

MINUTES
BROOKINGS COMMON COUNCIL
CITY OF BROOKINGS
SPECIAL COUNCIL MEETING
July 27, 1982
7:00 p.m.

I. CALL TO ORDER

Mayor Kerr called the meeting to order at 7:00 p.m.

II. ROLL CALL

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

Council Absent: Councilman Ray Nidiffer.

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

Media Present: Marge Barrett KURY Radio; Joe Hites Curry Coastal Pilot arrived late in the meeting.

III. MINUTES FOR APPROVAL/ACCEPTANCE

A. July 13, 1982 Regular Council Meeting Minutes

Mayor Kerr indicated that he would prefer these minutes be presented at the next regular Council meeting.

IV. SCHEDULED PUBLIC APPEARANCES

A. Zoning Case Z-82-1 (Anderson)

See Attached verbatim transcript.

V. COMMUNICATIONS/ANNOUNCEMENTS

A. Salmon Fishing in Coastal Waters

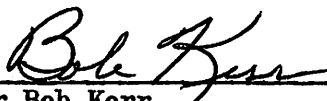
Mayor Kerr indicated that Councilman John Geraghty had a letter he wanted read into the record regarding salmon fishing in coastal waters. Councilman Geraghty read his letter into the record. There was a MOTION by Councilman Batty, seconded by Councilman Lovejoy, to forward Mr. Geraghty's letter over the signature of the entire City Council to the proper authorities; motion carried unanimously.

VI. UNSCHEDULED PUBLIC APPEARANCES/ANNOUNCEMENTS

None.

V. ADJOURNMENT

There was a MOTION by Councilman Geraghty, seconded by Councilman Lovejoy, to adjourn the meeting at 9:15 p.m.; motion carried unanimously.



Mayor Bob Kerr

ATTEST:



Naomi Bradfield, City Recorder

SPECIAL CITY COUNCIL MEETING - July 27, 1982
VERBATIM TRANSCRIPT OF PUBLIC HEARING
CONTINUATION OF Z-82-1 (Larry Anderson/Harris Beach Properties)
PORTION OF TAX LOT 101, MAP 40-14-36

- Mayor Kerr: Okay and the purpose of the Special Meeting is the Zoning Case Z-82-1. It is the Anderson Development and under the program that we carried this with we had appointed Mr. Babin as the Hearing Officer and we will continue that period through with Mr. Babin being the mediator for the for that hearing.
- John Babin: Thank you Mayor Kerr. Okay we are ready to continue with the proceedings. I noticed that Mr. Anderson is here with his attorney Mr. Gardner and I notice Mr. Hewitt is here. And I see that Mr. Myrick is sitting next to Mr. Hewitt. Is Mr. Myrick representing Mr. Hewitt?
- Mr. Myrick: Yes, please Mr. Hearings Officer. My name is Donald F. Myrick, I practice in Grants Pass. My Bar License No. 51075 and I've been requested by Mr. Hewitt to represent him at the hearing and I would also, under Ordinance 213 ask that the matter be reopened before full consideration by the Council the application and I don't mean to re-present the entire hearing I went through the minutes of the last meeting I've obtained a transcript of that. I would like principally to make a summation of the matter presented by Mr. Hewitt on his behalf, without going into the whole. I don't intend to put on new evidence.
- John Babin: Okay, well I note that there is a section of the Resolution that governs the hearings conducted before this Council that does provide that the subsequent meetings shall be for the purpose of continued deliberation and shall not allow for additional submission of testimony except upon the decision of the panel or the presiding officer. Now, since you are representing the opponent, the proponent Mr. Anderson being here with Mr. Gardner do they have any position on the reopening of the hearing?
- Mr. Gardner: In regards to reopening the hearing, as long as it is a brief statement and summation of Mr. Myrick, I don't have any objection but I do believe that a bunch of new testimony may (Inaudible) inappropriate but if Mr. Myrick is brief then in his summation of Mr. Hewitt's position, I don't have any objection.
- John Babin: Is that what you intend Mr. Myrick?
- Mr. Myrick: Well, how do you tell a lawyer to be brief but I do not intend to regurgitate all the testimony or present any new testimony. I'll be as brief as my facilities will permit. It may or may not be brief per your definition.
- Mr. Gardner: Mr. Myrick, as long as there is not new testimony then I have no

objection.

John Babin: Well, if we don't have any objection then from the City Council, I'll go ahead and allow Mr. Myrick to make any statement.

Bob Kerr: We have none.

John Babin: Okay, and then if there's anything that Mr. Anderson or Mr. Gardner would like to add after that then we can here from them. Why don't you go ahead Mr. Myrick.

Mr. Myrick: Alright if I may. Thank you. And a I would are both the microphones working? Or do you need them? Or can you hear me alright? I usually project....

Bob Kerr: For the record we like the

Mr. Myrick: Fine ... fine ... the thing that I would like to do is to briefly review the testimony that was given at the meeting, previous meeting, and point out some some features of that meeting, the statements that were made. As you go through both Mr. Anderson's and Mr. Gardner's statements to the Commission that the road known as the East Harris Heights Road which is I think is delineated in brown on the map which goes through Mr. Hewitt's property as well as, at one time or another, and does provide access to the easterly properties and the northerly properties of the subject property, the Harris Beach PUD. I think the black lines and, if I'm not mistaken, might delineate the perimeters of the PUD. Is that would that be correct, Mr. Gardner? Is that ah

Mr. Garnder: I am unable to see from this point, Mr. Myrick, yes.

Mr. Myrick: The large black borderline.

Mr. Gardner: Yes.

Mr. Myrick: Apparently is the borderline of your clients property. Now there's been some speculation that the Harris Beach access road was the borderline of the PUD properties and that's not so. The borderline of the Harris Beach PUD properties is the black line, that's the northerly and I'm referring only now to the top of the map or the northerly boundary. My client's property is represented by the diagonal line on the left to the diagonal line on the right and that's the spotted or dashed line. At some time or another apparently in the history of this the county acquired a 40' roadway along the boundary line, the black line, which would be on the north line of Anderson property but entirely within encompassed within the Anderson property, and that was a roadway to service the properties on up to the east and to the north including the client or the property of my client. Well, over the years apparently the brown line became used by all of these people and not and we know how roads become established in that fashion and that became used and I assume without researching but I'm assuming there's some prescriptive rights acquired over that 18' of roadway delineated by the brown line.

That projects up into my clients property and is being used by the people to the east and to the north. Now, this initiated by having a vacation of the 40' easement and in the Council Meeting and in the Board of County Commissioners when they decided to vacate that 40' easement, there was concern that there would not be adequate access by the residents to the north or to the east of their properties out to Highway 101. And the vacation was by the County was conditioned upon there being some access substituted access provided. So, Mr. Anderson and Mr. Hewitt my client, and South Coast Lumber and I'll leave the podium just for a minute, here a small, a small strip about an inch on the map and a few hundred feet I guess on the ground was the South Coast Lumbers involvement. A 28' easement was granted on the north of the black strip and a 28' easement granted to the south of the black strip. I believe that's delineated on the map by the red line with the dots. Now that's the 28' that we refer to as the easement over which the buildings are shown on the map as projecting is proposed. Now I'd like for you to bear in mind that we're not talking about a 28' easement, we're talking about a 56' easement that's involved with the agreement between the City of Brookings, Mr. Anderson, South Coast Lumber and my client. That if that is vacated, you must not only vacate the south 28' of the easement but the north 28' of the easement. Which brings up my very first point, and that is the County at one time had provided a service access to those people to the east and to the north which includes my client which includes the property which shows the house and some people that live on up the lane and again I'd like to leave the podium and point. This point services two other residences as well as this residence and the those people and then to the to the east of that was a concern and it is reflected in the meeting of the County Commissioners and the City Council, City of Brookings. Now what is being proposed and by minutes of 5-20-82, a variance was granted to Mr. Anderson, received Planning Commission approval for the following variance - 'The street widths, Arch Lane 28'; Glenwood Drive 36' - well at one time these people had 40' easements, then they had a 56' easement. Now, we are reducing by this draft that right-of-way is down to 28' and 36', which is certainly not base the basis of the vacation, and for that reason I I submit No. 1, now this is not this is a new point but it is not new evidence. The evidence is entirely in the record that that black line was a 40' easement, it was traded for a 56' easement and now has been reduced to 36 or 40 or even at the maximum I think 50 which also takes sidewalks and things out of the consideration. Which I, I think, that would call for that plan to be redesigned for no better reason than to

see if those people up on the easterly and northerly side are being adequately served by the green line which is apparently proposed, the green line that goes up and shifts off to the right is Seaview and does not end in the cul-de-sac but goes up and meets the brown and the black line. That would be the access apparently proposed for the people to the east. Well, now then the property that I pointed out a moment ago that is back by the dotted line and the house that is shown on the top extremity of the map must go down and there is a 40' rise from the bottom of the hill up to the green line, and they are going to be totally inconvenienced by that particular type of an access. Now Mr. Hewitt has been here and testified to you previously, Mr. Hewitt has pointed out with other maps and I will again show you what Mr. Hewitt's proposal would be and would be compatible with that of his neighbors and that is, from the cul-de-sac over to the dotted line on the right hand dotted line on the center of the map, that there be access provided in that direction, but that doesn't solve the width problem and I think that'll that matter has to be addressed with the cul-de-sac road is not does not meet the width requirements that was in the original 40' in the substitute 56' which has now been reduced to 36'. And it will be through here now Mr. Hewitt is perfectly willing to dedicate some land in that corner if that is necessary for that cul-de-sac to swing around and meet to make the necessary width, and that's never been a problem but in 1979 this was first pointed out by him to the Planning Commission as being the desirable way to go to come out at about that point of his property, that would be his southeast corner. And that's the type of access that he wants to persuade you to ah to require the designer to ah put in. He has no quarrel whatsoever with the PUD, he has no quarrel with the development in the area, he has no quarrel with the Council and has no quarrel with the Planning Commission. He feels that these people have all devoted many hours but they just haven't listened. As a matter of fact, I went up today and stood at that point which would be the southeast corner of my client's property which is the do I have to go over there you know which line I'm speaking of okay which in in a well just across from proposed units 45 and 46. Now, we get we then and I'll get off of the road kick but that's my first point gentlemen is that the the right-of-way is being provided access does not meet that which has been promised to the citizens of that area long prior to this ever starting. Not only promised but what they had they had a 40' right-of-way and they had a then and that was traded for 56. Why they demanded why the City wanted 28' from each of these owners on either side I don't know, but that's what they got. But when we speak of 28' we're not talking 28 we're talking 56' that's what the easement is through that area and the red

line is the bottom line, there ought to really be another red line to the north do you see how far that transgresses into Mr. Hewitt's property? And Mr. excuse me just a minute. What's your neighbors name there Ed ...?

Ed Hewitt: Burgess.

Mr. Myrick: Mr. Burgess has not joined in this, he's not given 28' from his property up, so that what, how this affects him requiring him to come back and come out that other green area, we don't know. And, I'd like to next, and my major point, and my legal point, I am going to refer to the agreement gentlemen that that Mayor Kerr entered into on behalf of the City of Brookings, on October 14, 1981. And if you would, you all have copies of this, and if you'd be kind enough to look at your copies, I'd like to play lawyer just a little bit, that's what I was hired to do so you'll note that the agreement is the release and extinguishment of a right-of-way easement. Now, the parties to this agreement, that is South Coast, my client Hewitt and Anderson and previously all deeded to the City of Grants Pass excuse me City of Brookings, 28' each on either side of the property line. I think you'll find that in your I don't know if you have it in the minutes of your last meeting it's in some of the exhibits that were furnished, Exhibits 1 and 2, if you can find that and ah I'd like to count down to the 1..2..3..4..5..the 5th line, the 6th line following the words Oregon Corporation and read that said City shall fully and this is just just after the granting clause, this is when the grantors are identified as being the City of Brookings, the Hewitt's, the Anderson's and South Coast Lumber Company. The said City shall fully and completely release and extinguish all of it's rights, title and interest in and to that certain right-of-way easement, granted to said City by said individuals and parties, now we're referring to the 28' on either side of the 56' right-of-way, effecting the real property more particularly described below and that's the Anderson property located in Curry County Oregon, 'at such time and upon the condition upon the condition that said City and said Anderson et al'. Now there could be ah a question what Anderson et al means other than I will get to that in a moment I'm I'm urging that the word Anderson et al means Hewitt's, Anderson and South Coast and the City of Brookings. 'Do agree to a legally legally sufficient and appropriate access from East Harris Heights Road, Brookings, Curry County Oregon, through that certain Harris Beach Property PUD.' Now what the words legally sufficient and appropriate access means I'm I it's a question of interpretation but I would think in this instant that legally sufficient and appropriate would mean no less than

that which was contemplated by the City and the County when the 40' easement was vacated and they're not getting that at this time because appropriate access is not being furnished by the access from East Harris Beach Road coming in at a point 96' to the east of is that measurement correct 96'?

Ed Hewitt:

Mr. Myrick:

396'. I thought it sounded so from the corner of my client's property down to the access to Harris Beach is 396' and all uphill. So it is not our intention is it's not legally sufficient and appropriate. But to define the word et al, I'm I was concerned when I first read this in that because we we we refer to Larry Anderson both individually and in conjunct with other legal individuals doing business as Harris Beach Properties. Well, I didn't know if the et al just meant Anderson and the Harris Beach Properties individually. I think that question is totally answered in the final next to closing paragraph. 'The City of Brookings herein warrants and represents that its agreement here and contained to release an extinguished said easements, shall run to the benefit of the legal individuals and entities named herein their successors, estates, heirs, devisees, personal representatives and assigns'. Therefore, I think the words et al obviously refers to all of the parties involved and that is the Hewitts, City of Brookings, the Andersons, Harris Beach Properties and South Coast Lumber Company. And the testimony of Mr. Hewitt was and also at one point in the testimony agreed to by Mr. Anderson that there was a meeting following the last Planning Commission Meeting to try to resolve the issue and ah the only agreement was reached is that they couldn't reach an agreement and I believe that's Mr. Anderson's testimony as well as his attorney Mr. Gardner that there was no agreement as to the location of the alternate road that would be a suitable road. Now, when I get to the word suitable again I have trouble but I believe suitable means as easy of an access as wide of an access and all the other things that go with that definition. I don't know, and I'd have to defer to the City Engineer, as to whether or not for heavy density I know a variance was granted on this, but whether heavy density road a 36' right-of-way if it in fact is 36' and I'm not certain from the map and the variance just exactly how wide that is, whether or not that really satisfies the heavy density requirements of the Ordinances and the Codes. I would I could I could go all through the transcript and point out places that it's been said but it's Mr. Anderson states at one point on page 4 "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". Well

that's not so, it's 56' we get into the double right-of-way, and I understand it's the it's I hear that well you have the testimony Mr. Anderson was not discussed at that meeting and you flat turned that down. That would be to come out did I, did I say that a road has been dozed up to that northeast corner, did I, or southeast corner, there's actually a roadway dozed up there. I went up and saw it today and if you had a field trip you would have seen that at one time somebody must have contemplated that. There is a dozed road right out to this point, which is flat, accessible and practicable. I I understand that the purpose of this meeting is to either approve the PUD or not approve the PUD and that the right-of-way may or may not have anything in the world to do with it and I understand further that it may be the thinking of the Committee or the Council that well we'll approve this and if they ever come to an agreement then that's fine. If they don't then Mr. Anderson will build at his peril, when he builds the units that are numbered the little red line cuts across units 17, 18, 19, 23, 24, 50 and 51. Now, 50 and 51 it's a is a trilateral construction and I don't think he can take 50 and 51 and only build 49, his plans call joint walls, party walls, condominium type construction. So you're going to wipe out his whole 49, 50 and 51, I would think you'd wipe out totally 22, 23, 24 and 25. I don't know what setbacks are required on the others, if there is an easement there and he starts building what are the setback requirements and again I assume the City Engineers checked that all out and found that that it's compatible with the setbacks but I would think that you and I certainly we're I'm not here to speak for Mr. Anderson's best interest but he would certainly be building anything at his peril if he built over the City's easement. Now, I don't think this City can abandon that easement until those three parties are in accord. And I think that that is the interpretation that I receive when I read the findings presented to the City by its Planning Commission on a re-evaluation of this which was presented on the 23rd of July and by your City Engineer. And there are 5 areas that he suggests that you reconsider; 1) Comprehensive Plan, that's been done; 2) statewide planning goals that's certainly has been addressed very adequately; Zoning Ordinance, and that's been addressed; but No. 4 the agreement between Anderson, Hewitt, South Coast Lumber and the City of Brookings, dated October 14, 1982, I just read to you from that and your City Engineer spends the first paragraph of Page 5 addressing that issue and he uses up three quarters of the page. But it's ends ends with the following sentence and you can certainly read the entire para-

graph as as I know you already have, but these are items that have come to you from your City Engineer since your last hearing, "the release and extinguishment of the 28' easement shown on the Harris Beach PUD Plans will not occur will not occur until all parties to the agreement all parties Hewitt, South Coast, City Of Brookings, agree that a sufficient substitute has been provided including the construction thereof." Now, those parties must agree and I believe that from our standpoint that's properly interpreted by the City Engineer and I hope that interpretation will be accepted by the Council. I didn't come here to rattle any sabers but I'm sure that the legal interpretation by a court would would back up that interpretation in visiting with other attorneys over that language, I don't think there's been too much question in our minds that that means exactly what it says and all three must agree, all those parties. Right now Mr. Hewitt is not in agreement. If you, I just I just don't I think the cart is before the horse, I think it's a I think you must and I again I'm not telling you, but I would I would urge that you say to Mr. Anderson we think you have a fine plan, we think you're going to be this is going to be an asset to our Community, we think it meets all the goals that are necessary but we don't think you've addressed this right-of-way issue properly because that was to provide suitable access to those residents east and north which includes the properties that are contingent to your property. We're not talking about 28' we're talking about 56' and that you get together with your neighbors as this agreement contemplated and with us as this agreement contemplated then come back and let's do it all in one bundle. Take a piecemeal now and then just invite a bunch of litigation so that I can spend more time over here at my beach cabin rather than in Grants Pass. And again, I'm not rattling sabers gentlemen, but that's the logical next step unless this this is turned down at this juncture with the proviso get together with those people. Mr. Hewitt is not not totally not unreasonable he's been here, he's tried to state his position to you and I think very adequately last time. And that's all he ask is that this matter be deferred until that access can be worked out and preferably from the cul-de-sac of Seaview over to the southeast corner of his property. And I will respond to any questions by any member of the Council or a member of the audience.

Mr. Gardner: Mr. Myrick

Mr. Myrick: Yes. If this is correct procedure.

John Babin: That's fine with me.

Mr. Myrick: Fine.

Mr. Gardner: I have two questions. I would like you to pin down exactly Mr. Hewitt's objections why he doesn't feel that this is adequate

access as designed okay. You indicated that he objects because it is not convenient, is that correct?

John Babin: Mr. Gardner you will have to come up to the other microphone please.

Mr. Gardner: Yes sir. I just like to pin his objections down to specifically, what are they?

Mr. Myrick: Number 1 is not adequate access 1, the access is too narrow number 2, it comes out in an area too far to the east, 396' to the east of the end of his property where other owners are using that property and still using his the old Harris Beach property.

Mr. Gardner: Is he concerned that other people may have some type of prescriptive right over his property?

Mr. Myrick: I don't think that he'd I think he's knows that they have, at the present time.

Mr. Gardner: You indicated that the widths of the street in the PUD are not adequate, is that correct?

Mr. Myrick: They do not meet the same widths that were set forth in the original easement and as set forth in the 56' easement that was solicited. I don't know whether adequate I'd I'd defer to the City Engineer on that.

Mr. Gardner: Are you acquainted and is Mr. Hewitt acquainted with the specifications of the City for streets?

Mr. Myrick: No. I'm not.

Mr. Gardner: (Inaudible)

Mr. Myrick: Except that I know that a variance was granted to reduce the size.

Mr. Gardner: But that was approved by the City as per City specifications.

Mr. Myrick: Apparently.

Mr. Gardner: Are you aware that there the County never ever constructed a road on the County easement that was abandoned?

Mr. Myrick: I am aware of that.

Mr. Gardner: Okay and are you aware that that easement was granted to the County long after Harris Heights Road was in existence, as it now exists?

Mr. Myrick: I don't know that I could not I..I matter of the fact I spent the day I just didn't have enough time today to trace I wanted to find the history of the creation of that easement. It was created later, I assume that they were trying to probably maybe run it over that road, but maybe not.

Mr. Gardner: So your your point is is it's not convenient to his property and the widths, at this point, are his two concerns about the access as designed?

Mr. Myrick: It's not an adequate substitute right?

Mr. Gardner: Based on those two things?

Mr. Myrick: No. Not based on those two things.

Mr. Gardner: What ... what (Inaudible)

Mr. Myrick: Not not only inconvenient to his property but inconvenient to the other owners on up the his property his owners to the north. I think there's some other people here that were out of the town but ...

Mr. Gardner: The only the only other party to the agreement to the north would be South Coast Lumber, correct?

Mr. Myrick: True.

Mr. Gardner: And they you realize they touch on 101?

Mr. Myrick: I think I think collaterally if I bring this up I think ah all the residents of the County in that area that are serviced were ah were ah parties to the agreement so to speak as members of the public

Mr. Gardner: Well, they were not signatories.

Mr. Myrick: And they were represented by the County.

Mr. Gardner: But they were not signatories to the agreement?

Mr. Myrick: No. True. True.

Mr. Gardner: Would you agree that ah the 396' between the end of the proposed street and Mr. Hewitt's property that there exists now ah the Harris Heights East Harris Heights Road, as drawn in there?

Mr. Myrick: In the black line in the brown and black congeal there at that one point?

Mr. Gardner: In other words that there is there is an existing road between the end of the proposed main street in the PUD and Mr. Hewitt's property?

Mr. Myrick: Oh yes. I there is a roadway there the legality is in some question, but there's a roadway there. It's not a public road.

Mr. Gardner: Are you aware that Mr. Burgess has never contested these proceedings in any formal proceeding either at the City level or the County level?

Mr. Myrick: I'm aware of the fact I spoke with Mr. Burgess this afternoon and he says I ain't taken a stand no way.

Mr. Gardner: That's all the questions I really had for Mr. Myrick. I do have a statement I would like to make later.

John Babin: Any other questions for Mr. Myrick? Okay, thank you very much.

Mr. Myrick: Thank you gentlemen.

Mr. Gardner: Thank you.

Mr. Myrick: Thanks for being so courteous to an out a townner.

Wayne Durfee: Can I say something? Could I go to the map?

John Babin: Um. I don't yea I think it would be fine ah could you identify your yourself please.

Wayne Durfee: Well, I'm Wayne Durfee and I live just back of Mr. Burgess there and we have an easement on Mr. Hewitt's property coming out to the Harris Heights Road. But I don't see why we should have to come out

John Babin: Okay, if you would step up to the microphone sir I we can allow you to make some brief comments.

Wayne Durfee: I don't see why we should have to come out from our road on to the Harris Heights Road and then climb a hill and then come back down a hill to come to the to the highway when the way it is now we come up on maybe a 3% grade up to our place and the other and the way they've they're gonna adjust it that way was there'll be a probably ah 8 or 9% grade to come up there. I'll show you where it's at if you have a contour map. We're right back here, we come out here. This is just easy grade but from here about here it starts pretty steep up to there and this road will be on fairly steep grade. I don't see why that is inconvenient to us?

John Babin: Okay.

Wayne Durfee: And the way it will be with the 28' road, if you wanta come in there with a house trailer or something like that you couldn't make the turns in there.

John Babin: Sir, could you repeat your name, we didn't

Wayne Durfee: Wayne Durfee.

John Babin: How do you spell you last name?

Wayne Durfee: D-U-R-F-E-E

John Babin: And where do you live?

Wayne Durfee: I live on East Harris Heights Road, it's 7..7..6 ur 967043.

John Babin: Harris...East Harris Heights Road?

Wayne Durfee: Yea.

John Babin: Okay. Now I don't know whether anybody wants to ask Mr. Durfee any questions since this is a continuation I would think that if anybody did want to ask any questions we'd like to keep if very very brief.

Mr. Gardner: I have no questions.

John Babin: No questions?
(Inaudible)

Mr. Myrick: I will ask one question and then sit down. Would you find the grade from the southeast corner into this cul-de-sac to be suitable?

Wayne Durfee: Yes.

Mr. Myrick: End of questions.

Wayne Durfee: That would only be about probably 3 or 4.

Mr. Gardner: Mr. Durfee, your only problem is the grade then?

Wayne Durfee: Not just grade it would be the width too. Because if Mr. Burgess, Leon Burgess hasn't hasn't grade to 28' (Inaudible) there in front of him, why we'd be stuck. There's no way they're gonna bottle me up there to where we can't get out.

Mr. Gardner: I understand that sir. Do you know the width, the present width of Harris Heights Road from 101 all the way around that circle?

Wayne Durfee: Oh I don't know maybe 16'...18'.

Ed Hewitt: I measured it. It's 18' maximum narrowing down to 10 or 12'.

Mr. Gardner: That's the present existing access of (Inaudible). May I make a

statement?

John Babin: Sure Mr. Gardner, didn't mean tointerrupt you.

Mr. Gardner: That's fine (Inaudible) For the record, I'm Jim Gardner, I represent Larry Anderson the applicant. The all the testimony tonight surrounds the agreement of October the 14th and I think that's the citizen's concerns. As I understand the Hewitt's concern in regards to their participation in the agreement of October the 14th, according to Mr. Myrick is convenience of their access and the width of their access. Now, we just heard from Mr. Hewitt and I would agree with him that the present width of the present access is 18' and that's what the access is is 18' at this time over a prescriptive right and as Mr. Myrick aptly pointed out, there could be much litigation over that in the future. What Mr. Anderson by his development here is offering these people, and the City is a city street from Highway 101 that has been approved by your Planning Commission and your Engineer of a width, a right-of-way width. I think the City standard is 50 or 55' with a paving width and grades to City specifications through this area to East Harris Heights Road. Now, that certainly will be better an access than is presently is existing on East Harris Heights Road. I don't think anyone can question that. It's going to be paved, curved street and a City street. The people won't be responsible for maintenance any longer as they are on this 18' gravel road. The next question is does Mr. Hewitt have adequate access as a party to the agreement and address the other gentleman's problems. Mr. Myrick is correct that the we are talking 56' in this entire abandonment. The thing he is incorrect about is that he leads you to believe the County road easement that was, in here was a 40' easement, well that easement as I just testified to you was never built upon and in fact the County testified in previous things with your City Manager that they couldn't build on it. Now, and that the access has always been 18', and that's why they abandoned it because they never intended to build on it because it was too steep. Now, the real question comes down, is this approximately 390'. By Mr. Anderson's development we are not leaving Mr. Hewitt in any worse circumstance that he already is, we are leaving him in a better circumstance from the standpoint he is going to have access over this road to this point. And he will have instead of I don't have a measure of this instead of, I would guess a quarter to a half mile of 18' gravel road, he's gonna have approximately 300' of gravel road to traverse. Now, this may be somewhat steeper (Inaudible) that's true but in terms of a better conceivable access I don't see the problem. The other point is that the Harris Beach PUD meets all of your City standards, it's

been passed by your City Engineer as to streets and widths, and yet Mr. Myrick is saying it's not adequate. I think that's a slap at your Planning Commission and yourselves and all the work and I know it's a slap at my client who has spent three years attempting to meet all your criteria. If this is approved and with the stipulations that are outlined in your memorandum we still have to build this 28' that would be ours if it is abandoned, we have to show that this is a better access. There is no question that I think you people can see that it is. I think working with Mr. Hewitt we could come to that agreement but I certainly disagree with Mr. Myrick who says stop now, when the situation is where it is at this point. The work that everyone has put in and the betterment that is going to be to the community and to these people who wish to depart as far as access into this area. Mr. Hewitt's proposal of opening up a cul-de-sac appears to me wipes out at least 4 to 5 units and get's into I've looked at the topography there and it is somewhat steeper than a gentle grade. In any event the the question here is does this meet the zoning and are you going to follow your Planning Commission and your staff's recommendation. I think certainly that we have to work out the situation with Mr. Hewitt but I think that can be done. Once we know exactly what his problems are I think we can cope with them.

John Babin: Do we have any questions for Mr. Gardner?

Changed tape to Side 2.

John Babin: Okay, if you'd like to step up to the to the two microphones so that we can continue.

Mr. Myrick: I don't, excuse me. I've didn't come here to get in the debating society, I'd just like to ask if you agree or disagree with the City Engineer's interpretation of the contract line which is a three party agreement.

Mr. Gardner: Oh, I'm not disagreeing with that at this time.

Mr. Myrick: And it takes the consent of all three parties.

Mr. Gardner: I'm saying that the parties have to consent that there is reasonable access. I think the interpretation of the agreement is to what is reasonable access and whether a party, whoever it is, is being unreasonable.

Mr. Myrick: That that's my question.

John Babin: Thank you very much. Thank you Mr. Gardner. Okay, if there is no other testimony then we will close the hearing to testimony. We will take however, any further comments that the staff has to make to the Council regarding this matter.

Lynn Stuart: Thank you Mr. Chairman, Mayor Kerr, Members of the City Council and ladies and gentlemen. This is what was originally planned to be an opening statement just in summary, now since these

gentlemen have very well stated all of the issues, I'd like to summarize by saying that originally what we had was a development being requested by Mr. Anderson that had a 40' dedication that existed along the north property line, just south of the north property line of the parcel to be developed. Mr. Anderson requested that Curry County that held title to that property or had the legal right to abandon that property, Mr. Anderson requested the abandonment and agreed with the agreement that we talked about here this evening to dedicate 28' which was half of the required 56' dedication required by City's subdivision and zoning ordinance. He agreed with the that if he were to receive the 40' in return for the rededication of the 28' he agreed to do that. Mr. Hewitt entered in and at this point and said he would like to get into the agreement and did in fact agree to the same issue along with the South Coast Lumber Company. So the parties that participated in the agreement were Mr. Hewitt, South Coast, Anderson and then the City of Brookings agreed to accept it because this was part of the City of Brookings planning process. Following that issue all this did happen, the abandonment took place, the rededication did take place and the agreement was signed, subsequent to that Mr. Anderson acquired yet another parcel of land to the north of the PUD that he is planning and presented back to the Planning Commission of the City of Brookings a proposed street layout that you see outlined here in and the gentlemen very well outlined all of the issues that we're talking about and presented back to the Planning Commission during the Public Hearing process the roadway alignment that's shown here in green. The brown road is the road that exists by the prescriptive rights that we talked about earlier, the red line does indicate the 28' on Mr. Anderson's side of the parcel and the reason that that's the only one shown is because that's the issue we're addressing here this evening is the zoning which is a request from Residential Low-Density to Residential Low-Density with a Planned Development Overlay. So that's really what we're addressing is this parcel of land at the time that adequate access is provided, the City agrees. Now, I'm not speaking for Mr. Hewitt, I'm not speaking for any of the other members of this agreement but the City of Brookings agrees that through the public hearing process that we've conducted with our Planning Commission and with the City Council that this would be adequate access. Now, that kind of very quickly brings the whole thing up to where we are today. The City staff did have some questions of Mr. Anderson and asked Mr. Anderson and his and his engineers and surveyors to add some more information to the plans. They have since the last meeting on July the 13th, they have submitted new plans. The engineer has reviewed it, the

City staff has reviewed it and with that information presented to us we are prepared this evening to make a recommendation to the City Council regarding this matter and Naomi if you would distribute these please. And ah I'll I'll just simply read it for the record. The City staff recommends approval of the subject Planned Unit Development with the following stipulations: Number 1 - that no construction of units relative to the 28' right-of-way until abandonment is completed in accordance with the agreement dated October 14, 1981. The reason that that's there is because there is a note here on the plans that needs to be clarified prior to the final adoption of this plan at the at the time that the construction is completed. At that point, if all parties in the agreement concur, abandonment would occur back to this property line which has been indicated before as Mr. Hewitt's property line and it would be as far as the City is concerned, I want to emphasize that point, the full 58'. The reason that is discussed 28' is because 28' exists on Mr. Anderson's property that's what we're addressing is Mr. Anderson's property. Okay so, that's the first issue. While I'm speaking of roadway widths, the attorney for Mr. Hewitt just pointed out that the roadway construction through this area was 36' dedication. Actually that's 36' from face of curb to face of curb that would be the surface roadway as opposed to the dedicated roadway. So that would be a paved road and I believe that I'm stating it correctly that it's 36' from face to face curb. That was what was reviewed by the Planning Commission and approved; Number 2 - Submittal and approval of as constructed final plan, the following construction of the off-site improvements in accordance with City of Brookings standard details and specifications and approved engineering plans. In other words, this plan is one that they can proceed with construction but the final plan will have to reflect exactly what was done on the site and that's what items 3, 4, 5, and 6 reflects, as it related to Phase 1 of the development; Okay. Number 3 - Completion of annexation of the north 40' of project. In other words, when this parcel of land was annexed into the City of Brookings there was a there was some verbage in the legal description that was provided to us that excluded the north 40'. This is a housekeeping activity but it's an important activity because at this point the the 40' the north 40' of this is not physically inside the City limits. The City Council at the July the 13th meeting did set a hearing date for the annexation of that property and that hearing date was set for August the 11th, which is the next regular meeting of the City Council; Item Number 4 - reference to the July 19, 1982 letter should be removed and the notes applied directly to the final plan. That discusses this series of notes up here which references a letter that was

written to Mr. Anderson. What I am saying is when the final plan is presented for acceptance by the City, that letter could very easily be be lost and and not a part of the record. What I'm saying is the references that are made there on the final plan, not before approval this evening but as a stipulation of approval this evening the content of that letter should be applied directly to the plan that is presented for final approval; Number 5 - The final plan shall have all the surveyors' data, corrected curve data, lengths of tangents on all final easements shown, noted and dedicated. That's just simply the method by which the City acquires ownership of dedicated right-of-ways and easements and so forth. That's the final plat process if this were a straight subdivision; Item Number 6 - references a note that is on sheet 5803 of the engineering plans and it shall have the water "water meter will be provided by the City" deleted. That part of the note shouldn't be there, it's in conflict with another note that's on the plans that has already been corrected. If we simply remove that phrase then the plans are are have continuity throughout. With those stipulations, the City staff would recommend approval of the Planned Development. What we have this evening is a request for a zone change, the action you are being asked to take this evening is a zone change from RL which is Residential Low-Density to Residential Low-Density with a Planned Development Overlay and it's for Phase 1 of the Harris Beach PUD project. I'd be happy to answer any questions the Council may have.

John Babin: Any questions? Any additional comments by staff.

John Coutrakon: I'd like to make one.

John Babin: Mr. Coutrakon.

John Coutrakon: First of all, I wondered if the members of the Council, do you have any, is there any confusion at all about what the 6 stipulations are you might say on the staff's report?

Mayor Kerr: No. I think they are they are pretty clear.

John Coutrakon: Yea. I I understand like I in fact I have haven't heard any discussions tonight or even reviewing transcript from last meeting, that there has been really a question about 2 through 6 that sounds like pretty much engineering or ministerial or (Inaudible) concerns, If the Council doesn't have any concerns on that I'd I'd like to make a couple comments on Number 1 first stipulation, everybody on the Council understand what this innuendo that's going back and forth between the Hewitt's and the Anderson's (Inaudible). Is there some confusion at all?

Mayor Kerr: Well, the only the only confusion that I came up with and and I've been here, is the argument of the abandonment of that 56', this is a dedicated right-of-way, this this does not refer to any street development or anything until it would come down to

when that width of the street the width of the street would be established that would go over that right-of-way and the other one they come back and said well we're dumping it from a 56' right-of-way down to a 36'. It's my understanding from the plans that that is a 36' face to face curbed paved street which meets most of our criteria in the City. And so I think somebody is confusing that, we're cramming a street down fairly narrow and if you want to go measure some of our arterial streets here in the City, they are they are running on the same face to face curb width, and are handling much more traffic than this area probably ever would. And this seems to be where the confusion between the parties is that just because they're they're in one area they're referring to a right-of-way, in the other place the other area they're still saying right-of-way or access to that but they're we're actually talking about a 36' paved street, and ah so this seems to be a confusion that I'm picking up between the two parties, in the testimony I'm hearing.

John Coutrakon: That that probably is a confusion. My personal feeling is that the widths here don't have much to do with whether it's suitable or substitute access but I see it since at the time I was representing the the City, in dual representation with the City and representing Mr. Hewitt since both the City and Mr. Hewitt did not, and we have this document, or letter or something in the file, but that Mr. Hewitt and the City both did not want Mr. Anderson's requested vacation to take place, unless there was some other arrangement made. The City had one reason for it and Mr. Hewitt had another reason for it but and both were in opposition to Mr. Anderson's wanting to have the vacation done sort of carte blanc so out of that came this agreement where as things stand now the City does hold a 50' a 56' right-of-way. Which is supposed to serve for access to East Harris Heights Road. The City also has an agreement with these three parties that they will release that easement basically on two conditions. One is that the three parties involved, who gave the easement being South Coast, Hewitt, Anderson agree that the City should release it and the second condition is that there be suitable I think that's the words are suitable substitute for access. Well, as I see it, frankly, from a legal point of view, and I would advise the Council thusly, is that because you have those two prongs in the agreement, one is that the three parties have to agree and the other is that there be a suitable access, it doesn't do much good to sit around and argue about whether or not that extension called Seaview is a suitable substitute or not because if the three parties can't agree, the the City is not going to release the easement. When the three parties agree, the City is going to release the easement. So since this is not a request for a

release of the easement by these parties, if the Council feels comfortable that according to the Mr. Stuart's thinking and the staff's recommendation that as far as the PUD overlay goes that this is a suitable access, then I see no reason why the City cannot go ahead and grant the approval to this. But I think it should be made clear that in Mr. Stuart's I think you could you know affirm me on this as my understanding from discussions with Mr. Stuart, that when he says no construction of units, you'll notice Number 1 stipulation, no construction of units relative to this right-of-way until abandonment is completed in accordance with the agreement dated October 14th. With that there shouldn't be any misunderstanding as I understand it between the parties since we do have that that blurb on the map that you referred to that the City of Brookings will release the easement according to the terms of the agreement and all three parties agree that it should be released and as long as the that's part of the stipulation I see no reason myself since this is just a request for a PD overlay, that if the City by the testimony being heard here tonite, thinks that that's a suitable substitute, the City should go ahead and approve it. I think Mr. Myrick said there's going to be problems ahead when two parties between themselves try to agree or disagree as to whether it should be released but I don't think that that's necessarily the City's concern at this point in regards to whether or not this plot of PUD overlay should be granted.

John Babin: Do we have any other comments from the staff? Okay, well I'll close the hearing then and I'll return the meeting to Mayor Kerr and

Mr. Myrick: Would you reread that Specification 1 again?

John Babin: The City staff recommends approval of the subject PUD with the following stipulations: Number 1 - no construction of units relative to 28' RW which means

Mayor Kerr: Right-of-way.

John Babin: Right-of-way until abandonment is completed in accordance with the agreement dated October 14th, 1981 (Clarify note on file of plan) which is what there's some language on the final plan which that refers to. Yes, Mr. Gardner.

Mr. Gardner: I'd like to ask a question of Mr. Stuart just for clarification of the record before.

John Babin: Okay, go ahead.

Mr. Gardner: Mr. Stuart I believe you indicated that it would be the City staff position that once Seacliff is constructed to specs and to plans, once it is constructed from Highway 101 to Harris Heights Road at at this point (Inaudible) adjoining. And that's constructed to City standards, that it is the staff's opinion and to the City Council that that is an adequate access and at

that point the 28' right-of-way or a 56' right-of-way which encumbers Mr. Hewitt's property and Mr. Anderson's property and the South Coast Lumber property running to the northwest, would be released but the 28' on Mr. Anderson's property running the other way would not be released until such time other adequate access in Phase 2 is completed. Is that correct?

Lynn Stuart: Mr. Chairman, Mr. Gardner. If I may go to the map my my feeling in discussing this with these folks this afternoon, the feeling of the City staff is that the applicant for the zoning request that we're reviewing this evening, has met the requirements of the processes of the City. At the time that this roadway, which is shown here in green, and it's called Seacrest Lane, at the time of that's constructed in accordance with the City standards and the plans that have been that are being approved and so forth to the point where you can go out and jump up and down on the asphalt where this connection is made to the roadway which is on the north end of Mr. Anderson's property and and connects to the gravel prescriptive roadway that presently exists. The City's position is that the access requirement of the agreement, has been met as far as the City is concerned, I and I repeat I do not I am not speaking for the other parties of the agreement and I cannot speak for the other parties of the agreement. And I want that that's why I repeated it before and I'd like to repeat it again. Once that roadway is constructed to City standards and it's asphalt and the connections are made and it's accepted by the City, then the City has no objections however, there are other parties to the agreement that we've talked about and we all agree that there's more than just one party to the agreement.

Mr. Gardner: I understand that.

John Babin: Okay. With the end of that question and answer I'll again close the hearing process and turn the meeting back over to Mayor Kerr.

Mayor Kerr: Okay, does the Council wish a little time to deliberate on the things or do you feel that they have the parties involved have presented it enough testimony to approve or disapprove their development or zone change I should say not development from a RL to a RL Planned Development with Overlays, that that this meets the requirements of the City as far as to that point?

Gil Batty: May I address one question to the City Attorney? If down the road there is litigation in the guard to this release of this property, what is the likelihood of the City being joined in that litigation?

John Coutrakon: I would think fairly likely, fairly likely. I would say that it is fairly likely and the reason for it is is because the City is making a determination that that's suitable access, is doing so in the context of a PUD zone overlay hearing. That may

or may not be relevant as Lynn said to the other parties who have to agree to the easement being released, that for the release of the easement purposes that's a suitable substitute. It's my understanding that this is a suitable substitute as far as the City is concerned in regards to the total PUD picture. But that may not be the same suitable substitute in regards to the reasons for why the easement ought to be released and it's my feeling that and I as I say again really the threshold question and I don't know if I am hearing as a direct statement from the staff or not but this is my opinion as attorney for the City. Is that and I think it's and I don't think anyone disagrees with it frankly, maybe the argument is over something else but it's in the agreement and it's in I think some statements made on the record in the prior hearing and this hearing, three parties have to agree that the easement be released before the City should release it. And if the City would release that with any of those three parties not in agreement, that's when the City's gonna be in hot water in litigation. Other in other words, the practical problem I see here is that if we pass, and I think approval should be given with this condition frankly if every other condition is okay. Is if you look at the map Councilman Batty. What is the person going to do when they put in this road and they can't build seven units? And then they'd probably come in and sell cement roads. I think the practical outcome of this is that the Hewitt forces and the Anderson forces are gonna have to get together to resolve this. The City's protection is being fairly, the City may be joined as a nominal party and I may be called to testify or whatever, but the City's immunity from suit in terms of being an active participant actually is it just abide by the terms of the agreement that they will not give a release of the easement until all the parties agree to it. Because then it leaves up between the parties to agree and if the parties disagree one way or another, I don't know. Now what hay you might say could be made of the fact that the Council, staff's recommendation that this is a suitable substitute at this time may carry greater or lesser weight with the court if the parties get into litigation over it. But I don't see that as a stumbling block to avoid proving this it's you feel from the evidence that this is a suitable roadway to be a feeder into East Harris Heights Road. For the PUD scheme itself is respective of the purposes for which the easement should be released between these three separate parties.

Mayor Kerr:

If the Council would take action to approve the development plan as presented and they can't come to an agreement even is it my understanding that they are gonna go ahead and build the road and put the road through before this

John Coutrakon: I don't know, I don't know.

Mayor Kerr: I don't know I I think the stipulations as indicated by Mr. Stuart here are exactly what should be on the record and I just want to caution all the parties involved, I think the interpretation of the agreement in other words, no construction can happen until abandonment is completed. And abandonment has to be completed in accordance with the agreement, and the agreement says it can't be abandoned until the three parties agree. So that's fine. You know that's that's I I practically don't know what Mr. Hewitt's gonna do and Mr. Anderson's gonna do it just looks like it just keeps turning in on itself but as far as the City, if the City feel like this is a good plot plan here, I say go ahead and give this approval to it and let Mr. Anderson go do what he feels best for the economic development of the property. I don't think the City, as long as the City says that they won't release the easement except according to the terms of the agreement, then the most that can happen is that the City becomes basically a nominal party to any litigation if Hewitt and Anderson get into it.

Lynn Stuart: Mr. Mayor, can I just make one statement here?

Mayor Kerr: Yes.

Lynn Stuart: When you say no construction John, it's no construction of the units relative to the 28' right-of-way, we're not meaning no construction of anything

John Coutrakon: Oh, I'm sorry. I meant yea I meant, to read what. It was Mr. Stuart's stipulation Number 1 sounds it sounds good to me with the comments I've added to it.

Lynn Stuart: My only other my only other comment Mr. Mayor and Members of the Council would be that that City staff in bringing this recommendation to you is a is a calculated recommendation. This is not something that we just wrote, what we feel, the City staff feels, that we have followed all the processes necessary and even beyond that. We have notified all the people not only that are involved in this thing, we notified them of the hearing, we have done so by certified mailings and so forth. So as far as the City is concerned, the staff feels that we have followed the procedures and and some think even beyond that. So we feel as though the recommendation that we're making is a well found recommendation, is basically what I am saying.

Mr. Myrick: I've got a real question. Somebody talked about putting a road through Seaview, is there a 28' involved there also?

Lynn Stuart: Mr. Mayor, his voice is not coming through there.

Mayor Kerr: Could you get by a mike? We can't hear it's hard to hear you and it's not coming through for the records.

Mr. Myrick: It's a totally totally dumb question. I hadn't thought of it

previously but that red line goes the entire length and someone mentioned about going ahead and building Seaview and then the City finding it okay. Well, that seemed inconsistent with Number 1 where as the City says you can't build over the 28' until it's abandoned so does that mean that Seaview cannot be I don't know.

Lynn Stuart: Mr. Mayor.

Mr. Myrick: I don't I don't know if the 28' has anything to do beyond Hewitt's property or not whether that's part of the agreement. I don't know.

Lynn Stuart: Mr. Mayor, just as a point of clarification in my presentation and if I may go to the map again. In my presentation, once Seaview has surfacing that you can jump up and down on here. We're saying that the abandonment would be back to the east property line of Mr. Hewitt's and nothing beyond that because we don't have any any documentation of how the roadway will be handled beyond that point so we're saying that it would stop at the east boundary line of Mr. Hewitt. Does that clarify the question?

Mr. Gardner: I think the other thing, if I understand Mr. Myrick's question. The actual construction of Seaview is a City street and it is within a dedicated right-of-way out to the City's permission so I don't see any problem in that red area.

Wayne Durfee: Well, there might be another problem there. That two dotted lines should come down right in the middle of Seaview where it joins there. Mr. Burgess' property corners on this side of the existing road there and that that Y right in there would be taken in part of Mr. Burgess' property.

Mayor Kerr: Could you point out where these properties are?

Wayne Durfee: Mr. Burgess property, it comes right in here.

Lynn Stuart: Mr. Mayor, Members of the City Council, just as a point of clarification, following along every thing below the black the heavy black line belongs to Mr. Anderson. And other other parties. There is a small portion of land fronting on that north boundary line that belongs to South Coast. Then from this point, the the east line of South Coast property is this line which is the east line of Mr. Hewitt's property and the west line of the Burgess' property. Then Mr. Burgess owns over to another line which shows on this map as being owned by Harold and Ethyl Jochens.

Mayor Kerr: Jochens.

Lynn Stuart: But I believe that's presently owned by Mr. Anderson and goes on again to the east to the west boundary line of D. Dale and Carol L. Lowden and then that goes on over to join again with Mr. Anderson's property. The agreement that is being referenced is between South Coast, Hewitt, Anderson; with the City of

Brookings agreeing to accept the dedication and abandon at such time when certain issues are addressed. So it's at least three property owners that are involved with the City. Then, the Burgess property and so forth on across, have not been addressed as far as dedication on their side of on the north side of Mr. Anderson's property hence, the recommendation that we do not abandon beyond this point on to the east. Okay, that's that's the that's the reason that the City staff recommendation stops at the east boundary line of Mr. Hewitt's property.

Mayor Kerr: Well, what was confusing me I guess was having those other units showing in that right-of-way.

Lynn Stuart: Okay, but

Mayor Kerr: (Inaudible)

Lynn Stuart: These these pieces are showing the right-of-way and they cannot be constructed until such time that adequate access is provided on to the other to the other properties and that's that's part of the issue but I don't believe that that's a problem at this point with with Mr. Anderson discussing it with his attorney.

?? (Inaudible)

Lynn Stuart: The construction, excuse me, the construction that that Mr. Hewitt's attorney was talking about. My note in the the memorandum, and you're surely welcome to a copy of this, we have extra copies here, the it's very specific that that no construction of units and that's dwelling units not roadways and so forth. Okay, the construction of this roadway will obviously be in a public right-of-way or in the future dedication of public right-of-way. But the units that we're referencing in my memo to the City Council is referencing the dwelling units that are shown as encroaching upon the 28' dedication. Does that help clarify the points?

Mayor Kerr: Yes it does. So it would be whatever the Council feels that that they are covering the City's criteria for this type of a zoning change for this development.

Gil Batty: I have heard sufficient testimony from my position.

Walt Lovejoy: I have too.

Mayor Kerr: Do you any wish to make a motion into which direction that

Walt Lovejoy: I I'll make a motion that we accept the the zone change as presented.

Mayor Kerr: (Inaudible) Could you make a correction with part of that in the stipulation (Inaudible)

?? (Inaudible) stipulation (Inaudible)

Mayor Kerr: Staff recommendation.

Walt Lovejoy: Staff recommendation.

Gil Batty: I'll second that motion.

Mayor Kerr: The motion is seconded. Questions? No questions. All in favor

signify by Ay.

Council: Ay.

Mayor Kerr: Opposed. Motion so granted now. Then

Mr. Gardner: Could I ask a question?

Mayor Kerr: Yes.

Mr. Gardner: Could we have this approval of this plat be in writing because we need that for various financial matters. We're not pushing but we would like to know when we could expect that.

Mayor Kerr: No over time on that.

Lynn Stuart: Mr. Gardner, as soon as I possibly can get the work done. I am leaving at 7:00 in the morning to go over where it's hot, I'll be back late tomorrow afternoon, early tomorrow evening, and I'll make every effort to have it to you by Thursday or Friday of this week, if that's satisfactory with you.

Mr. Gardner: That is satisfactory. Thank you very much.

Mr. Myrick: I have a request. May I have a copy of the recommendations (Inaudible) and I would like the record to show that my address, mailing address, madam Secretary is P.O. Box 1330, Grants Pass, 97526, and I also would like a copy of it, whatever's put out on behalf of my client.

Mayor Kerr: Thank you. Are there any other matters that the Council has to bring before?