located and the properties adjacent to said dwelling group. Emphasis shall be placed on retention of neighborhood character and privacy of adjacent properties when reviewing dwelling groups."

There all ready six dwelling groups in other areas of Brookings. I have examined all of them. None of the six dwelling groups blend inconspicuously into the surrounding neighborhoods. The purpose of dwelling groups should be to provide an adjacent dwelling for aged parents, dependent children, or other **relatives**. The whole basis for R-1 zoning, is after all, **single family**. The Brookings' Planning Department and Planning Commission application of the concept appears to be to subvert common sense for the sake of cramming as many structures onto an R-1 lot as a set of carefully selected and contrived sections of the codes will allow.

The Planning Department, Planning Commission, and the applicant's legal council argue only the technical issues covered by other sections of the code. This paragraph on neighborhood characteristics specifically pertains to the ambience of the neighborhood. The construction of this dwelling group will definitely detract from the existing neighborhood characteristics.

- a. The sizes of the proposed buildings are too big for the available land on each site and will not match the characteristics of the existing neighborhood. The maximum width of Unit #1 is 20'. The maximum width of Unit #2 is 25'. There are no houses on Tanbark Point containing 2,500 square feet with these limited widths.
- b. The dwelling density would be uncharacteristically high for our existing neighborhood. The character of the neighborhood is, on average, 20,000 square foot lots with structures filling less than 1,800 square feet (9% fill ratio). The proposed development places 3 dwellings, with a total foot print of at least 4,900 square feet, on less than 25,000 square feet of buildable property (after the access road and turn around area is subtracted per 17.112.020 C) for a fill ratio of 18%, double that of the existing properties.
- c. Because the lots are not sub-dividable, the applicant intends to convert the dwelling group to condominiums in order to effect the sale of the additional units. The concept of condominiums is not in keeping with the characteristics of our single family per lot, R-1 properties. Please consider that if the decision to allow

this dwelling group stands, several other property owners on Tanbark Point will want to build higher density dwelling groups/condominiums in their backyards, forever damaging our neighborhood characteristics.

There are no codes that provide the local government in Brookings any control over the creation of condominiums in any residential zoning within the city once a dwelling group is approved. The only way to stop the formation of a condominium group in this R-1 zone is to reject this application for a dwelling group. The discussion on "neighborhood characteristics" is within Section 17.20.110 on "Dwelling Groups." It provides the City Council with the authority it needs to reject the formation of a multiple family group of houses, to be sold as condominiums, on a single R-1 lot zoned only for single family use.

Therefor, the Friends of Tanbark Point recommend that the City Council apply common sense to APP-3-06 and reverse the Planning Commission's decision and thereby reject the application for file #CUP-7-06 on the basis that it is not appropriate to add two new structures, as a dwelling group, on an R-1 lot that does not comply with current standards, and that they, and the condominiums that they will become, will not be consistent with the characteristics of the existing single family neighborhood.

Tom Appleby

Will city prosecute parking restrictions on private driveway?

Exhibit Table for APP-3-06

Materials received prior to City Council Meeting

[illegible]

RECEIVED
AUG 28 2006 1m
CITY OF BROOKINGS

August 25, 2006

City of Brookings

Re: APP-3-06

PLEASE READ THIS INTO THE PROCEEDINGS OF THE CITY COUNCIL
MEETING ON
AUGUST 28, 2006

I own the property located at 108 Tanbark Road, Brookings, Oregon.

My recommendation is that the city council reverse the Planning Commission's decision and reject the application for file #CUP-7-06.

The four existing lots to the rear of 106 Tanbark Road far exceed the current limitation of having only one rear lot. Further more, the 400 feet of access road exceeds the current code of 200 feet maximum. The size of the proposed buildings are too big for the available land and would make the dwelling density uncharacteristically high for our existing neighborhood. Even though the Planning Department considers these deviations as preexisting conditions to the current codes, the City Council should not exacerbate these currently unacceptable conditions by allowing additional structures as part of a dwelling group on this rear lot.

Because the lots are not sub-dividable, the applicant intends to convert the dwelling group to condominiums in order to effect the sale of the additional units. The concept of condominiums is not in keeping with the characteristics of our single family per lot, R-1 properties. Please consider that if the decision to allow this dwelling group stands, several other property owners on Tanbark Point will want to build higher density dwelling groups/condominiums in their backyards forever damaging our neighborhood characteristics.

Sincerely,

Christine Mallouf
4232 Franklin Ave
Los angeles, CA 90027
(323) 664-4674

-----Original Message-----

From: Margaret Brocklander [mailto:brockx4@earthlink.net]

Sent: Sunday, August 27, 2006 7:59 PM

To: Pat Sherman

Subject: 19 Tanbark Road

Mayor Pat Sherman,

My name is Mark Brocklander and I own the property located at 535 Cushing Court, Brookings. My email is in response to app-3-06 and cup7-06 as well as my dismay at Councils poor decision to allow group dwellings to placed on subject property with the sole intent of resale; this sets a dangerous precedent for future growth. The current characteristics of the existing homes in the Tanbark Point neighborhood would be compromised. Speaking from experience with other cities where I have resided and this has happened; the outcome is generally not good for the existing homeowners or the general appeal of the neighborhood; the benefit is only for the single property owner.

In addition, I question the "real" ability to keep this area protected in terms fire protection and law enforcement. Adding a conditional turn-around for emergency vehicles and no parking signs will not offer real protection to the inhabitants. I do not believe this is fair decision to the current homeowners and ask that the City Manager, Mayor and Council visit the property in question and reconsider your decision to allow a dwelling group on 19 Tanbark Road.

Thank you,

Mark Brocklander
535 Cushing Court
Brookings, Oregon
303-887-5278
brockx4@earthlink.net

Exhibit Table for APPC-2-06

Materials received prior to City Council Meeting

[illegible]

Dianne Snow

From: Dale Shaddox
Sent: Monday, August 28, 2006 8:08 AM
To: 'Pat Sherman'
Cc: Dianne Snow; Donald Wilcox
Subject: RE: documents requested

Hi Pat,
Yes I will have those copied and distributed.

Dale Shaddox
City Manager
City of Brookings, OR
541-469-1101
dshaddox@brookings.or.us

-----Original Message-----

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Sunday, August 27, 2006 6:17 PM
To: Dale Shaddox
Subject: documents requested

Good morning Dale,

Please forward to appropriate staff:

Regarding the 'tank' appeal, if possible I need the following documents:

Permit to build the tank (There is an illegible permit for ? in the file.)

NOT A PERMIT FOR TANK,
IT'S A PERMIT FOR RETAINING WALL.
ATTACHED.

Final order and COP for the PUD (especially those COP having to do with water storage - ?COP #41 and 46)

ATTACHED.

Document from the city or HGE that told Bruce Bros what water storage requirements for the PUD are-
how many gallons?

DON WILCOX SAYS THERE IS NO
DOCUMENTATION FOR THIS.

Document that shows when foundation forms were inspected.

ATTACHED

Please distribute these documents to all Councilors.

Thank you.

Pat

- FINAL ORDER FROM PLANNING
COMMISSION APPEAL HEARING. ATTACHED.

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

In the matter of Planning Commission File No. PUD-1-04/MC-1; a request for a conditional use permit and subdivision to establish a Planned Unit Development; Bruce Brothers, LLC, applicant.) Final ORDER) and Findings of) Fact))
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ORDER approving an application for a minor change to an approved Planned Unit Development to add one additional "building envelope" lot, for a total of 29 lots; redesign the internal street system to provide a formal ingress/egress on Marina Heights Loop; and to allow the yard setback standards of the R-2 (Two Family Residential) Zone in lieu of those of the underlying SR-20 Zone, on a 13.43± acre parcel of land located adjacent to the easterly side of Old County Rd. and Marina Heights Rd.; Assessor's Maps 40-13-32CC, Tax Lot 1500 and 1700 with portions of Tax 300, Assessor's Map 40-13-32C; Zoned SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size).

WHEREAS:

1. The Planning Commission duly accepted the application filed in accordance with the Brookings Land Development Code pursuant to Section 140 Conditional Use Permits and Section 116, Planned Unit Development Approval and Section 176.060, Major Partitions and Subdivisions; and

2. Such application is required to show evidence that all of the following criteria for a conditional use permit have been met:

- A. The proposal is in compliance with the Comprehensive Plan.
- B. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code.
- C. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
- D. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing.
- E. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complimentary to the surrounding area; and

3. Such application is also required to show evidence that all of the following criteria for a planned unit development have been met:

- 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; and
4. Such application is also required to show evidence that all of the following criteria for a subdivision have been met:
- A. Conformance with the comprehensive plan, and applicable development standards of this code, and state and federal laws.
 - 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.
 - E. The proposed street plan affords the most economic, safe, efficient and least environmentally damaging circulation of traffic possible under existing circumstances.
 - F. 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.

G. 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.

H. 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.

5. The Brookings Planning Commission duly set this matter upon the agenda of a public meeting and considered the above described application with the public hearing a matter of record of the Planning Commission meeting of August 2, 2005; and

6. At the public meeting on said conditional use permit application, evidence and testimony was presented by the applicant and recommendations were received from and presented by the Planning Director in the form of a Staff Agenda Report, dated July 15, 2005 and oral presentation of same; and

7. At the conclusion of the presentation of the applicant, Planning Director and the public, after consideration and discussion the Brookings Planning Commission, upon a motion duly seconded, approved the request for the subject minor change and directed staff to prepare a Final ORDER with the findings set forth therein for the approval of said application.

THEREFORE, LET IT BE HEREBY ORDERED that the application of the conditional use permit on the subject parcel is approved. This approval is supported by the following findings and conclusions:

FINDINGS

The applicants' findings are the primary findings in this matter and are attached to and hereby made a part of this Final Order. The following are staff's supplemental findings.

1. The applicant obtained approval for a Planned Unit Development/Subdivision on July 6, 2004 to create 28 building envelope lots, a private street and common areas on a 13.9± acre parcel of land.
2. The approval of the project was based on criteria in Section 140, Conditional Uses, Section 116, Planned Unit Development and Section 176, Land Divisions, of the Land Development Code.
3. The subject property is zoned SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan.
4. The applicant has subsequently purchased two parcels of 3,600 sq. ft. and 2,940 sq. ft. that are adjacent to the subject property on the north but were originally outside of the city limits and have now been annexed to the city and included as a part of the subject project.

5. The private street system in the approved project consists of a gated access point in the northwest corner from Old County Rd. then a short two-way segment that then divides into a one-way loop. Another two-way segment extends southeast from the southerly most end of the one-way loop to an easement that extends through private property in a different ownership to Marina Heights Rd. This two-way segment ends at the easement and is gated for emergency access only.
6. The applicant is requesting a minor change to the approved project, which would add one additional building envelop lot, allow yard setbacks equivalent to those of the R-2 Zone rather than the underlying SR-20 Zone, and to realign the internal street system to provide for an access point on Marina Heights Loop and abandon the connection to the emergency access point at the easement in the southerly portion of the parent parcel.
7. Although both access points in the new street configuration will be gated, the project will have two fully accessible points of ingress and egress as compared to one fully accessible and one emergency access, in the originally approved design.
8. The R-2 Zone yard setbacks are 20 feet for the front yard and 5 feet for the side and rear yard. The side and rear yard setbacks increase by ½ foot for each foot over 15 feet of building height. The SR-20 Zone requires a 20 foot front and rear yard setback and a 10 foot setback for each side yard with no increase for building height. Maximum building height in each zone is 30 feet.
9. All of the applicable Conditions of Approval applied to the original approval are still in effect unless negated, deleted or changed by the supplemental conditions added through the approval of this minor change.

CONCLUSIONS

1. The proposed project was shown to meet the criteria for Section 140, Conditional Uses, Section 116, Planned Unit Development and Section 176, Land Divisions, of the Land Development Code, when it was approved in July 2004. Therefore only the three elements of the requested minor change are considered in relation to those criteria.
2. The addition of one lot will not create a significant increase in the traffic generated by the proposed project. The addition does not increase the density beyond what would be allowed by the underlying zone for the same parcel size and will have no particular impact on the surrounding properties.
3. The new internal street layout is a much better design than the originally approved system in that it provides two full access points to the project rather than one full access and one emergency only access. The new design should add little or no additional traffic to Marina Heights Dr. because the Old County Rd. access provides the shortest route into town. The advantage is that the Marina Heights Loop access is not an emergency only exit and thus eliminates the concern for gate that must be unlocked manually in case of an emergency. The design provides a safer and more efficient internal circulation than that of the original approval.

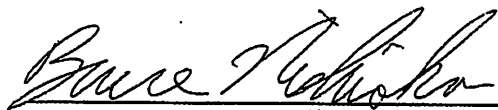
4. Yard setbacks are a flexibility that could be allowed in a PUD and are essentially a marketability issue, i.e. would you want to buy a house in this location with smaller setbacks and thus is a decision the applicant must, and in this case has made. However the neighboring properties in different ownership that must build under the SR-20 setback requirement should be given the same separation benefit. In this regard a condition of approval will require the lots adjacent to the non street boundaries of the project to meet the SR-20 side and rear yard setbacks from the boundary. With this condition of approval, the requested R-2 yard setback standards should impose no greater impact on the neighboring properties.
5. All of the applicable Conditions of Approval applied to the original approval are still in effect unless negated, deleted or changed by the supplemental conditions added through the approval of this minor change.

CONDITIONS OF APPROVAL

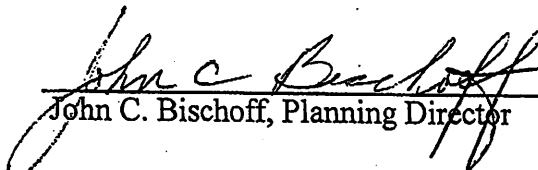
The conditions of approval are attached to this document and are made apart thereof.

LET IT FURTHER BE OF RECORD that the Planning Commission approved the requested Minor Change.

Dated this 2nd day of AUGUST 2005.


Bruce Nishioka, Chairperson

ATTEST:


John C. Bischoff, Planning Director

CONDITIONS OF APPROVAL
Pacific Terrace Planned Unit Development
PUD-1-04 and PUD-1-04/MC-1 Supplemental Conditions
July 6, 2004, Amended August 2, 2005
As amended by the Planning Commission August 2, 2005

General Conditions

1. The final plat shall be in substantial conformance with the submitted preliminary plat as amended herein and as approved by the Planning Commission.
2. Approval of this preliminary plat will expire one (1) year from approval unless the final plat is approved and recorded or unless an extension of time is requested and approved. The extension of time may be granted by the Planning Commission with good cause and will not exceed one (1) year. The recordation of the final plat can be phased to match construction phases of the project within the one-year period. Should the applicant wish to proceed with the subdivision following expiration of the one (1) year extension, the preliminary plat process must be re-initiated and resubmitted to the Planning Commission for review and approval.
3. The size and shape of all lots shall conform substantially with the approved preliminary plat. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
4. All lots shall conform to the provisions of the SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size) Zone, *as amended herein*, and to all other applicable provisions of the Land Development Code. (As amended by the Planning Commission, August 2, 2005)
5. Improvement work, including grading and fill, shall not be commenced until the City Engineer has reviewed and approved construction plans for adequacy.
6. All costs of plans checks and inspections by the City Engineer shall be paid by the applicant to the city.
7. Information on the construction plans shall be pursuant to the City of Brookings Standard Specifications document dated August 1988.
8. Prior to any construction or grading on the site, the contractor will place, in a location visible from an existing public street, a sign containing the name of the contractor, a telephone number and address where the contractor can be reached.
9. The applicant shall record with the subdivision C, C, & Rs providing for reciprocal access over and maintenance of the private street, to all lots created by the subdivision. A note to this effect shall also be placed on the final plat map.
10. The final plat map shall contain a note stating that prior to the construction of *streets, utilities and a house* on any lot within this subdivision, a geological study *and grading plan* will be required pursuant to Section 100, Hazardous Building Site Protection/Hillside Development Standards. Amended by the Planning Commission 7-6-04).
11. *Prior to any further construction on the site the southerly terminus of the new private street shall be gated and locked for use as an emergency exit only.* The applicant shall coordinate the access code for this gate with the emergency service providers. (Amended by the Planning Commission 7-6-04).
12. The gate to the entrance of the project from Old County Rd. shall be placed at least 30 feet beyond the right-of-way for Old County Rd. and the access code shall be coordinated with the emergency service

providers. The street between the gate and the Old County Rd. right-of-way shall be flat or at a grade acceptable to the City Engineer for sight distance concerns.

13. Lot 26, as shown on the approved preliminary plat map, shall have at least 20 feet of frontage on the spur street.
14. A homeowners association shall be established to provide for the maintenance of the private street system and associated gates; the common areas; and the sewer and storm drain system if they are intended to be owned by the association.
15. The C, C &Rs shall contain a clause to the effect that the city must review and approve any change or deletion of a clause required by the city to be in the C, C &Rs.
16. *Prior to any further construction on the subject property, the applicant shall record a Lot Line Adjustment to bring the included portions of Tax Lots 205 and 300 into the applicant's ownership. (Added by Planning Commission 7-6-04).*
17. *Prior to the approval of the Final Plat Map by the Planning Commission, the applicant shall cause the annexation of the portion of the subject property that currently extends outside of the city limits. (Added by the Planning Commission 7-6-04).*

Street Conditions

18. The private streets shall be constructed with 20 feet of pavement for the one-way portion of the street and 24 feet of pavement for the two-way sections of the streets as shown on the approved preliminary plat map.
19. ~~A hammerhead type turnaround shall be constructed in the vicinity of the gate at the south terminus of the private street. The design of the turnaround shall be approved by the City Engineer. (Deleted by the approval of Minor Change No. 1, August 2, 2005).~~
20. Old County Rd. shall be improved with two paved, 12-foot travel lanes and a 4-foot paved shoulder along the frontage of the subject property. No obstructions shall be placed in the within the paved shoulder area.
21. The applicant shall dedicate to the city sufficient additional right-of-way along the frontage of Marina Heights Rd. to complete a 25 foot wide right-of-way along the easterly side of the centerline of the street. *The applicant shall execute and cause to be recorded a Deferred Improvement Agreement for future street improvements on Marina Heights Rd. (Added by the Planning Commission 7-6-04).*
22. *Prior to the recordation of the Final Plat Map, the applicant shall engineer and remove the bank-as shown in Lot 14 of the approved preliminary plat- along Old County Rd. south of the proposed entrance to improve the sight distance from the entrance of the project. Prior to the actual removal of the bank, the construction plans shall be approved by the City Engineer and removal shall be according to the approved plans. (Added by the Planning Commission 7-6-04).*
23. All street improvements shall include any required underground storm drain facilities.
24. All street improvements must be approved by the City Engineer prior to construction and all construction shall be carried out as approved by the City Engineer.
25. A "STOP" sign shall be placed on Pacific Terrace Loop at the intersection with Old County Rd.

26. A street light shall be placed at the intersection of Old County Rd. and Pacific Terrace loop as shown on the preliminary plat map, pursuant to the provisions of Section 172.050 of the city's Land Development Code.
27. A street name sign shall be placed at the intersection of Old County Rd. and Pacific Terrace Loop.

Sanitary Sewer And Storm Drain Conditions

28. The applicant shall extend sewer service mains into the new private street system and through the other areas of the property as necessary. Service laterals shall be extended to each lot within the subdivision.
29. *The applicant shall extend a sewer main into the Old County Rd. right-of-way from the current terminus to the northerly boundary of the subject property. (Added by the Planning Commission 7-6-04).*
31. *The applicant shall extend a sewer main into the Marina Heights Rd. right-of-way from the current terminus at the intersection of Old County Rd. and Marina Heights Rd. to the southeasterly boundary of the subject property. (Added by the Planning Commission 7-6-04).*
32. Sanitary sewer installation shall comply with the standards of the State of Oregon Department of Environmental Quality and the provisions of Brookings City Ordinance No. 430, and Standard Specifications Document, dated August 1988.
33. The location of all sewer laterals shall be appropriately marked on the curb in a permanent manner.
34. An easement shall be granted to the City over all of the sewer mains throughout the project, unless the mains are intended to be owned by the homeowners association. The width of the easements shall be approved by the City Engineer
35. Any portion of the sewer main that is outside of the driveway shall be provided with a drivable surface suitable to accommodate repair vehicles.
36. All drainage from the subject property including roof drains shall be engineered in a manner that protects down stream properties from water flow greater than currently exists.
37. All storm drains shall be installed pursuant to the provisions of the Standard Specifications document.
38. All storm sewer mains that are located outside of a street right-of-way shall be provided with an access easement as required by the City Engineer, unless the storm drain system is to be owned by the homeowners association.
39. Prior to the construction of the detention basin in the location shown on the approved preliminary plat map, the applicant's engineer shall consult with a geologist to determine the feasibility of the basin due to the presence of the potentially hazardous slope just above that location.
40. All sanitary and storm sewers plans shall be approved by the City Engineer prior to construction and all construction shall be carried out as approved by the City Engineer.

Water System Conditions

41. A water tank shall be constructed in the location shown on the preliminary plat map and connected to the city's water system. If the engineers determine that a different site is more appropriate, then a tank shall be constructed in that location.
42. All lots within the subdivision shall be served by the city domestic water supply system.

43. The applicant shall extend water mains into the private street. Service laterals shall be extended to each lot within the subdivision.
44. All water lines shall be installed pursuant to the provisions set forth in the OAR Chapter 33, Sections 42-200 through 42-243, by the Oregon State Health Division and the City of Brookings Standard Specifications Document.
45. Water meters shall be clustered at common lot lines to the extent possible.
46. All water system plans shall be approved by the City Engineer prior to construction and all construction shall be carried out as approved by the City Engineer.
47. A fire hydrant shall be located as shown on the approved preliminary plat map.
48. An easement shall be granted to the city over all water mains constructed for this project. The width of the easement shall be determined by the City Engineer.

Utilities

49. All utility lines, including but not limited to, electric, communication, street lighting, and cable television shall be placed underground throughout the subdivision. This includes undergrounding of services from existing overhead utilities.
50. All utility easements shall be clearly defined as to their scope, purpose and term, preferably to be included within the restrictive covenants which are to be recorded with the subdivision plat. The abbreviation "PUE" must be clearly defined and spelled out.
51. All proposed easements shall be clearly shown in dashed lines on the plat including the size and locations as required by the affected utilities, public agencies and service companies.
52. A continuous five (5) foot "PUE" adjacent to the right-of-way on Old County Rd., Marina Heights Rd., Marina Heights Loop, and all of the private streets, shall be provided to be utilized for water related equipment (meters, valves, etc. and other utilities (electrical pedestals, street lights, telephone and other facilities).
53. The applicant shall be responsible to coordinate final acceptance of all proposed "PUE's" with the affected utilities, public agencies and service companies prior to final plat approval.
54. The applicant shall coordinate the placement of mailboxes with the U. S. Postal Service. Mailboxes shall be placed in a manner that does not obstruct the sidewalk area.

Restrictive Covenants

55. In order for retaining walls, fences, etc, to be constructed within the remaining public right-of-way in back of and abutting the sidewalks the applicant shall incorporate in the covenants a "hold harmless" clause absolving the city and/or utilities of any liability or responsibility for the replacement of such appurtenances within the right-of-way should it be necessary to remove same to make repairs to existing facilities or install new facilities therein.

Bond And Agreement

56. Prior to the Planning Commission certification of the final plat, the applicant shall install the required improvements.

57. The applicant shall file, to assure his full and faithful performance thereof, one of the following: 1) surety bond executed by a surety company authorized to transact business in the State of Oregon, 2) cash, or 3) an irrevocable standby letter of credit from a bank of savings and loan association. The assurance of full and faithful performance shall be for a sum approved by the City Manager sufficient to cover the cost of the improvements, engineering, and repair of existing streets and other public improvements damaged in the development of the subdivision, and must be approved by the City Attorney as to form and content. The performance bond shall guarantee the improvements to be free of defects for one (1) year after written acceptance by the City Manager.

Supplemental conditions added with the approval of the Minor Change added by The Planning Commission, August 2, 2005.

58. Prior to construction of the street segment from Marina Heights Loop to the project boundary (that portion through Tax Lot 300) the applicant shall provide the city a copy of the recorded easement for that right-of-way segment.
59. The gate to the entrance of the project from Marina Heights Loop shall be placed at least 30 feet beyond the right-of-way for Marina Heights Loop and the access code shall be coordinated with the emergency services.
60. A stop sign shall be placed at the intersection of the Pacific Terrace Loop and Marina Heights Loop.
61. A street name sign shall be place at the intersection of the Pacific Terrace Loop and Marina Heights Loop.
62. A street light shall be place at the intersection of Pacific Terrace Loop and Marina Heights Rd.
63. The final plat map shall contain the following note: "Lots 14, 15, 16, 17, 23, 24, 25, 26, 27, and 28 shall meet the appropriate setback standard of the SR-20 Zone. *All other lots are allowed to have yard setbacks as follows:*

Front 20 feet
Side..... 5 feet
Rear..... 5 feet

Side and rear yard setback shall increase by ½ foot for each foot of building height over 15 feet.
Building height shall be determined as defined in the Land Development Code.
(Amended by the Planning Commission, August 2, 2005)

City of Brookings
898 Elk Drive
Brookings, Oregon 97415

HGE Architects, & Planners
375 Park Avenue
Coos Bay, OR 97420

Bruce Bros., Inc.
207b Wharf Street
Brookings, Oregon 97415

February 6, 2006

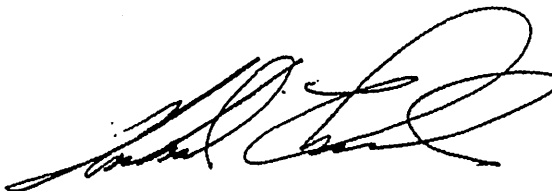
Report # 1

Footing for water tank on Marina Heights have been poured.

February 10, 2006

Report # 2

The contractor that is building the water tank has installed the foundation sheet with the gray and bentonite seals, so today Josh poured 35 ½ yards of 4,000 # concrete for the slab.



INSPECTED BY: Dennis Barlow for HGE, Inc.
HGE, Inc., Architects, Engineers, Surveyors & Planners
375 Park Avenue, Coos Bay, Oregon 97420



DISTRIBUTION: Bruce Bros., Inc.
City of Brookings

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

**In the matter of Planning Commission File No.) Final ORDER
APPC-2-06; an appeal of the Site Plan Committee) and Findings of
decision; Bruce Brothers, Inc., appellant.) Fact**

ORDER upholding an appeal of a decision of the city's Site Plan Committee that the water tank on a 5,328 sq. ft. lot did not meet the yard setback requirements of the approved Planed Unit Development; Assessor's Map 40-13-32CC, Tax Lot 1500; Zone SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size), yard setbacks of the R-2 (Two Family Residential) Zone allowed on the subject lot via the approval of the Planned Unit Development.

WHEREAS:

1. The Planning Commission duly accepted the appeal filed in accordance with Chapter 17.156, Appeal To Planning Commission, of the Brookings Municipal Code; and,
2. The Brookings Planning Commission duly considered the above described appeal on the agenda of specially scheduled public hearing on June 15, 2006; and
3. Recommendations were presented by the Planning Director in the form of a written Staff Agenda Report dated June 5, 2006, 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 Planning Commission, upon a motion duly seconded, upheld the request, and

THEREFORE, LET IT BE HEREBY ORDERED that the appeal is upheld and is supported by the following findings and conclusions:

FINDINGS

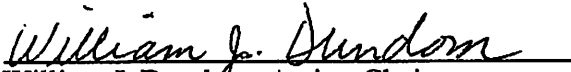
1. The applicant is appealing the Site Plan Committee's determination that the water tank that has been constructed on the subject site does not meet the applicable setback and height standards.
2. The project site is a 5,382 sq. ft. parcel created as a part of a subdivision/planned unit development, specifically for a water tank necessary to provide sufficient pressure and flows to serve this and other development in the area.
3. The planned unit development was approved on 13.43 acres located in the SR-20 (Suburban Residential, 20,000 sq. ft. minimum lot size) Zone.
4. The SR-20 Zone requires a 20 foot front and rear yard setbacks and 10 foot side yard setbacks with no increase related to building height. Maximum building height is 30 feet.
5. Through the flexibility of the planned unit development process, the internal lots and lots that do not front on undeveloped property in separate ownership within the SR-20 Zone were allowed to meet the setback standards for the R-2 (Two Family Residential) Zone.

6. Setback requirements of the R-2 Zone are a 20 foot front yard setback and a 5 foot side and rear yard setback; the side and rear setbacks must increase by ½ foot for each foot of building height above 15 feet. Maximum building height is 30 feet.
7. The tank, which is already constructed, is located approximately 7.3 feet from Marina Heights Loop, and approximately 9 feet from the rear property line.
8. The height of the tank as constructed is 34 feet.
9. Chapter 17.128, Interpretations and Exceptions, of the Brookings Municipal Code does allow water tanks to reach a height of one and one half (1½) times the maximum structure height of the underlying zone, however, the setback must be at least 50 feet from all property lines.


CONCLUSIONS

1. The lot on which the required tank was to be placed was depicted on the approved preliminary plat map, with the size and shape. Although the actual physical size of the required tank was not known at the time of approval, it should have been determined whether a tank of the required size and capacities could be placed on the lot within the required setbacks prior to the approval of the final plat map.
2. The setbacks should have been determined at the time the foundation forms were inspected.
3. The evidence suggests that the capacity requirement of the tank was determined to serve the entire area rather than just the approved Planned Unit Development, and thus required the tank to be too large to meet setback requirements.
4. For the reasons stated above, it is unreasonable to require the removal and reconstruction of the tank.

Dated this 11th day of July, 2006.


William J. Dundon, Acting Chair

ATTEST:


John C. Bischoff, Planning Director

COPY

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JOHN C. BABIN*

*ALSO LICENSED IN CALIFORNIA

P.O. BOX 1600 • 517 CHETCO AVE

BROOKINGS, OREGON 97415-0600

CHRISTOPHER KEUSINK

(541) 469-5331 • FAX (541) 469-9865

August 28, 2006

RECEIVED
AUG 28 2006 CM 2:25 PM
CITY OF BROOKINGS

Larry Anderson
City Councilor
898 Elk Drive
Brookings, OR 97415

RE: PUD-1-04
August 28, 2006 - Council Meeting

Dear Mr. Anderson:

As you know there's a hearing scheduled tonight regarding the Pacific Terrace PUD in which the Bruce Bros., are an applicant. The outcome of this hearing will obviously affect the status of the stop work order that has presently been issued against this project by the City. Since all other public improvements are completed and there is only minor work to be done on the water tank, approval of the water tank will mean that the Bruce Bros., will be able to proceed with completion of the public improvements and sales of lots and homes in the subdivision. Failure to approve the existing water tank will mean that the Bruce Bros., will be further delayed in selling the lots and homes for the twenty nine lots in the PUD.

My client believes that you have a stake in the outcome of the decision at this hearing. Furthermore, based on the information that is available to us, you have a direct or substantial financial interest in the outcome of this decision. The provisions of ORS §227.035 would preclude you from participating in the consideration of this matter.

Further review of the matter indicates that your participation in the decision on this matter will deny the Bruce Bros., the constitutional right to due process of law guaranteed to them under the Fourteenth Amendment of the U.S. Constitution and also under the Oregon Constitution. Since you have a personal interest in the outcome of the decision, a decision by you on the merits will be a violation of their due process. I am sure that the City attorney can advise you on the standards for such a determination which can be found in the Supreme Court Decision 1000 Friends v. Wasco County, 304 Or 76 (1987).

These rules have been developed to preserve the highest public confidence in the governmental processes which bring about zoning regulation and formulate property use and land use decisions. The extent of your personal interest in the outcome of this decision would not preserve public confidence in the governmental processes. The issue is not whether you believe you can be fair and unbiased. The issue is the integrity and fairness of the governmental process.

Larry Anderson
City Councilor
August 28, 2006
Page 2

My client is aware that you are a developer and a licensed contractor in the State of Oregon. They are aware that you have a conditional use permit to develop a dwelling group consisting of two single family dwellings on one lot at 966 Parkview Drive, Brookings, Oregon and a second conditional use permit to develop a dwelling group with two single family dwellings at 994 Parkview Drive, Brookings, Oregon. They believe that you intend to construct dwellings on those lots and sell them to the general public.

The Bruce Bros., are attempting to develop approximately twenty-nine lots in the Pacific Terrace PUD with homes built thereon. Therefore, you are in direct competition with the Bruce Bros., for people who are looking to buy new homes on lots in Brookings, Oregon. A delay in the ability of the Bruce Bros., to market these lots and homes located thereon would increase the marketability of the lots in your dwelling group and the homes that you intend to locate thereon.

There's also some evidence that you have taken a personal interest in Bruce Bros., developments prior to this hearing. There's evidence that you have received personal briefings by members of city staff regarding the compliance of the Bruce Bros., with various aspects of this development and others. There's also evidence that you have had discussions outside of council meetings, with city staff members recommending or suggesting actions city staff members could or should take to ensure compliance by the Bruce Bros., with regulations on their developments within the City of Brookings. There also may be additional evidence regarding these factors which is not available to the Bruce Bros., but only to you and the people with whom you have discussed them. The Bruce Bros., have advised me that they have evidence that you have conducted your own site visits on Bruce Bros., projects either with or without city staff present. We would like this information disclosed.

You were involved in a prior legal dispute with the Bruce Bros. You initiated a breach of contract action against the Bruce Bros., in the Curry County Circuit Court. The Bruce Bros., counterclaimed against you for breach of contract. The Bruce Bros., were successful in dismissing your claim and obtaining a judgment against you on their claim. While the amount was not overly significant, there is the risk that you may harbor bias or ill feelings against the Bruce Bros., as a result of that legal dispute that went to court.

For these reasons you should remove yourself from consideration of the City Council hearing on the water tank at the Pacific Terrace PUD. I'm attempting to deliver this letter to you prior to the hearing tonight so that you can make a considered decision on this request.

Sincerely,



John C. Babin

JCB:jkm
pc: James Spickerman