

MINUTES  
BROOKINGS COMMON COUNCIL  
CITY OF BROOKINGS  
July 13, 1982  
7:00 p.m.

I. CALL TO ORDER

Mayor Kerr called the meeting to order at 7:05 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Council Present: Mayor Bob Kerr; Vice Mayor Gil Batty; Councilman Walt Lovejoy; Councilman Ray Nidiffer; Councilman John Geraghty.

Staff Present: City Manager Lynn Stuart; City Recorder/Treasurer Naomi Bradfield; Administrative Assistant Georgia Shirilla.

Media Present: Bob Rodriguez, Curry Coastal Pilot; Marge Barrett KURY Radio.

IV. CEREMONIES/APPOINTMENTS

1. Library Board Appointment

Mayor Kerr indicated there was a vacancy presently existing on the City of Brookings Library Board created by the expiration of the term of Mr. Otto Rinderknecht on June 30, 1982. Councilman John Geraghty indicated that he had reviewed the list of proposed appointees presented to the City Council by the Library Board of Trustees and expressed appreciation for Mr. Rinderknecht's service to the community.

Councilman Geraghty indicated that he would recommend that Mr. Carl Van Der Sterre be appointed for a four year term beginning July 1, 1982 and ending June 30, 1986.

There was a MOTION by Councilman Lovejoy, seconded by Councilman Geraghty, to appoint Mr. Carl Van Der Sterre for that term; motion carried unanimously.

V. MINUTES FOR APPROVAL/ACCEPTANCE

A. Approval of Council Meeting Minutes

There was a MOTION by Councilman Nidiffer, seconded by Councilman Geraghty, to approve the regular Council Meeting Minutes of June 8, 1982; motion carried unanimously.

B. Acceptance of Commission/Board Minutes

There was a MOTION by Councilman Geraghty, seconded by Councilman Lovejoy, to accept the April 20, 1982 Planning Commission Minutes, May 20, 1982 Planning Commission Minutes, May 24, 1982 Library Board Meeting Minutes, June 28, 1982 Special Council Meeting Minutes, June 28, 1982 Work/Study Session Minutes, July 1, 1982 Parks & Recreation Commission Minutes; motion carried unanimously.

## VI. SCHEDULED PUBLIC APPEARANCES

### 1. Hardship Water Request (Norris)

Mr. Stuart outlined the hardship request and read into the record a letter from Dr. Williams indicating that Mrs. Norris was allergic to the formaldehyde insulation utilized in the construction of her mobile home situated on Rustic Lane just off Parkview Drive. Mrs. Norris is requesting that a hardship be declared to allow her an additional water service to split her mobile home lot and allow her to construct a new residence on the property.

Mr. Mike Cremerosa spoke on behalf of Mrs. Norris and urged the City Council to allow the hardship to exist. Ordinance 322 provides that no additional water services be provided outside the corporate limits, the City Council has issued one hardship connection to the water system since the adoption of Ordinance 322 in September, 1979.

Following a brief discussion, there was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to grant the hardship water connection to the property of Mrs. Norris situated on Rustic Lane just off Parkview Drive; motion carried unanimously.

### 2. Zoning Case Z-82-1 (Anderson)

See attached verbatim transcript.

### 3. Red's Auto Wrecking License Transfer

Mr. Stuart presented the request for wrecking license acknowledgement on the forms presented by the state of Oregon. Following a brief discussion, which identified the Police Department has researched the records and had no objections, there was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to approve the request for wrecker license transfer; motion carried unanimously.

## VII. COMMUNICATIONS/ANNOUNCEMENTS

### A. Mayors Announcements

#### 1. OCZMA Correspondence

Mayor Kerr indicated the the Oregon Coastal Zone Management Association had held their meeting in the City of Brookings and have forwarded correspondence expressing their appreciation to the City of Brookings for their hospitality.

#### 2. August 10th Council Meeting

Mayor Kerr indicated that the August 10th Council Meeting was in conflict with an election which will be held in the Brookings Council Chambers. Following a brief discussion, there was a MOTION by Councilman Lovejoy, seconded by Councilman Batty, to move the August 10, 1982 Regular Council Meeting to Wednesday, August 11, 1982; motion carried unanimously.

### B. Council Announcements

#### 1. Public Works Equipment Search

Councilman Lovejoy outlined the need for Public Works equipment purchases to the City Council. He requested the Council's authority to travel to other communities looking for good used equipment, specifically a dump truck for the Public Works Department.

There was a brief discussion regarding the feasibility of attending State auctions. The Council concluded that Councilman Lovejoy should proceed with the pursuit of adequate Public Works equipment to replace existing, below standard equipment.

**C. Managers Announcements**

**1. Coos-Curry Franchise**

City Manager Lynn Stuart outlined that the Coos-Curry Franchise would terminate at the end of July, 1982. Presently negotiations are continuing with the Coos-Curry Electrical Cooperative and Councilman Ray Nidiffer. City Manager asked for an extension to continue negotiations.

There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to extend the existing Coos-Curry Electrical Franchise for a 90-day period; motion carried unanimously.

**2. Street Light Request - 6th Street**

Mr. Stuart outlined the request to relocate an existing street light from 5th Street across from the medical center to an area approximately half way between Ransom and Easy Street on the west side of 6th Street. There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to authorize the relocation of the street light as outlined; motion carried unanimously.

**3. L.I.D. Assessment Oxford, Cedar, Maple (Lavigne)**

City Recorder Naomi Bradfield outlined a proposed payment plan for Mr. Lavigne in lieu of foreclosure as provided for by Council resolution.

Following a brief discussion, there was a MOTION by Councilman Lovejoy, seconded by Councilman Nidiffer, to approve the payment procedure as outlined; motion carried unanimously.

**4. Left-turn Refuge - U.S. 101**

City Manager Lynn Stuart outlined the proposed installation of a left-turn refuge from the area of Pacific Drive to approximately Mill Beach Drive which required the removal of all parking on both sides of the street. There was a brief discussion regarding the impact on businesses and the City Manager was directed to contact the State Highway Department to insure that as many parking spaces as possible could be retained.

There was a MOTION by Councilman Lovejoy, seconded by Councilman Geraghty, to approve the installation of a left-turn refuge and the removal of any parking spaces necessary; motion carried unanimously.

**5. 5th Street L.I.D. - Hearing Date**

City Manager Lynn Stuart outlined the status of the 5th Street local improvement district and requested that a hearing date be set for either July 27th or August 11th.

There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to set the 5th Street L.I.D. hearing date for August 11, 1982; motion carried unanimously.

6. SAIF Agreement (82-83)

There was a discussion about the industrial insurance carrier to be utilized by the City of Brookings. Resolution No. 286 was adopted authorizing the staff to proceed with the SAIF carrier. The staff presented a briefing to the City Council regarding the cost effectiveness of all available industrial insurance.

Following a brief discussion, there was a MOTION by Councilman Lovejoy, seconded by Councilman Batty, to reaffirm Resolution 286 authorizing the use of SAIF insurance; motion carried unanimously.

7. A-95 Review - Pacific View Apartments

Following a brief discussion, regarding the housing for the elderly proposed through the Pacific View Apartments, it was determined that additional information should be provided by the applicant and the item was tabled until applicant representation could be provided.

8. Library Apportionment Review

City Manager Lynn Stuart had been directed at the previous Council Meeting to determine the method of library fund apportionment at the Curry County Budget Review. Mr. Stuart outlined for the City Council the method of apportionment that was utilized and there is misunderstanding between the librarians and the Curry County Budget Committee.

Mr. Stuart indicated that librarian Anne Hicks had been admonished for making the policy decision as to the method of fund apportionment and assured the City Council that we understand this is a City Council function and the City staff will not attempt to make such decisions in the future. It was also pointed out that the Curry County Commissioners had expressed a desire to work with the City of Brookings to formulate a satisfactory apportionment policy for the future.

9. Year End Financial Report

Mr. Stuart outlined the financial status of the city at the end of June, 1982. This information is unaudited and the City Council will be presented an audit which is presently in process by the firm of Burns and Updegrave.

10. Navigable Rivers Hearing Report

Mr. Stuart outlined the process which had been pursued by the State Department of Lands for the purposes of studying the feasibility of creating the Chetco River as a navigable river. The purpose of the agenda item was to inform the residents of the City of Brookings that the transcript of the hearings is available for citizen review and the document can be checked out at the City Recorders office.

11. Planning Commission

The City Manager outlined the activities reviewed by the Planning Commission at their last regular meeting, this was to keep the City Council informed as to the Planning Commission function.

**D. Attorney Announcements**

None.

**E. Engineer Announcements**

The City Engineer outlined for the City Council activities presently being conducted by the engineers office. These included primarily the review of Mr. Larry Anderson's Harris Beach PUD and preparation for the 5th Street L.I.D. public hearing that was scheduled earlier on in this evenings agenda.

**VIII. CALL FOR BIDS**

None.

**IX. REPORT ON BIDS**

None.

**X. ORDINANCES**

**1. Ordinance No. 360 Zoning Amendment (Comprehensive Plan)**

City Recorder Naomi Bradfield read Ordinance No. 360 into the record. There was a discussion regarding the function of Ordinance No. 360 and it was pointed out that in order to comply with state requirements, the City staff having reviewed this approach with DLCD was recommending that all annexed lands zoned residential low-density or residential medium-density be assigned zoning designations AL-R-2 or AL-R-3 respectively, to insure sufficient lands were available for low to moderate income housing in the form of manufactured housing. Mrs. Jean Cunningham spoke to the issue asking if this would limit mobile homes to only outside the corporated limits. The response was that mobile homes would still be allowed within the corporated limits except they could be only on lands zoned for mobile home subdivisions. There was a MOTION by Councilman Nidiffer, seconded by Councilman Lovejoy, to approve Ordinance No. 360.

Mayor Kerr directed the City Recorder to read Ordinance No. 360 by title only.

There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to approve the second reading of Ordinance No. 360; motion carried unanimously. Mayor Kerr declared the passage of Ordinance No. 360.

**2. Ordinance No. 361 Anderson Annexation**

City Recorder Naomi Bradfield read Ordinance No. 361 into the record.

City Manager Lynn Stuart indicated that this was the first step in the process of annexing the 40 foot strip on the north boundary of the Harris Beach PUD property. Mrs. Barrett of KURY Radio asked if the Harbor residents had an official voice in the annexation proceedings since they were a member of the regional wastewater treatment facility. City Attorney John Babin responded in the negative. There was a MOTION by Councilman Lovejoy, seconded by Councilman Batty, to approve Ordinance No. 361; motion carried unanimously.

Mayor Kerr directed Mrs. Bradfield to read Ordinance No. 361 by title only.

There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to approve Ordinance No. 361 as presented; motion carried unanimously. Mayor Kerr declared passage of Ordinance No. 361.

3. Ordinance No. 362 Zoning Amendment (Anderson)

No action. Pending conclusion of land use hearing.

XI. RESOLUTIONS

1. Resolution No. 306 NBSD Assessment

City Recorder Naomi Bradfield read Resolution No. 306 into the record.

There was a brief discussion indicating that the purpose of Resolution No. 306 and 307 was to insure the City maintains a clean record on improvement district bonding and it was necessary to guarantee the city's status by adopting these resolutions of foreclosure. There was a MOTION by Councilman Lovejoy, seconded by Councilman Nidiffer, to adopt Resolution No. 306; motion carried unanimously.

2. Resolution No. 307 NBSD Assessment

City Recorder Naomi Bradfield read Resolution No. 307 into the record.

There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to approve Resolution No. 307; motion carried unanimously.

3. Resolution No. 308

City Recorder Naomi Bradfield read Resolution No. 308 into the record.

There was a brief discussion regarding the proposed city election scheduled for November 2, 1982. There was a MOTION by Councilman Nidiffer, seconded by Councilman Lovejoy, to adopt Resolution No. 308; motion carried unanimously.

4. Resolution No. 309 Comprehensive Plan/Inventory Review

City Recorder Naomi Bradfield read Resolution No. 309 into the record.

City Manager Lynn Stuart and Administrative Assistant Georgia Shirilla outlined for the City Council the content and intent of Resolution No. 309 and indicated that the purpose of this resolution was to respond to 'in order to comply statements' set forth by LCDC.

Following a brief discussion, there was a MOTION by Councilman Lovejoy, seconded by Councilman Nidiffer, to adopt Resolution No. 309 as presented; motion carried unanimously,

5. Resolution No. 310 Abstract of "A" Ballot Votes

City Recorder Naomi Bradfield read Resolution No. 310 into the record, indicating the passage of the city's "A" Ballot for fiscal 82-83. There was a MOTION by Councilman Batty, seconded by Councilman Nidiffer, to adopt Resolution No. 310 as presented; motion carried unanimously.

6. Resolution No. 311 - 1982-83 Budget Appropriation

City Recorder Naomi Bradfield read Resolution No. 311 into the record. There was a MOTION by Councilman Batty, seconded by Councilman Geraghty, to adopt Resolution No. 311 as presented; motion carried unanimously. There was a discussion regarding the Municipal Budget for fiscal 82-83 and the state forms LB-50 and LB-60 were discussed. There was a MOTION by Councilman Batty, seconded by Councilman Nidiffer, to adopt the 1982-83 Fiscal Year Municipal Budget as proposed; motion carried unanimously.

7. Resolution No. 312

City Recorder Naomi Bradfield read Resolution No. 312 into the record. There was a MOTION by Councilman Nidiffer, seconded by Councilman Lovejoy, to adopt Resolution No. 312 creating the 9-1-1-Emergency Communications Account; motion carried unanimously.

XII. UNSCHEDULED PUBLIC APPEARANCES

None.

XIII. PAYMENT OF VOUCHERS

There was a MOTION by Councilman Nidiffer, seconded by Councilman Lovejoy, to approve the vouchers list in the amount of \$32,447.91 and \$3,558.21; motion carried unanimously.

XIV. DEPARTMENTAL REPORTS

No action.

XV. ADJOURNMENT

There was a MOTION by Councilman Lovejoy, seconded by Councilman Nidiffer, to adjourn the meeting at 10:30 p.m.; motion carried unanimously.

EXECUTIVE SESSION ORS 192.660 (1) ( )

  
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Mayor Bob Kerr

ATTEST:

  
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Naomi Bradfield, City Recorder

VOUCHERS PAYABLE

July 13, 1982

<u>VOUCHER#</u>	<u>CHECK#</u>	<u>VENDOR</u>	<u>AMOUNT</u>
412	4651	ADS Equipment Inc.	183.90
501	4652	Akin Motor Co., Inc.	271.55
516	4653	Ray Allyn	11.50
513	4654	Robert E. Babb	11.50
398,465,560	4655	Baker & Taylor Co.	49.38
502	4656	Beaman Reloaders	50.00
520	4658	BECCO, Inc.	306.25
458	4659	B & E Department Store	59.00
414,446,478	4660	Blue Star Gas-Northwest	1,388.36
499	4661	Brite Spot Janitorial	87.50
440	4662	Brodart, Inc.	103.35
451,464	4664	Brookings Office Supplies	861.80
500	4665	Brookings Plumbing	57.00
471,527	4666	Brookings Supply, Inc.	97.24
493,532	4667	Brookings Volun. Firefighters	684.00
523	4668	Building Codes Division	66.58
449	4669	Burns & Updegrove	825.00
488	4670	Cantel of Medford, Inc.	21.00
450	4671	Larry Cass	36.00
457,563	4672	Chetco Rexall Drugs, Inc.	11.12
477	4673	John Clarke	14.68
428	4674	Colvin Oil Co.	498.10
429	4675	Commercial Radio & Elec.	226.28
444,509	4676	Jerry Conant	496.50
518	4677	Michael J. Cooper	7.20
505	4678	Coutrakon, Hoselton & Babin	2,015.00
411	4679	Curry Coastal Pilot	72.87
467	4680	Curry County Printing	48.80
421	4681	Curry General Hospital	82.50
435	4682	L.N. Curtis & Sons	29.51
445	4683	Dan's Photo & Cameras	22.50
396	4684	Dave's Rent-All	43.00
463	4685	Dick's Chetco Saw Shop	572.96
514	4686	Samuel W. Dotson	8.55
528	4687	Doyle Electric	691.01
406	4688	V.W. Eimicke Associates, Inc.	43.17
485	4689	Wm. Endert Distributing Co.	10.69
426	4690	Executive Dept.	300.00
519	4691	Curtis H. Fox	18.00
419,461,468,498	4692	Frank's Office Equipment	188.50
399,524	4693	Freeman Rock Enterprises	1,087.48
497	4694	Robert O. Farrow	12.55
447	4695	Gourmet Magazine	18.00
533	4696	Grants Pass Water Lab.	36.00
443,534	4697	Greyhound	28.05
424,565	4699	Harbor Logging Supply	209.42
408	4700	Hessel Tractor & Equipment	310.45
503	4701	H.G.E., Inc.	1,731.00
405	4702	Anne F. Hicks	10.40
410,454	4703	Hinds Supply Co.	79.51
418	4704	Horton Bros., Inc.	1,605.00



<u>VOUCHER#</u>	<u>CHECK#</u>	<u>VENDOR</u>	<u>AMOUNT</u>
415	4705	Hubbard's Lawn & Garden	10.50
473	4707	Independent Business Forms	177.00
434	4708	Internat. Instit. Strat. Stud.	52.00
522	4709	Bruce Conrad Johnson	16.00
416, 479, 483, 496, 529	4711	Kerr Ace Hardware	214.06
562	4712	Less Discount	(11.39)
403	4713	Lincoln Equipment, Inc.	1.72
425, 484, 564	4714	M.C. Lininger & Sons, Inc.	84.00
481	4715	Littrell Parts	168.51
409, 427	4716	Christina Lucas	106.00
437	4717	ITT Marlow	1,897.98
432	4718	McNaughton Book Service	27.91
535	4719	Mike's Printing Co.	32.00
397, 431, 490	4720	M & K Restaurant	1.90
536	4721	Mory's Arts	113.62
441	4722	Nat. Fire Protection Assoc.	33.60
433, 507	4723	National Geographic Soc.	21.45
491	4724	James H. Nelson	950.00
480	4725	New Era Press	53.00
404	4726	Newman Signs	68.80
413	4727	N.W. Law Enforcement Equip.	21.92
430, 453	4728	Nudelman Bros.	59.74
511	4729	O'Neale Supply, Inc.	230.10
510	4730	Oregon Dept. Of Revenue	300.00
401	4731	OMFOA	15.00
515	4732	Organic Gardening	13.00
402, 439, 459, 487	4733	Kent Owens	10.30
472	4734	Pacific Water Works Supply	1,482.35
470	4735	PACO Pumps	736.00
420	4736	Paramount Pest Control	17.00
521	4737	Pool & Patio Place	25.60
436, 460	4738	Calvin W. Ranney	16.00
492	4739	Ray's Sentry Market	75.23
395, 548	4740	Margie Riecke	7.50
417	4741	Ritz's Repair	3,409.93
508	4742	Gerald Ross Agency, Inc.	1,110.00
400	4743	Secretary of State	10.00
517	4744	Seventeen	11.95
525	4745	Wayne Sheffel	12.00
494	4746	Cecil K. Smith Sr.	23.07
438, 489, 526	4747	Keith Smith	350.00
422, 448, 455	4748	Square Deal Builders	238.86
537	4750	Stamper's J & J Tire	129.08
462	4751	Steiner Corporation	255.13
423	4752	Tartan Book Sales	16.59
475	4753	3M	115.00
474	4754	Tidewater Contractors, Inc.	466.33
512	4755	United States Leasing Corp.	200.00
476, 531	4756	U.S. National Bank	187.90
486, 495, 544, 561	4757	U.S. Postmaster	126.00
		Wilson Tire	3,057.96

TOTAL: 32,447.91

VOUCHERS PAYABLE

Vouchered in June-to be paid when documentation is complete

<u>VOUCHER#</u>	<u>CHECK#</u>	<u>VENDOR</u>	<u>AMOUNT</u>
539		Brookings Office Supplies	60.86
540		Brookings Plumbing	50.00
506	4783	Burroughs Corp.	33.00
407,466,542,543	4792	Curry County Printing	505.65
469	4807	Flexible Pipe & Tool Co.	756.00
541		Frank's Office Equipment	165.00
553	4798	Gaylord Bros., Inc.	77.25
551	4848	Guideposts	5.95
555	4825	Newman Signs	93.00
554	4793	Nudelman Bros.	35.00
546,556,557, 558,559	4808	Pacific Water Works Supply	468.07
552	VOIDED	Praeger Publishers	6.75
545		RCA Music Service	10.17
549	4795	Reprint Co., Publishers	105.25
547	VOIDED	Survivair	350.52
504		3M	657.62
			<hr/>
			3,380.09
530	4847	RCA Music Center	1.50
538	4806	Steiner Corporation	176.62
			<hr/>
		TOTAL:	3,558.21

CITY COUNCIL MEETING - July 13, 1982  
VERBATIM TRANSCRIPT OF PUBLIC HEARING  
Z-82-1 (Larry Anderson/Harris Beach Properties)  
PORTION OF TAX LOT 101, MAP 40-14-36

Mayor Kerr: The next item is Zoning Case Z-82-1 and I believe that we have had a request from Anderson's attorney that he would like a five minute recess to consider some items before we go ahead with this, so with that we'll have a five minute recess. We will reconvene the Council meeting and as a reference, it will be to Zoning Case Z-82-1 Anderson Annexation Subdivision which would come under a hearing status and we will conduct a hearing under the guidelines of Resolution No. 213 and under that resolution that allows me to appoint a hearings officer to conduct that portion of the hearing and as I have in the past, I would like to appoint the attorney as our hearings officer, and so John Babin if you would conduct the hearing.

John Babin: Thank you Mayor Kerr. For the record, John Babin, City Attorney for the City of Brookings. We will now commence the hearing on the application for a zone amendment. The zone amendment is by Mr. Larry Anderson. The purpose of the zone amendment is to ask for an approval of a Planned Unit Development lay-over on a certain portion within the city limits of Brookings, more specifically set out in his proposal. We are going to take testimony from the proponents and the opponents and follow the procedures of Resolution No. 213 during this hearing. The first order of business I need to ask the Council in general and the members of the Council whether any particular member of the panel wishes to abstain from participation in the hearing. Hearing that none wish to abstain, we will constitute the panel as the Council that we have on the general roll call. Now I will have to ask any person at the hearing whether they object to the jurisdiction of this Council to determine this question. Okay, hearing no objections, we will proceed with the conduct of the hearing. The first order is the staff report on the proposed zone amendment.

Lynn Stuart: Yes, Mr. Babin, Mayor Kerr, members of the Council, the request before you this evening is a zoning change request which was filed by Mr. Larry Anderson. It is a Planned Unit Development for a zone change for Z-82-1, as was previously indicated. The map that Ms. Shirilla will be putting on the screen here shortly, shows the location of the requested land use decision that you're being asked to make this evening. As is outlined

in the memorandum which you received in your packet dated July 9, 1982, this agenda pertains to the zone change request filed by Larry Anderson owner of Harris Beach Properties. Mr. Anderson is requesting that the zoning of a parcel of land known as Phase 1, which is indicated on the attached map, Harris Beach PUD be amended from residential low-density (R-LD) to residential low-density with planned development overlay (R-LD1). Reference is made to Section 4.310 of Zoning Ordinance No. 216. Public hearing on the request has been posted for Tuesday night's meeting, that's this evening, and the notices to landowners of property within 250' of the subject property has been sent by way of certified mail. I make a footnote at this point that that is not a requirement of our ordinance but the City Council did determine that as a policy statement some time back and we do mail certified mailings to the property owners within 250'. A public hearing on the subject request was held before the Planning Commission on April 20, 1982. The Commission recommended that the zone change be granted subject to certain engineering and access requirements being met. The staff and city engineer have been in contact with Mr. Anderson regarding those issues. Findings and the city engineer's report will be distributed to you on Monday, July the 12th. That's the request that's before you. The property is situated north on U.S. 101. It's located just off U.S. 101, the north boundary line of the property is presently East Harris Heights Road. The actual dirt roadway is not in, it's thereby prescriptive rights. There is a 40' section of land along the it's just south of the north boundary of the subject parcel and I might add at this point that there is annexation proceedings that's under way and this parcel of land was annexed to the City some time back, I don't recall the exact date on that, through to a due to a an exception of that 40' roadway during the annexation process, that 40' strip of land is not presently a part of it. We don't really see any problems with it, we've had that before the Planning Commission and also the City Council this evening will be considering an ordinance which will, I don't remember the proper term, but we don't have to vote on it because the property owner is Mr. Anderson. I don't see any real major concerns with that but that is the point that should be made at this time. The zoning has been outlined for you, the land parcel has been outlined and I'm sure Mr. Anderson, during his presentation, will be giving you more details on the request for the zone change. That would conclude the staff report.

John Babin: Okay, is the proponent present? Before you begin Mr. Anderson, I'd like the record to reflect Mr. Anderson is present and has stepped up to give his presentation before the Council.. I'd

like to know at this time if there are any opponents to this zoning amendment present at the hearing and could I have your name sir.

Ed Hewitt: Ed Hewitt.

John Babin: Are there any other opponents present at the hearing at the present time? Mr. Anderson you can go ahead now and give your testimony. We'll hear from you first. There will be an opportunity to cross-examine you by any opponent and then Mr. Hewitt can give his testimony and you will be given an opportunity to cross-examine him.

Mr. Anderson: The proposed zone change, this is the second phase I believe. The first phase was approved by the Planning Commission, I believe two meetings ago I don't have that particular date. I have submitted the data that I was asked to submit to for this project. This project has been under study and design for a little over two years. Basically we are seeking a P.D. Zoning to have a greater flexibility in house construction. Our densities are lower than what we could possibly be allowed by the ordinance. The plans have been submitted and I think the staff's reports are affirmative, probably incorporate those findings. I'm just nearly seeking a second phase of the zone change to a P.D. We are hoping to get this project under way shortly so therefore I am requesting you to rezone this with an overlay of P.D. zoning.

John Babin: Do you have any further testimony you wish to give at this time?

Mr. Anderson: No. I think my supporting data has been submitted to the Planning staff. It's quite a large amount of information so if I got into it it would probably be a lengthy meeting. Maybe if there's a question directed toward one aspect, I could get into that, but otherwise I will not.

John Babin: Mr. Hewitt, you now have the opportunity to ask any questions of Mr. Anderson. Mr. Anderson perhaps you could also remain. If you could move that seat perhaps out there Mr. Hewitt sit in front there and you now can ask Mr. Anderson any questions you wish.

Ed Hewitt: I'd like to address the Council itself if I may.

John Babin: Well, you'll have the opportunity to do that at a particular time. This particular portion of the hearing however, is designed solely for questions for Mr. Anderson. You will have the opportunity after if you wish to ask Mr. Anderson any questions to address the Council. But as the hearings officer I must conduct this in a particular format and a particular

schedule and right now you cannot, you will be given the opportunity. You can only, right now, ask Mr. Anderson any questions.

**Ed Hewitt:** I'd like to ask Mr. Anderson a question about the 40' roadway, deeded roadway easement. It was on the north boundary of that property that was recently abandoned by Curry County, it was abandoned on the premises that Mr. Anderson and I came to an agreement and the only agreement that we have is to have an agreement with the City of Brookings. And as far as I'm concerned, this agreement has not been lived up to and I would like to ask Mr. Anderson what he intends to do about that. It's been suggested many times that him and I get together to resolve this situation and as yet we never have.

**John Babin:** Mr. Anderson.

**Mr. Anderson:** The 40' strip was brought up by the City Manager, that 40' strip was vacated by the County to me. Prior to them vacating it, the City of Brookings attorney, the City Manager and I met, my attorney, Mr. Hewitt's attorney also met and there was an agreement developed that before the vacation of the abandonment of that right-of-way, each property owner on both sides would set aside 28'. That was the condition of their vacation. That 28' right-of-way is still incorporated in our plans. The agreement between the adjacent property owners and I come into effect, that is, the parties are not in agreement, then the City will not vacate that 28'. It is not 40'. So essentially, the issue of that right-of-way is 28' down the road when we do our construction and the City's position has been documented and recorded documents and those documents were signed by myself and Mr. Hewitt. I do not see this 40' right-of-way as an issue tonight.

**Ed Hewitt:** The 40' right-of-way was abandoned to Mr. Anderson on the premises that we came to an agreement and our agreement was to have an agreement for the 28' each and it would be deeded back to each of us, including South Coast Lumber, when an adequate substitute across Mr. Anderson's property that would serve all of the residents of East Harris Heights Road was incorporated in his plans. This he has not incorporated in his plans and ah, that would serve all these people and I'd like to know just what that entails.

**Mr. Anderson:** Mr. Hewitt mentioned that we have never gotten together, I do remember being together, the most recent time was after the last City Council meeting, it took place in the hall outside and witnessed by Ray Passley, we discussed our positions. I let you be aware of what my intentions were. Our access was

designed by recommendations of you and your attorney. We spent a considerable amount of money redesigning the roads and at this time that plan has been approved by the Planning Commission and we will continue to pursue that plan. If at a later date, when we ask for the abandonment by the City, there is a conflict, then we will deal with that at that time, as it is needed.

John Babin: Excuse me, Mr. Hewitt. Do you have that agreement with you?

Mr. Hewitt: Yes I do sir.

John Babin: Perhaps we can make it part of the record so that the panel can refer to it.

Ed Hewitt: I'll have it ready for you. I would like to know when this meeting was supposed to have taken place that me and my attorney concurred with his plans.

John Babin: You can certainly ask him that question.

Mr. Anderson: I'm sorry, Mr. Gardiner.

John Babin: Could you repeat your question Mr. Hewitt?

Ed Hewitt: I'd like to know when this meeting was supposed to have occurred between me and my attorney that would concur with his plans. We have never had a meeting for that effect.

Mr. Anderson: The meeting for the design of that road took place in Gold Beach at Mr. Gardner's office immediately following the Planning Commission meeting excuse me, the Commissioners meeting ah I do not have the date offhand. The four of us sat down at a table in Mr. Gardner's office and discussed this road design.

Ed Hewitt: Mr. Anderson that was not discussed at that meeting except ah I asked the possibility of putting it in one direction and you flat turned that down.

John Babin: Okay, Mr. Hewitt you have to ask him questions. You can ask him a question about whether it happened or whether he remembers specific provisions and other people there. You'll have an opportunity to make a statement; but at this point, you're the procedure limits you to asking him specific questions.

Ed Hewitt: Do you remember my attorney and I asking for a specific route from the cul-de-sac over the East Harris Heights Road?

Mr. Anderson: The outcome of the road design is that the Planning staff has and now the City Council has was my attorney and my understanding of what we were being asked to do. I didn't spend in excess of \$3,000 to have the road redesigned under the assumption that you were not going to be satisfied.



Ed Hewitt: I don't think you answered my question, Mr. Anderson.

Mr. Anderson: Perhaps you can ask me again and I'll ...

Ed Hewitt: Do you remember specifically my attorney and I asking the feasibility of cutting the road through from the cul-de-sac to Mr. Anderson's ah the west property border?

Mr. Anderson: Yes. And we cut the cul-de-sac through that Mr. Coutrakon pointed to. I asked him if the City was in agreement with that, he said he would check with Mr. Stuart and that yes they were. That's what we remember and that's what we designed it to.

Ed Hewitt: The map that I have unfortunately does not have that but ah ...

John Babin: Mr. Hewitt do you have that map with you?

Ed Hewitt: Yes sir.

John Babin: Okay, perhaps we could have that and mark it for the record and then we can ask Mr. Anderson questions about that map.

Ed Hewitt: It's ah it's not the exact map that we had at that meeting the ah ...

(Changed tape - tape no. 2)

John Babin: And ask Mr. Anderson questions about the map, after they put the tape back in. You may proceed Mr. Hewitt.

Ed Hewitt: Where we pointed out was from this point to Mr. Anderson along the west side of that bluff, no mention was ever made of over here, and this is the one we pointed out to him. I don't where he come up with this particular plan but that is the one we're asking about.

Mr. Anderson: Again, not to be redundant, Mr. Hewitt this was our understanding of what you were asking for. My remembrance of what your concern was quote "you didn't want anything to do with the road coming down in that area". It would have been much easier for us to redesign the road at this point than what we did. All I can say is that my attorney, your attorney were there, testimony is needed at a later date they will have to provide that, otherwise it's just what I reckaleck and what you reckaleck.

Ed Hewitt: If you remember right the when I said I didn't want anything to do with that road I said I didn't want it crossing my property. I'd like to have it where it belonged or some suitable place cause I bought and paid for that, knowing that it was an existing right-of-way on the west side of my property line that could feasibly have a road put on it. And that was the reason I didn't I didn't care to have that road on my property.



John Babin: Could you put that in the form of a question, Mr. Hewitt?

Ed Hewitt: You remember the first day I met you? Did I ask you where your ah right-of-way was and the property lines?

Mr. Anderson: Yes, I do.

Ed Hewitt: Do you remember telling me at that time that the right-of-way is where the existing roadway is?

Mr. Anderson: I do not remember that.

Ed Hewitt: I've spent two days looking for my property line on the other side of the road until I found out later that they were actually on 40' on the west side of that road, and this is when I found exactly where the roadway easement was and the property lines were ah until that time I had never ah met you before and til Gold Beach I hadn't met you after that except for one time with Mr. Turner but that's either here nor there, nothing came out of it. Ah I don't think I have any other specific questions at this time. I would like to reserve the right to ask a few more if they do come up in the cross-examination.

John Babin: Okay, alright. Are there we will call you to give testimony in a moment but first I would like to ask if there are any other parties in the room that have any questions for Mr. Anderson.

Audience: (Inaudible)

John Babin: Mr. Hewitt, now ah, you now have the opportunity to give testimony as far as your portion, excuse me, there are there any other people in the room who wish to give testimony in favor of the zoning amendment? Mr. Gardner.

Jim Gardner: My name is Jim Gardner. I am an attorney from Gold Beach, I represent Mr. Anderson. I'd just like to put on record some documents that may help clear up for the record the questions that Mr. Hewitt was putting to Mr. Anderson.

John Babin: Mr. Hewitt could you have a seat please?

Ed Hewitt: Sure.

John Babin: Mr. Gardner could you step to the microphone so that we can get that on the record?

Jim Gardner: Yes sir. Ah I represented Mr. Anderson in regards to his negotiations with Curry County and with Mr. Hewitt in regards to the vacation of that 40' strip that has been described as running through the proposed PUD. In October of 1982, Mr. Hewitt was represented Mr. John Coutrakon, an attorney in Brookings and three agreements were drawn, one

agreement each by Mr. Anderson and Mr. Hewitt to dedicate to the City of Brookings a 28' strip of land that lay basically on what is known as now as Harris Heights Road, for public access to the City of Brookings. In exchange, the City of Brookings, withdrew its objections from Curry County vacating the 40' strip of land through the PUD that had been dedicated to the county for public assess. The Curry County Commissioners were concerned that if they vacated that that there would be no record of any public access and there were people that had access back in there and they wish to avoid any lawsuits. The agreement also included South Coast Lumber Company, as I said there were three easements, they are all recorded in Book of Records 89 of Curry County between pages 880 and 890 and the agreement that the City signed indicated that if Mr. Anderson at any time wished to propose a different route into the adjoining owners property and came to the city to release this dedicated right-of-way, that he would have to propose to the City's approval another access through the PUD and only if the City accepted that proposal would the dedication of the 28' be released by the City. At the present time, Mr. Hewitt and his neighbors have access over the present Harris Heights Road which is basically the 28' that Mr. Hewitt gave and the 28' that Mr. Anderson gave to the City as a condition of Curry County releasing the other right-of-way. So and I have these documents which can be copied and placed into the record. I don't have a copy machine available. You can do that and mark them if you wish Mr. Hearings Officer.

John Babin: Why don't we do that ah do we have a copy machine available?

Mayor Kerr: Yes sir I do.

Jim Gardner: That's all I the testimony I have unless someone has questions.

John Babin: Well, ah let's ah let's take a short adjournment so we can make copies of the documents in case anyone wants to cross-examine you on those documents. Let's take a five minute recess.

(Recess)

John Babin: We'll continue the hearing now, Mr. Gardner do you have those documents?

Jim Gardner: Yes I do. I would submit to the record what has been marked as Exhibit 1, which is the documents that I described in my testimony in one exhibit.

John Babin: Alright I'll take those and what I will do is I will show them to the Council. I will start over here to the right. Mr. Hewitt would you like to ask Mr. Gardner any questions

based on the testimony that he just gave?

Ed Hewitt: Only to the fact that ...

John Babin: Could you step up here close to the microphone so we can get it on the tape recorder please.

Ed Hewitt: I have only been in the office one time.

John Babin: Mr. Hewitt you're also going to have to speak up, we're having trouble picking you up on the tape recorder.

Ed Hewitt: Okay. I'd only been in Mr. Gardner's office one time and at that time this road did not go through except for as a fire road. This is the only cul-de-sac that I remember seeing on the other one and this is the one that we discussed, of cutting the road through and it was just flat said no. No do you remember that time?

Jim Gardner: Mr. Hewitt I remember discussing numerous alternatives. The only alternative I remember accepting by both parties was the fact that you had agreed to not fight the vacation of the county road provided that there was access along East Harris Heights Road and that as long as Mr. Anderson ever wanted to withdraw his 28' that he would have to come to the City Council to get that approval and they would have to approve the new access and that would give you a chance and your neighbors a chance to speak. There was no agreement between the parties to my knowledge other than the what's in the records that I just introduced. There was lots of discussion but no agreements.

Ed Hewitt: We'd discussed the suitable substitute.

John Babin: The what Mr. Hewitt? I didn't hear.

Ed Hewitt: Suitable substitute for the existing road.

Jim Gardner: We certainly discussed the many proposals but there was no written agreement, those are the only written agreements, and the reason I think that those were the only written agreements is because of there was no meeting of the minds between the two parties in anything other than what is contained in those agreements that there would be access along the road. You certainly made I remember, a number of (Inaudible) proposals, I know quite a few of those proposals at that time were rejected by Mr. Anderson because he wasn't sure because his plan wasn't set.

Ed Hewitt: Do you remember my making a statement that I wanted the road completely removed from my property and access to the neighbors above me furnished with some sort of a road?

Jim Gardner: I don't remember that statement but you did sign an easement giving 28' to the city for access. Certainly Mr. Anderson by the agreement with the City cannot remove his access without providing getting the City's approval and I'm sure the City would give their approval without Mr. Anderson providing another access.

Ed Hewitt: Do you think it just like this here is adequate?

Jim Gardner: I don't have an opinion on that sir, it's not ah I'm not that familiar with engineering or anything that's not my specialty.

Ed Hewitt: Mr. Burgess has to go over 400' uphill to get into that access there.

Jim Gardner: Well, again, I'm not an engineer and I'm not even that familiar with the property. So I couldn't even begin to give an opinion on whatever access is proposed to the plan. It was accepted by the Planning Commission.

Ed Hewitt: Do you remember me making a statement in your office that my only concern was to remove that road but also at the same time furnish my neighbors with a road?

Jim Gardner: I can state that your concern was that there remain access for you and your neighbors to Highway 101. That's what the Commissioners were concerned about and I understand from the agreements that and from talking to Mr. Stuart on the phone that's what the City of Brookings was concerned about.

Ed Hewitt: I have no further questions.

John Babin: Thank you Mr. Hewitt. Are there any other persons who would like to testify in favor of the zoning amendment? Okay, Mr. Hewitt, you can now give your testimony in opposition to the zoning amendment, if you would like to step up here and give a general statement. Before you do that, I have been presented with a packet of material that's with a cover letter dated July 15, 1982, addressed to the Brookings City Council, signed by Ed Hewitt. What I want to ask you is if you would like to present this packet of information to the City Council for their consideration in this matter?

Ed Hewitt: Yes sir, I sure would and I have two more if you would like to have those.

John Babin: Okay. Why don't we take those now and mark those as exhibits. Are these copies of the same thing?

Ed Hewitt: I have the original here and those are copies.

John Babin: What I will do is I will mark one of these as Exhibit 2 and I

will circulate that Exhibit number 2 and the two copies to the City Council.

Ed Hewitt: Would you like me to read those before I go into this?

John Babin: No. I think you should go ahead and testify and ...

Councilman: (Inaudible)

Ed Hewitt: I would like to enter a map as evidence of the only route ever discussed by myself and my attorney with Mr. Anderson as to the suitable substitute access. I am not an artist or anything, I just roughed it in with a pen where it is, I'd also like to call attention that those houses built on that 40' strip in there that this substitute was supposed to take the place of.

John Babin: Okay, we'll receive that and mark that as Exhibit 3. You can proceed with your testimony Mr. Hewitt.

Ed Hewitt: Beg your pardon.

John Babin: Would you like to proceed with your testimony?

Ed Hewitt: Yes. I'm looking for something here. This is the same agreement that you have there that I think is as Exhibit 1, I'd like to point out there that the right-of-way easement granted to the City by said individuals and parties, effecting the real property more particular described below here and below locating Curry County, Oregon, as such time and upon the condition as said City and said Anderson F.L. do agree to legally sufficient and appropriate access from East Harris Heights Road, Brookings, Curry County, Oregon, through that certain Harris Beach Properties PUD as presently on file with the City of Brookings as of the date from the execution hereof such that said access to and for the benefit of East Harris Heights Road is a sufficient substitute for said access otherwise likely to be obtained or achieved through said right-of-way easements so executed by the names parties and is to the City of Brookings. The said right-of-way of easement shall be released and extinguished by the City of Brookings upon the above stated conditions as more particularly described as below and described by that 28' and it's signed, excuse me, Mayor Bob Kerr, City Recorder Naomi Bradfield, notary public by Praecilla Pruitt. The 1979, I appeared at a City of Brookings Council meeting, at that time, I think it was 1979 I'm not absolutely positive it could have been 1980 but I think it was 1979. Mr. Anderson had a proposal for the City Council for consideration of annexing to the City. I questioned the Council about the right-of-way at that time and I was assured by the city legal staff that it being a deeded right-of-way that it could be nothing, never be anything but a road.

Also pointed out by Mr. Anderson's drawing showed how he build on that right-of-way and I was told that these houses could never be built there, as they were these plans were only a preliminary and incorrect as far as planning was concerned and the plans were to be corrected before approval was ever made. I also was told that no increase in traffic on East Harris Heights Road would be allowed by Mr. Anderson, however, he had cut three or four roads into East Harris Heights Road. August 1979, I contacted Curry County Road Department about putting the road in it's proper place. I was told that if any work was done on the right-of-way it would have to be carried the full lengths to County Specifications not just replacing the road across my property but the comparable road all had to be done at my own expense and I had already spoken to a contractor and he would cut an equal or better road for the distance from my property for right at \$20,000. Mr. Anderson approached me in September 1979, through Mr. Ernie Turner about widening the existing roadway and putting in a 6" water main. Along the road was the hydrant for fire protection. I told Mr. Turner at that time that I would donate the needed amount of land to make a legal city street providing the 40' right-of-way was used which was maybe given Mr. Anderson 16'. I also told him that the water line could go no further than 4' outside the existing 16', making it 20' off my property line. All would be from the property line and not the existing road. March 1980, my attorney, my wife and I met Mr. Anderson on my property to discuss the possibility of widening East Harris Heights Road along with installing this water line. Wayne Durfee, Leon Burgess, Ernest Turner and Mr. Ford were also at that meeting. Mr. Anderson wanted to put the water line 6' north of the existing road and only widen the road to the property line. We advised him that this was unsatisfactory. Mr. Anderson got mad and left saying to Mr. Turner that he didn't need the property to accomplish what he wanted. November 1981, Mr. Anderson applied to Curry County for abandonment of 40' right-of-way. I protested and hired legal counsel to represent me had the right-of-way of 40' been abandoned the road would never have been removed from my property and when I had new recourse in the matters through negotiations for protection for myself, the City of Brookings, an agreement was reached by Mr. Anderson, South Coast Lumber and myself, with the City of Brookings concurring that each of us deed 28' to the City of Brookings from our property line for a roadway right-of-way. And that this property would be reconveyed to us upon the completion of a satisfactory road being cut from East Harris

Heights Road through Mr. Anderson's property that would service all the property owners of East Harris Heights Road. I was under the impression that all the officials concerned concurred with me that the most logical place was in front of Mr. Burgess' house connecting eliminate the cul-de-sac from Mr. Anderson's property, thus serving all the people of East Harris Heights Road. But cutting through this, having this road cut through is the only way I could possibly ask the neighbors to give up their constrictive rights, which is all they have to cross my property; they had the roadway back to utilize all my property. This 28' is deeded back and the existing road is not abandoned I would have to consider my property without due process or just compensation. If the 28' is not deeded back as promised then the roadway should be put there where it belongs eliminating 5 units from Mr. Anderson's development which are on the 28' right-of-way. January 1982, the 40' right-of-way was abandoned and given to Mr. Larry Anderson by Curry County on the premises that Mr. Anderson and I come to an agreement on an access road for the residents of East Harris Heights Road. The only agreement that we have is to have an agreement with the City of Brookings. Requests for June 1982, requests for reconsideration on Mr. Anderson's zone change were made because I felt that insufficient, inadequate information was given to the Planning Commission and subsequently I was turned down because of the 15-day limitation on how long before I could appeal it. Mr. Brewer suggested Mr. Anderson and I try to come to an agreement before this Council meeting. Mr. Anderson and I left the Council meeting to discuss the situation. Mr. Anderson told me that our respective attorneys had agreed to the present road shown on this plot map, this is very untrue. He then stated that he could see what would be done about getting constrictive rights to my property transferred back to me. As I discussed this with my neighbors and the only one to refuse was Mr. Burgess, he refused to go 400' up the road to contact the other road and he said he would see what could be done about that. As of this date, I've neither seen nor heard from Mr. Anderson. In conclusion, I would submit that I had a moral if not a legal right to the 40' right-of-way that Curry County abandoned to Mr. Anderson to replace the property for the existing roadway that goes across my property because there is 40' between that road and my property line that is absolutely unuseable as it is if that roadway stays there. My prime consideration in this whole matter is to regain my property so that I can utilize all of it without having a road cut through it. The I'd like to see either the road put back on the 40' right-of-way or coming

back through the cul-de-sac so I can utilize my property or get the people above me to abandon their prescriptive rights which is all they have across my property. This is my only object in this whole thing for the last three years since we started this thing was to regain the prescriptive rights that these people have to cross my property and utilize my own property that I bought and paid for. The County Engineer in Gold Beach stated that the right-of-way was unsuitable for a road. I've had two engineers and a geologist up there at the same time I got an estimate of what a road would be cut through on that 40' right-of-way and I think this statement is absolutely false and if necessary I think that this whole situation should be settled before we go any farther. I would like to suggest that this council recommend that Mr. Anderson and I get together, with a time limit, and get this thing ironed out and get it done before it goes any farther. It's cost him he said \$3,000 to redesign an intersection. It's cost me over \$3,000 fighting Curry County. It is gonna cost me more than that to fight him anywhere else and I'd like to do that before that occurs.

- John Babin: Thank you, Mr. Hewitt. Would you remain up here? Mr. Gardner or Mr. Anderson would you like to ask Mr. Hewitt any questions?
- Mr. Anderson: No questions. There's a couple of comments.
- John Babin: Well, you'll have your chance for a rebuttal but time now is for inquiries. No questions. Is there any other?
- Jim Gardner: I have one question for Mr. Hewitt.
- John Babin: Mr. Hewitt could you step up here again to the microphone, Mr. Gardner could you please use the microphone so we can get it on the record.
- Jim Gardner: Mr. Hewitt, did you review Exhibit 1 that I introduced today?
- Ed Hewitt: Is that the agreement with City of Brookings?
- Jim Gardner: Yes sir.
- Ed Hewitt: Yes sir. I have one right here and it's also in my Exhibit 2.
- Jim Gardner: Okay. Are you familiar with who drew the agreements that you signed, that the City of Brookings signed and Mr. Anderson signed?
- Ed Hewitt: I presume Mr. Coutrakon did.
- Jim Gardner: And he is your attorney, is that correct?
- Ed Hewitt: He was the attorney for the City Council at that particular time. He was my attorney last November in Gold Beach, Oregon.



Jim Gardner: Okay, but he was the attorney that represented you at the Commissioners' where those were drawn?

Ed Hewitt: Yes it was.

Jim Gardner: Thank you. That's all.

John Babin: Any other persons wish to ask Mr. Hewitt any questions? Okay, well now we have the opportunity to hear from any public agencies including the staff report or the staff on any testimony that they would like to give concerning this matter. Mr. Stuart.

Lynn Stuart: Mr. Chairman, members of the Commission, Ladies and Gentlemen. I think this a point of information that I would submit regarding the alignment of the roadway and the discussions that I had with Mr. Coutrakon regarding that alignment. To the best of my knowledge, the alignment that is reflected on the present plan that we have for the development of the Harris Beach PUD that we have before us here this evening, does reflect to the best of my understanding, what was agreed upon by Mr. Anderson and Mr. Hewitt and ourselves. In the discussions that I had with Mr. Coutrakon I stated, and I've done this on many occasions, I cannot commit the policy makers to any specific issue regarding policy. This would be one of those. What I did was say that it would appear to me that it would be technically sound. We reviewed it with Mr. Nored the City Engineer and it appeared to be technically sound but to insure that the alignment was what was the best for the City and the City's future, was reviewed at public hearing process before the Planning Commission. The Planning Commission did review it and to the best of my recollection there were no objections at that point to the alignment of the roadway and as a result, the City staff has been proceeding with the alignment that is shown on the map that was originally presented and I don't believe it was marked as an exhibit. But it's the preliminary plan that the Planning Commission reviewed.

John Babin: I think that as part of the Planning Commission proceedings will be apart of the record of this proceeding.

Lynn Stuart. I would have no further comments.

John Babin: Thank you Mr. Stuart. Mr. Nored would you like to give any testimony?

Mr. Nored: Not at this point, no.

John Babin: Mr. Anderson and Mr. Gardner now have an opportunity to give any rebuttal evidence that they would like to give.

Mr. Anderson: Just two points. One, the subject of this entire right-of-way has become a recorded document and I will abide by those documents as they were designed. Number 2, to tell you a little bit about why units appear within that right-of-way, on this plat map. With road design as it is the City of Brookings will not consider vacating or abandoning that 28' right-of-way until this road is indeed installed. At that time I will request, as the agreement says, to have this road deemed an adequate and satisfactory road. If it is, then I will construct these buildings. If it is not, then obviously and I am aware of this, the City of Brookings will not issue building permits to have anything constructed in that zone until that issue is satisfied. That's the end of my comments.

John Babin: Mr. Hewitt, do you have any rebuttal evidence that you would like to give? Thank you Mr. Anderson.

Ed Hewitt: It is the understanding that the contract that we have with the City has to be approved by myself, Mr. Anderson, South Coast Lumber and the City of Brookings before it can ever be abandoned. Therefore, he cannot build any houses on this easement and his plans have been approved as a whole unless some provision for those particular five houses are made, he cannot build any of these houses until those five houses are separated from the rest of them. And I think that the City is leaving itself open to some legal action by Mr. Anderson should he go ahead and get his permit to build those and then come to find out that those five houses are not buildable. I would like to have the Council consider that into their decision. That's all.

John Babin: Mr. Hewitt, for the record could you tell us what your address is please?

Ed Hewitt: 96707 East Harris Heights Road, is my physical address up here.

John Babin: That's in Brookings, Oregon?

Ed Hewitt: That's right.

John Babin: Thank you.

Ed Hewitt: Would you like my home address where I live?

John Babin: Yes. Please.

Ed Hewitt: 5201 Ambrose Drive, Reno, Nevada 89509.

John Babin: And that's also in Brookings?

Ed Hewitt: No. Reno, Nevada.

John Babin: Reno, Nevada. Thank you.

Ed Hewitt: I hope this is my permanent address in the future; but as of this time, it's up in the air.

John Babin: Is there anybody else that would like to give any additional evidence? Okay. We'll close the hearing at this point. The Council will now go into deliberation and will continue its deliberation until the next meeting unless they are prepared to make a decision at this point. Can we have an indication from the Council as to whether they will continue their deliberation or make a decision at this time.

Bob Kerr: As is to the discretion of the Council do that you feel that you need to review the evidence? I think that with the testimony we've heard that probably the problems I'm hearing could be possibly worked out at a staff level. Because it seems to me that somewhere there has been a breakdown of communication between the parties and until a working agreement is reached between the two parties I can't feel that there's any way that the City can really take a final action as far as the acceptance on this because everything occurred back into the information that they have presented here that everything has worked up to a point and it's over the dedication of new accesses on both parties. Something can be worked out on a staff level then we can expedite it by possible actions.

Lynn Stuart: Mr. Mayor and members of the City Council, we have talked as you are aware most of the afternoon and again this evening with Mr. Anderson's attorney. And an offering was made at this point, if we could have a moment to discuss that with our attorney and with our city engineer and see just where we are in the process now since new testimony has been given. I hate to ask for another recess but if we limit ourselves to a quarter to nine, could we ask for that type of recess?

Bob Kerr: That's only five minutes, unless your watch is fast. Mine is closest (Inaudible). Any objections to allowing a five minute recess? If not, so granted. This must be a record I think, three five minute recesses. (Inaudible).

(Recess)

John Babin: Just for the record, as far as the hearing is concerned, I have been informed by the Council that they wish to continue their deliberations on this matter. The deliberations will be continued to 7:00 p.m. July 27, 1982, Special Meeting of the City Council. At which time we will go back in session on the hearing and the deliberations will be concluded.