

MINUTES
BROOKINGS COMMON COUNCIL
CITY OF BROOKINGS
September 22, 1981

I. CALL TO ORDER:

The meeting was called to order at 7:30 p.m. by Mayor Robert L. Kerr.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Those present were: Mayor Kerr; Councilmen Walt Lovejoy, Gil Batty, Ray Nidiffer and John Geraghty.

Staff present were: City Manager Lynn Stuart, Administrative Assistant Georgia Shirilla, City Attorney John Coutrakon and Secretary Praecilla Pruitt.

IV. PAYMENT OF VOUCHERS

The City Manager requested that Voucher No. 40 in the amount of \$39.86 be removed from payment.

MOTION by Councilman Nidiffer, seconded by Councilman Geraghty that we approve the vouchers in the amount of \$18,025.47. Motion carried unanimously.

V. PUBLIC HEARING

City of Brookings Comprehensive Plan

Mayor Kerr turned the meeting over to the City Manager and Georgia Shirilla for their presentation on the Comprehensive Plan. The City Manager stated that the Plan had been written based upon previous input from the public meetings. The Plan had been separated into three different documents consisting of 1. the Plan, 2. Inventory and 3. amendments to the Zoning Ordinance, Subdivision Ordinance and the Management Agreement. The documents had been reviewed with Mr. Glen Hale of LCDIC and his comments were incorporated into the Plan.

The City Manager gave a brief review of Goals 1 - 18 and the status of compliance. The format of the Comprehensive Plan had been changed causing a re-write of the entire Plan. Goal 1 - Citizen Involvement was in compliance. Goal 2 - Land Use Planning consisted of map corrections and major readjustments on the UGB and the Area of Mutual Interest; major and minor partitions were added in the Subdivision Ordinance, and the Urban Growth Management Agreement was amended. Goal 3 - Agricultural Lands was in compliance since no agricultural lands were included in the UGB. Goal 4 - Forest Lands was in compliance because the forest lands were removed from the UGB. Goal 5 - Open Spaces, Scenic & Historic Areas and Natural Resources, basically identified the conflicting uses of natural, scenic and historic resources and means of protecting those resources. The City has indicated that there are no midden sites and added the Central Building as a historic site. There was added to the Zoning Ordinance a site plan and also a public open space zone which applies to the parks and the school area. Goal 6 - Air, Water and Land Resources Quality was in compliance. Goal 8 - Recreational Needs consisted of clarifying the language in the Zoning Ordinance to satisfy the Department of Transportation that no conditional use permit was needed to maintain buildings on park property. Goal 9 - Economy of the State was in compliance. Goal 10 - Housing consisted of making an inventory of available buildable lands and uses to provide adequate housing and to establish population projections within the City and UGB, and establish need by housing type. Goal 11 - Public Facilities and Services was in compliance. Goal 12 - Transportation added the airport approach zone overlay of the Airport Master Plan to the Zoning Ordinance and included co-ordination with the Airport Master Plan. Goal 13 - Energy Conservation was in compliance. Goal 14 - Urbanization was to provide

justification of the UGB and identified the Standard Detail and Specification document as one of the tools used to standardize growth. Goal 15 - Willamette Greenway was unnecessary to address. Goal 16 - Estuarine Resources had been adopted at the last Council Public Hearing. Goal 17 - Coastal Shorelands consisted of identifying the coastal shorelands boundary and to achieve consistency with the County Estuary Plan. Goal 18 - Beaches and Dunes consisted of identifying those beaches and dunes (there were no dunes) and not allowing any residential structure within the coastal shorelands area. The City Manager stated that the City might not receive acknowledgement of the estuarine goals until the completion and acknowledgement of the County's Estuary Plan.

The City Manager stated that the Subdivision Ordinance, Zoning Ordinance and Management Agreement would need to be read in full once before they could be adopted. Ordinance No. 354 amending the Zoning Ordinance; Ordinance No. 355 amending the Subdivision Ordinance; and the Addendum to the Urban Growth Area and Sphere of Influence Management Agreement were read in their entirety.

Mayor Kerr then requested input and questions from the audience. Bill Cunningham questioned the definition of the estuary shoreland boundary. The City Manager stated that the map and information included in the Plan on page 16-3 and 16-8 and the Inventory on I 16-1 from a-f gave the description of the estuary shoreland. Mr. Cunningham asked about the provisions concerning modular homes and the minimum lot width restrictions. The City Manager stated that it was 60' and there had been no change. Mr. Cunningham questioned about building within the shoreland boundary. The City Manager stated that within the Commercial Tourist Zone and one industrial zone, water dependent and water related uses can be allowed. Mr. Cunningham questioned the minimum setback from the water and the City Manager stated that it would be 15' from the shoreline boundary. The City Attorney stated that once the Comprehensive Plan is approved it takes away LCDC power and the aerial photo maps in the inventory has a line drawn which shows the shorelands and it would be the Council's decision if they want to accept that line. Mr. Fred Hummel asked about the estuary shoreland boundaries. The City Manager stated that the shoreland boundaries come down the estuary on both sides of the river itself until they reach the ocean and then the ocean shoreland boundary takes over. The City Attorney stated that basically the shorelands boundary follows the flood boundary especially near the mouth of the river. Further up the river near the edge of the UGB there is some divergence between the flood boundary and the shoreland boundary.

There being no further questions from either the audience or the Council the Mayor requested that Ordinance No. 354 amending the Zoning Ordinance; Ordinance No. 355 amending the Subdivision Ordinance; and the Addendum to the Urban Growth Area and Sphere of Influence Management Agreement be adopted. The following motions were then made:

MOTION by Councilman Lovejoy, seconded by Councilman Nidiffer that we read Ordinance No. 354 by title only. Motion carried unanimously.

Ordinance No. 354 was read by title only.

MOTION by Councilman Lovejoy, seconded by Councilman Batty that we adopt Ordinance

No. 354. Motion carried unanimously.

MOTION by Councilman Nidiffer, seconded by Councilman Geraghty that we read Ordinance No. 355 by title only. Motion carried unanimously.

Ordinance No. 355 was read by title only.

MOTION by Councilman Nidiffer, seconded by Councilman Geraghty that we adopt Ordinance No. 355. Motion carried unanimously.

MOTION by Councilman Geraghty, seconded by Councilman Nidiffer that we adopt the addendum to the Urban Growth Area and Sphere of Influence Management Agreement. Motion carried unanimously.

The Mayor then requested a motion to adopt the Comprehensive Plan if the Council felt that everything was in order.

MOTION by Councilman Nidiffer, seconded by Councilman Batty that we adopt the Comprehensive Plan as presented. Motion carried unanimously.

The City Manager stated that any small corrections on the documents would be made, but assured the Council that no substantive changes would be made. Members of the Council commended the Staff for the work in putting the Plan together in a simple to read format.

VI. ADJOURNMENT

MOTION by Councilman Lovejoy, seconded by Councilman Batty that the meeting be adjourned. Motion carried unanimously.

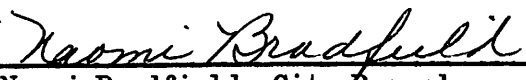
The meeting was adjourned at 9:22 p.m.

This meeting was recorded on tape and is on file in the City recorder's office.



Mayor Bob Kerr

ATTEST:



Naomi Bradfield, City Recorder

VOUCHERS PAYABLE

September 8, 1981

<u>VOUCHER#</u>	<u>CHECK #</u>	<u>VENDOR</u>	<u>AMOUNT</u>
1		Akin Motor Co., Inc.	\$ 24.00
2		Ray Allyn	10.20
3		American Insurance Association	66.50
4		Architectural Digest	36.00
5		Robert E. Babb	8.45
6		Bad Road Salvage	70.00
7		Baker & Taylor	7.01
8		Becco, Inc.	164.00
9		Blue Star Gas - Northwest	1,769.08
10		Brookings Office Supplies	135.05
11		Burroughs Corporation	33.00
12		California Library Association	10.00
13		Coastal Petroleum Sales	187.50
14		Mike Cooper	7.20
15		Coos Curry Electric Co-op	1,366.96
16		Coutrakon, Hoselton & Babin	1,572.70
17		Curry County Printing	92.05
18		Curry County Road Department	77.00
19		Eric D. D'Alcorn	17.50
20		Dan's Photo & Cameras	11.47
21		Del-Cur Supply Co-OP	173.96
22		Samuel W. Dotson	8.55
23		EBSCO Subscription Services	279.57
24		F & C Construction, Inc.	476.19
25		Patrick R. Foley	125.00
26		Robert O. Furrow	9.50
27		Warren Gay	10.55
28		General Telephone	100.00
29		Al Glasser Janitorial	600.00
30		Harbor Equipment Co.	25.00
31		Harbor Logging Supply Inc.	57.20
32		Hinds Supply Co.	319.12
33		Kerr Ace Hardware	101.49
34		Littrell Parts	213.89
35		Walt Lovejoy	71.55
36		Christina Lucas	212.00
37		Medford Laboratories, Inc.	24.00
38		Mory's Arts	160.03
39		National Geographic Society	6.95
40		National Geographic World	7.95
41		New Era Press	112.00
42		O.K. Tire Stores	15.00
43		O'Neale Supply, Inc.	240.63
44		Oregon Culvert Co., Inc.	933.65
45		Oregonian - Oregon Journal	22.50
46		Kent Owens	10.30
47		Pacific Water Works Supply Co., Inc.	1,021.57
48		Ray's Sentry Markets	82.88
49		Recreonics	3.58
50		Gerald Ross Agency, Inc.	148.00
51		R.R. Bowker Co.	27.50
52		Wayne Sheffel	9.05
53		Georgia Shirilla	37.00
54		Cecil K. Smith	17.80
55		Smithsonian Magazine	14.00
56		Square Deal Builders Supply, Inc.	135.61
57		Steiner Corporation	327.69
58		Suiter's Paint & Body	114.78

VOUCHERS PAYABLE CONT.

VOUCHER#

CHECK #

VENDOR

AMOUNT

59
60
61
62
63
64
65
66

3M FGL 1582
Time Life
Town & Country Magazine
Treasurer of the United States
United States National Bank of Oregon
U.S. News
U.S. Postmaster
Wilson Tire Service

36.02
40.22
38.00
6.00
20.00
13.75
36.72
216.50

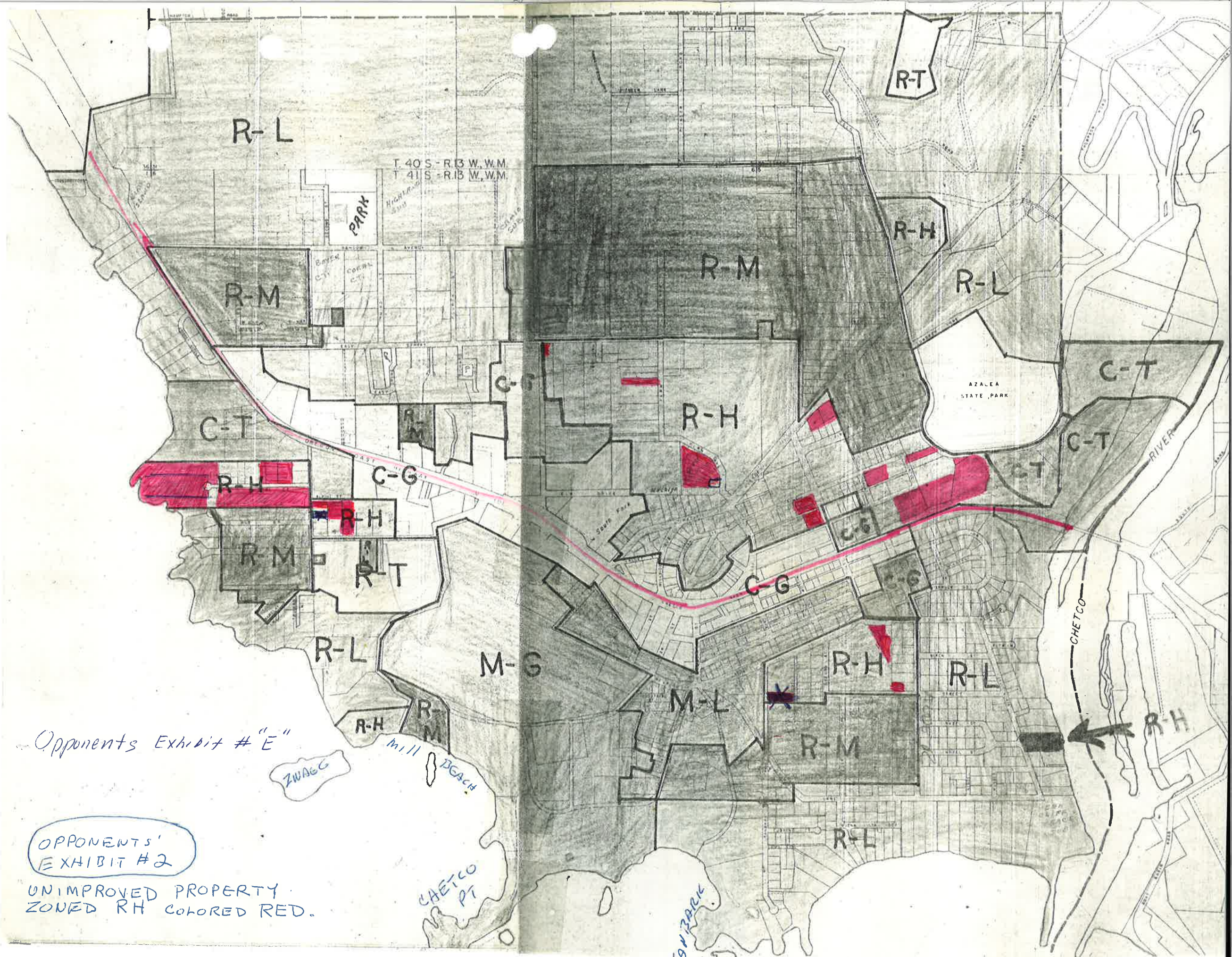
\$12,328.92

67

Bob Kerr

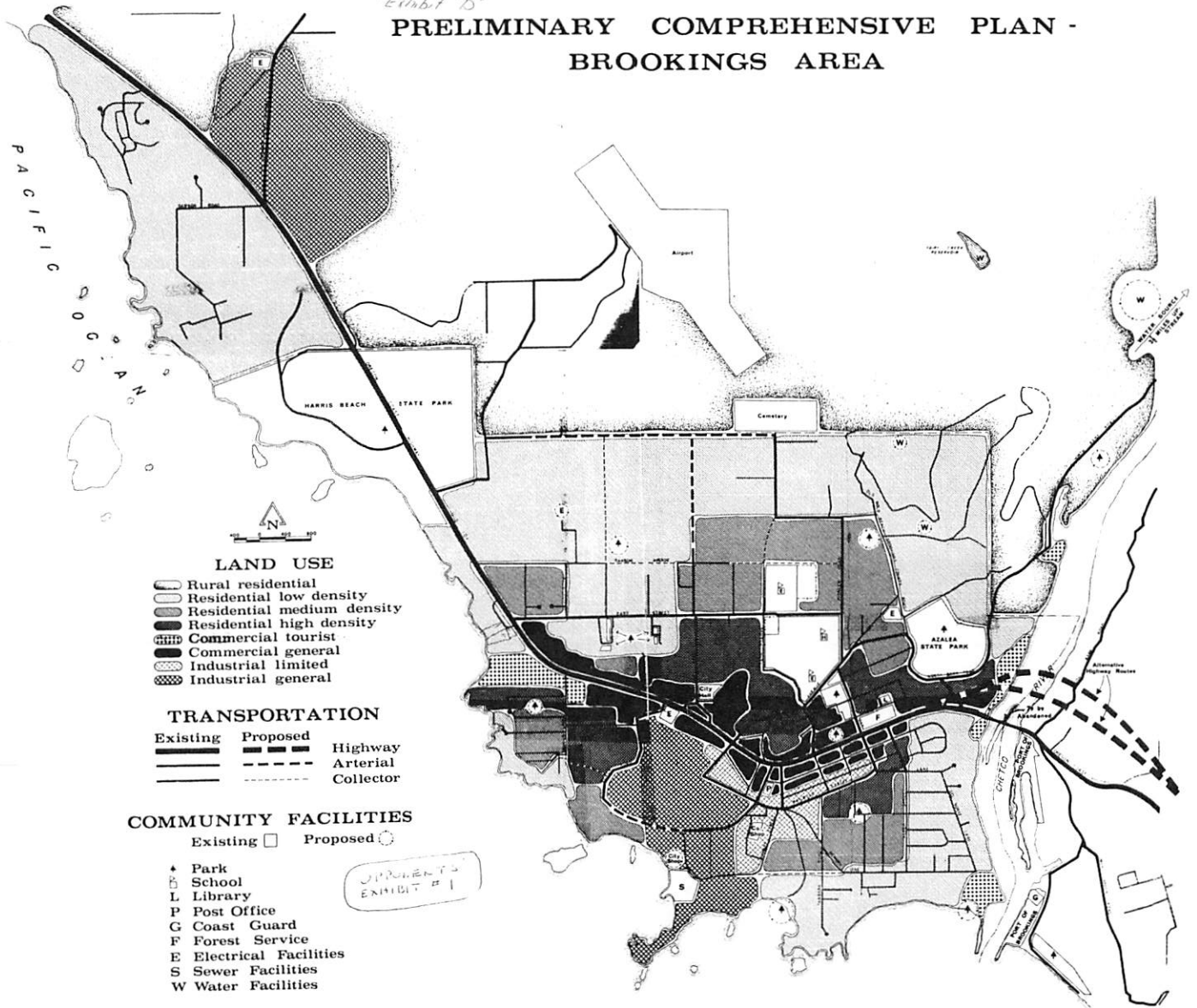
188.25

Total----- 12,517.17



Opponents
Exhibit "D" #1

PRELIMINARY COMPREHENSIVE PLAN - BROOKINGS AREA



LAND USE

- Rural residential
- Residential low density
- Residential medium density
- Residential high density
- Commercial tourist
- Commercial general
- Industrial limited
- Industrial general

TRANSPORTATION

- | | | |
|----------|----------|-----------|
| Existing | Proposed | Highway |
| | | |
| | | Arterial |
| | | Collector |

COMMUNITY FACILITIES

- | | |
|----------|-----------------------|
| Existing | Proposed |
| | |
| + | Park |
| S | School |
| L | Library |
| P | Post Office |
| G | Coast Guard |
| F | Forest Service |
| E | Electrical Facilities |
| S | Sewer Facilities |
| W | Water Facilities |

OPPOSANTS
EXHIBIT #1

E X H I B I T L I S T

JOY/PETERSON ZONE CASE Z-81-1

Public Hearing (De-novo) - September 23, 1981

PROPOSERS' EXHIBITS:

- Exhibit A - James R. Ochs letter of support
- B - Kelly Ross - Correspondence/support
- C - Kelly Ross Correspondence/Rezone Study
- D - Proponents' Facts of Law
- E - Edward W. Riley Correspondence/Court rules on land use
- F - Letter of Support - Fountain, Haynes, Kerr and Miller
- G - Pat Widmer - Letter of Support
- H - Prof. Guntis Plesums - Letter of Support
- I - Gouldin - Letter of Support
- J - Petitions of Support
- K - Findings of Fact
- L - Previous Findings of Fact submitted with application

OPPOSERS' EXHIBITS:

- Exhibit A - Findings of Fact and Order Denying Application
- B - Comprehensive Plan Map/Opponents' Findings of Fact
- C - Response to Proponents' Findings of Fact
- D - Comprehensive Plan Map
- E - Opponents' Zone Map
- F - Proof of Proponents' Noncompliance with Statewide Planning Goals and Guidelines
- G - Curry Coastal Pilot and real estate firm advertisement
- H - Mrs. Donald Packer/Mrs. John Fitzgerald Letter of Opposition
- I - Paul Jenkins - Letter of Opposition
- J - Clarence M. Sebern - Letter of Opposition
- K - Tom and Phyllis Farmer - Letter of Opposition
- L - Artists letter of Opposition - Gill, Armstrong, James, Stewart and Hutman
- M - Robert W. Heavey - Letter of Opposition

Proponent's Exhibit "A"

1497 E. Main St.
Ashland, Ore. 97520
Aug. 14, 1981

City of Brookings
Planning Commission
City Council
Brookings, Ore. 97415

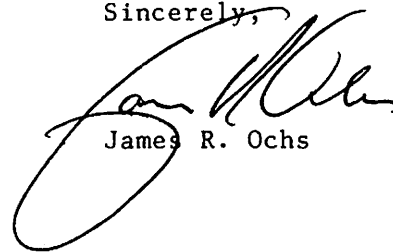
Dear Ladies and Gentlemen:

I am the owner of houses at 214 and 216 Del Norte Lane, and a vacant river lot behind 214 Del Norte. The house at 216 is immediately adjacent to the Smuggler's Cove condominium development.

This letter is to inform you that I fully support that development and also the additional development that Dr. Joy plans in that area.

It is my belief that high density development is the best use for the steep river banks in that area.

Sincerely,



James R. Ochs

Proponent Exhibit "B"

CURRY COUNTY OREGON BOARD OF COMMISSIONERS

Shirley E. Van Loo

Kelly G. Ross

Donald K. Buffington



Mack Arch on the Curry Coast

BOX 748

GOLD BEACH, OREGON 97444

(503) 247-7011

September 15, 1981

Dr. & Mrs. Gerrid Joy
Rt. 2, Box 1264
Smith River, CA 95567

Dear Dr. & Mrs. Joy:

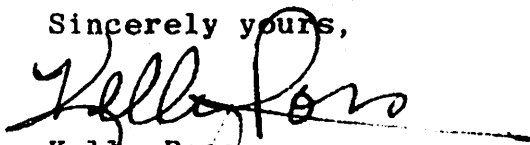
As per our telephone conversation of 9 September, I am happy to give you the details of a study which I think is particularly relevant to your development at Smuggler's Cove. I have been assured by the Fraser Institute in Vancouver, B.C. that a copy of the study itself has been sent to me and when it arrives I will pass on a copy to you. In the meantime, to make sure that you do have the information for the next city council hearing, I will give just a thumbnail description of the findings.

A recent publication of the Fraser Institute entitled Zoning: Its Costs and Relevance for the 1980s outlines a study done of Vancouver's Kerrisdale area by Michael Goldberg and Peter Horwood to determine whether the enlargement of an apartment zone in 1961 had any affect on property values. After reviewing property transactions in the area before and after the rezoning, Goldberg and Horwood concluded that it had no affect. Property values continued to rise in the neighborhood at the same rate as elsewhere, and the single-family areas next to the apartments in Kerrisdale are still desirable places to live. From this conclusion they went on to assert that local governments needn't concern themselves with the affects on nearby residential areas of high-density residential land uses.

Hopefully, this will provide some concrete facts about the affects of such a development instead of mere speculation. I have been amazed at the obstacles and charges that you have had to endure and regret that our laws permit such interference with a property owner's use of his land.

Good luck, and I will relay the entire study to you as soon as I receive it.

Sincerely yours,


Kelly Ross
Curry County Commissioner

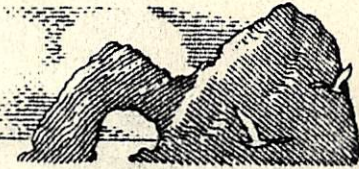
Fraser's Exhibit "C"

CURRY COUNTY OREGON BOARD OF COMMISSIONERS

Shirley E. Van Loo

Kelly G. Ross

Donald K. Buffington



Mack Arch on the Curry Coast

BOX 746

GOLD BEACH, OREGON 97444

(503) 247-7011

September 17, 1981

Dr. & Mrs. Gerrid Joy
Rt. 2, Box 1264
Smith River, CA 95567

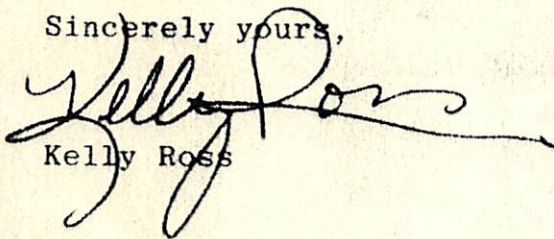
Dear Dr. and Mrs. Joy:

Please find enclosed a copy of the actual study of the Fraser Institute. Although most of discussion is somewhat complex, I think the conclusion on the last page is beautifully simple and should be exactly what you want.

Very relevant to this, are the backgrounds of the authors. Michael Goldberg is Visiting Scholar (1979/80), Harvard University and a Professor in the Urban Land Economics Division, Faculty of Commerce and Business Administration, at the University of British Columbia. Peter Horwood is a freelance consultant in the urban land economics field engaged in work for both the public and private sectors. He received his B.A. and M.Sc. degrees in Urban Land Economics from the University of British Columbia.

Hope this helps, and again, good luck.

Sincerely yours,


Kelly Ross

The implications reached from these findings are important and not necessarily those that might have been anticipated beforehand. First, looking at the overall picture in Table 5, it was observed that rezoning did have an impact on property values during the 1965-1974 period. Second, and of even greater importance, when looking behind these aggregate figures it was observed that the impact of rezoning varied dramatically, depending upon the type under consideration. Some changes such as from duplex (RT-2) to medium density apartments (RM-3) led to large increases in assessed property values (Type 4). In contrast, rezoning properties from medium density apartments (RM-3) to medium density commercial (C-2) led to significant declines in property values (Type 6). In addition, rezoning from heavy industrial (M-1) to single detached (RS-1) (Type 7) led to increases in property values matched only by rezoning from duplex to medium density apartments (Type 4).

Therefore, it appears quite justifiable to warn against generalizing about the impact of rezoning. Allowing some supposedly higher uses (such as from RM-3 to C-2) led to declines in property values, not increases, as one would have expected (Type 6). Other such changes had little if any impact (Types 1 and 8). Thus, the only general statement that can be made from these findings is *avoid generalizing*. It is essential to examine each type of rezoning in its own right before making any statements of *fact* about the direction and magnitude of change.

Qualifications

As with any empirical study, the results can be only as good as the data. But in this case, one can be relatively confident that the assessments were reliable and useful for the purposes. To test this more rigorously would have required sampling transactions from the records of the Land Registry Office (L.R.O.), an expensive and time-consuming task. Given the high degree of correlation between the observed transactions and the assessed values, this does not appear to be justified, though to be absolutely sure (or as absolutely sure as one can be with actual data) resorting to L.R.O. data would have been preferable. Second, one might have extended the sample beyond the City of Vancouver to other municipalities. Once again this would have been an expensive and costly proposition and given the sponsorship by the City of Vancouver, unwarranted. However, the study can be replicated quite easily in other municipalities and such repli-

cation is most desirable to test the generality of the methods and conclusions set out above.

III. REZONING IN VANCOUVER: THE CASE OF KERRISDALE, 1961

One of the strongest conclusions that can be drawn from the works described above is that the specifics of each rezoning must be studied in some depth if any understanding of the dynamics of the changes in property values is to be gained. With this in mind, in 1975 a study was undertaken of the Kerrisdale area of Vancouver,[†] where a major rezoning from single family detached (RS-1) to medium density apartments (RM-3) occurred in 1961. Where the city-wide study concentrated on identifying whether or not rezoning affected property values, the Kerrisdale study sought to explore the dynamics of land value change both over time and over space. Of interest were the timing of speculative transactions and the spatial spread of property value effects (both positive and negative). The details of the Kerrisdale rezoning are presented below, and the results and methods discussed in some depth. The strengths and weaknesses of this study are also discussed, and in a concluding section the results are examined to determine their implications for zoning and land use controls in the future.

Background, history, and purpose

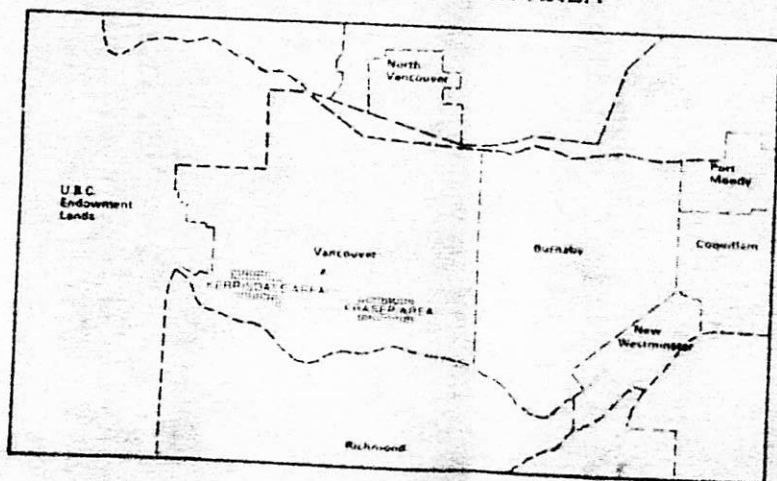
The Kerrisdale study was more narrowly focused than the city-wide analysis of rezoning done by Tunnicliffe. It examined the impact of zoning on speculation and, therefore, on neighborhood stability as well as the impact of rezoning on adjacent properties that have not been rezoned (e.g., the externalities argument). To examine these dimensions it was necessary to find a sample which was fairly large in scale and which constituted a change from a lower to a higher use. Such uses are supposedly incompatible and, therefore, zoning protection is presumably needed to minimize or eliminate negative externalities.

Two cases existed for study as a result of an August, 1958 report to City Council by the Vancouver Technical Planning Board. That report recommended that the city give

[†] Editor's Note: This examination was made by Goldberg and Horwood, the authors of the present volume. What follows is the initial report of the results uncovered in that study.

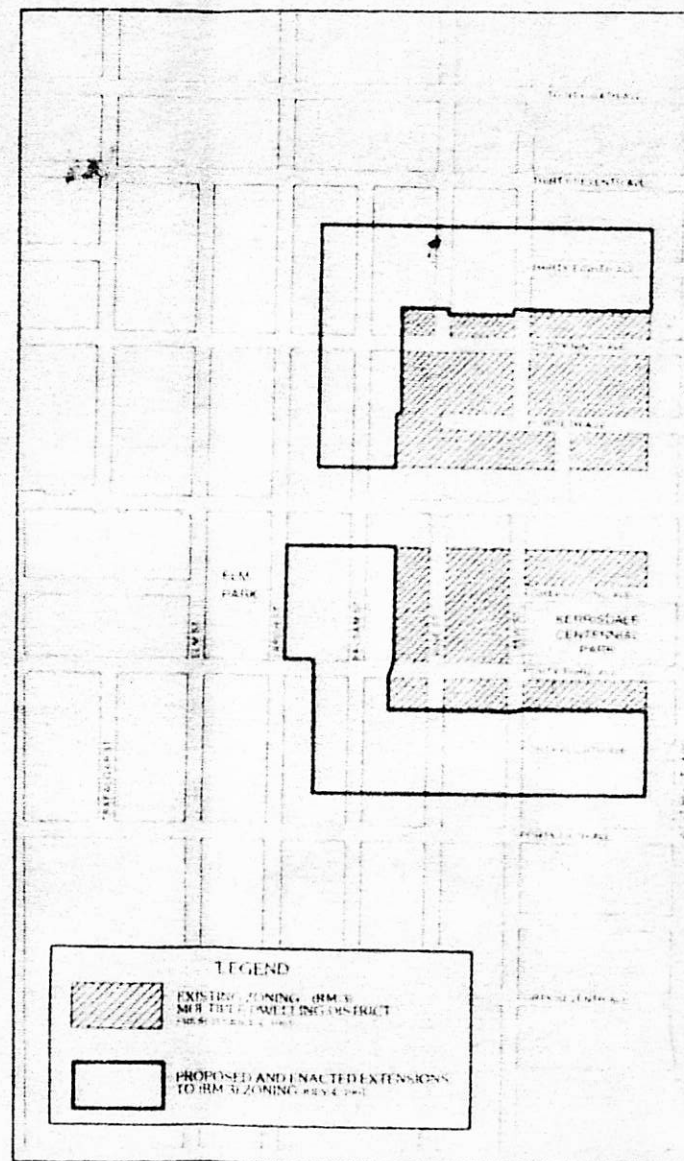
serious consideration to decentralizing residences away from the high density West End immediately adjacent to the Vancouver Central Business District (CBD). Two specific regions suggested by the report which were subsequently rezoned were the area at East 43rd Avenue and Fraser Street (an old retail area) and the Kerrisdale area at West 41st Avenue at Yew Street (see Map 1 of Vancouver), surrounding the existing medium density residential zone (RM-3 zone) see Map 2 of Kerrisdale). Both areas received additional study by the planning authorities in the city and were eventually rezoned. The Fraser Street and East 43rd Avenue change, however, never gained market acceptance as it was not a prime residential location. As a result, even though it was rezoned to RM-3 from RS-1, it did not develop as an apartment zone and thus had to be eliminated from the study.

Map 1
GREATER VANCOUVER AREA



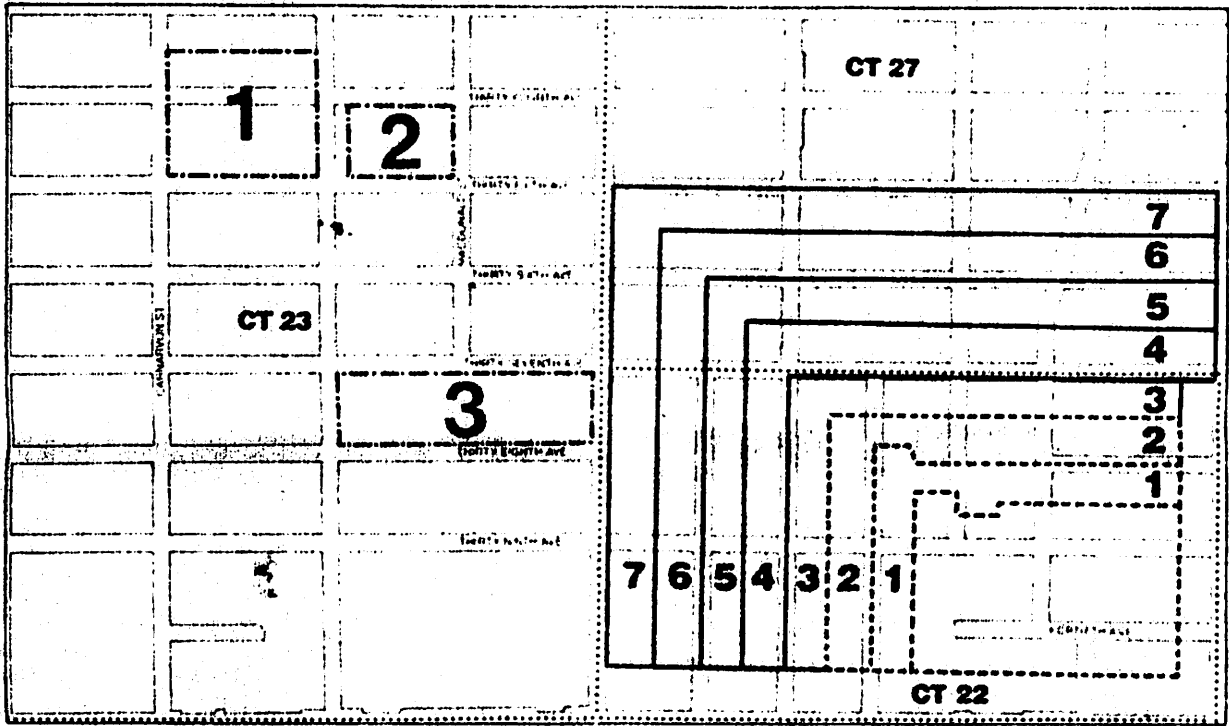
But the Kerrisdale alteration did gain instant market acceptance. Accordingly, it provides the focus for this study. As there is interest in both changes in real property values over time (as a result of the anticipation of rezoning and of rezoning itself) as well as over space (as a result of the supposed negative externalities that exist between apartment and single family houses), the concern here is with the timing of the rezoning as well as its location and geographic impact.

Map 2
RM-3 ZONING IN KERRISDALE

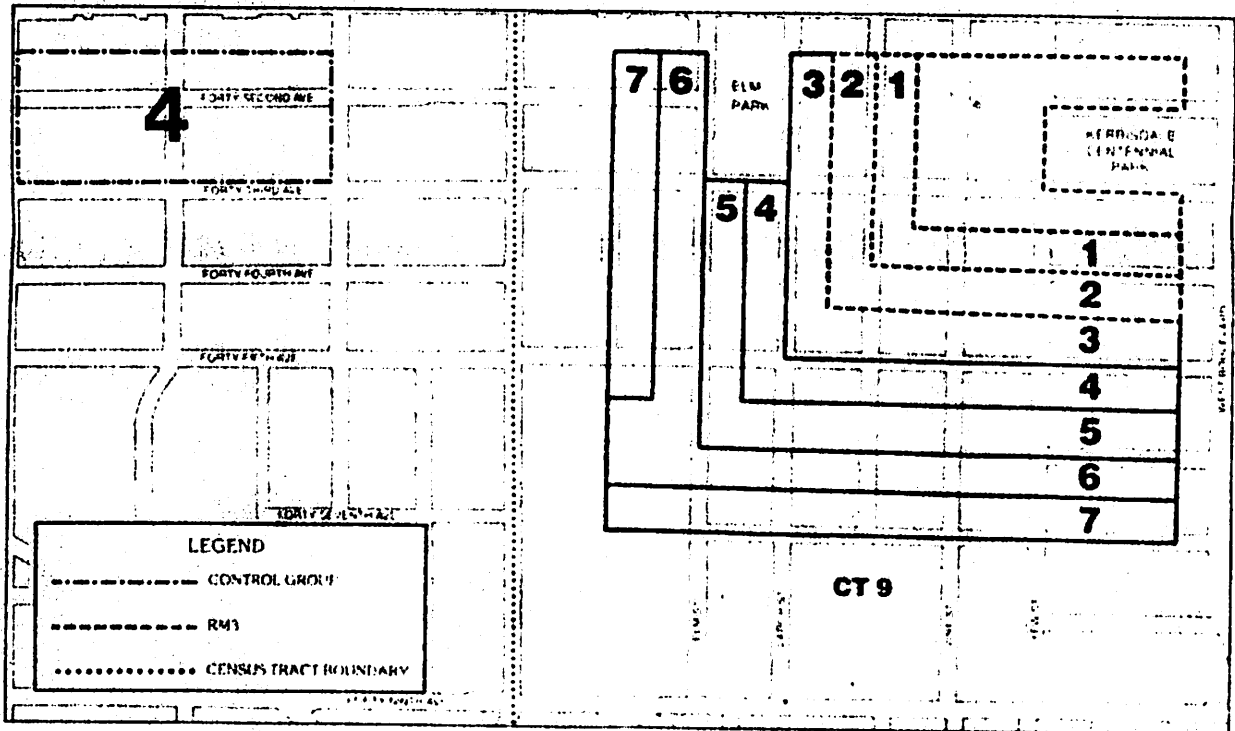


Map 3 - KERRISDALE STUDY AREA

Zoning: Its Costs and Relevance for the 1980s



72



73

Coldberg & Harwood: A Canadian Example

Following upon the August, 1958 report of the Technical Planning Board, further studies were conducted on Kerrisdale. City records show that the final public hearing required under the Vancouver Charter of Zoning By-laws was conducted on May 15, 1961, and By-law #3927 was given final approval by Council on July 4, 1961, at which time the area shown on Map 2 was rezoned from RS-1 (single detached housing) to RM-3 (multi-family medium density housing).

Procedures

In light of these events it was decided to break the study into three time periods: *Period 1* - from January 1, 1955 to November 30, 1958, when the Technical Planning Board report was considered; *Period 2* - from December 1, 1958 to June 30, 1961, when the rezoning by-law was enacted; and *Period 3* - from July 1, 1961 to December 31, 1966. The end-points of January 1, 1955 and December 31, 1966 were chosen because it was possible to get consistent information from the Vancouver City Assessor's record during this period. However, to keep the periods roughly equal in length, transactions beyond March 31, 1963 were ignored. Differences in format both before 1955 and after 1966 made consistent data gathering extremely difficult, and unless consistency could be maintained, little validity could be attached to any subsequent findings.

It was also necessary to delimit a meaningful study area to look at the effects of rezoning on adjacent properties. To do this, a series of concentric rings surrounding the existing RM-3 zone in Kerrisdale were developed. Each ring was one-half block in width. A total of seven such rings were identified, the first two of which were rezoned, the remaining five of which remained RS-1. Finally, a control group of properties was needed which was similar to the rezoned area and its adjacent rings, but which was sufficiently far away to preclude any spillover effects of the rezoning. Four such control groups were identified in the Kerrisdale area within a fifteen block radius of the rezoning. These areas are all set out on Map 3 which summarizes the foregoing discussion on the study area.

Given the appropriate time period and geographic study area, the final element in developing the methodology was the determination of a suitable data source for market transactions. Several sources were available: the L.R.O. which records actual transaction prices for all transfers of

property duly registered with it; *Teofa*, a real estate market service that gathers transaction information from the L.R.O. on a semi-monthly basis; and the City Assessor's records which also show actual arms-length transactions for every property on the assessment rolls.

As was mentioned before, using L.R.O. records is extremely time consuming and difficult. Moreover, the information is limited to the recorded transaction price, the purchaser and vendor, and the legal address. The Assessor's records, in contrast, yield information on transaction price, lot size, assessed value of land and improvements, legal address, and assessment roll number. They were readily available in a consistent form over the study period as noted previously. Accordingly, the decision was made to use assessment records.

Other items of information gathered were the registration of Rights to Purchase, Assignment of Rights to Purchase, Sub-rights to Purchase, Assignment of Sub-rights to Purchase, and sales to non-resident owners who were not builders. These variables were used as proxies for speculative activity. (Such transactions are characteristic of investors/speculators, not residential owners.)

Table 6 sets out in summary form the numbers of transactions and properties that appeared in the study. Property transactions were recorded for all seven rings and for the four control areas (e.g., a 100 per cent sample) with one exception: no transactions were obtained for the rezoned areas after the rezoning since the study was not concerned with multiple family housing but only with the effects on existing single family housing. There was a total of 979 properties in the study areas and 744 observed transactions over the study period. In addition, 185 rights were registered and 43 sales to non-resident owners were recorded.

Results

Tables 6 through 9 set out in summary form the principal findings of the study. The transactions were analyzed by location (e.g., ring location or control area as shown on Map 3), by period (e.g., before rezoning study, during study, and after rezoning), and by size of lot (greater or less than 5,000 square feet). Properties were analyzed by lot size because preliminary analyses showed that grouping tended to blur the price changes, since larger lots sell for higher prices. Thus, if one ignored lot sizes and if the proportion of larger lots

decreased in the sample, over time one might spuriously show declining prices when, in fact, only the proportion of large lots were decreasing.

Table 6
SUMMARY OF PRICE CHANGES
(per cent)

	Period 1 through Period 2* (Jan. 1, 1955 - June 30, 1961)	Period 2 through Period 3 (Dec. 1, 1958 - March 31, 1963)	Period 1 through Period 3 (Jan. 1, 1955 - March 31, 1963)
LOT SIZE LESS THAN 5000 SQ.FT.			
Non-Control Group			
Rezoned lots	6.8	20.8	29.0
Non-rezoned lots	23.2	-0.7	22.3
Ring 1	19.9	13.7	36.2
2	1.6	23.5	25.5
3	33.4	-6.3	28.9
4	23.6	-32.4	-16.5
5	25.7	5.8	33.0
6	18.7	35.7	61.1
7	26.6	11.3	46.9
Control Group			
All lots	23.5	-17.6	-1.8
Ring 1	25.9	-21.5	-5.2
2			
3			
	28.9	-0.7	28.0
LOT SIZE GREATER THAN OR EQUAL TO 5000 SQ.FT.			
Non-Control Group			
Rezoned lots	-4.6	65.3	57.7
Non-rezoned lots	15.8	-10.2	4.0
Ring 1	-10.6	49.5	33.7
2	-0.5	-82.9	81.9
3	13.1	-23.3	-13.3
4	14.6	-7.2	6.4
5	23.0	-20.1	-1.7
6	13.3	3.2	17.0
7	18.4	-12.1	8.1
Control Group			
All lots	4.8	0.8	5.4
Ring 1	9.9	-100.0	-100.0
2	10.7	7.8	19.3
3	18.7	-12.7	3.6
4	-5.8	7.8	1.5

Notes: * Period 1 - January 1, 1955 to November 30, 1958
Period 2 - December 1, 1958 to June 30, 1961
Period 3 - July 1, 1961 to March 31, 1963

For each period, the mean (average) price was calculated for all rezoned and all non-rezoned properties (Tables 7, 8, 9). In addition, mean sales prices were calculated by location. These calculations were further broken down by lot size. These results appear in Tables 7, 8, and 9. Table 6 presents a summary of these data by showing the percentage change in average prices that occurred between the three

Table 7
AVERAGE PRICES BY LOT SIZE AND LOCATION
January 1, 1955 to November 30, 1958*

	Mean Price (\$)	Number of Properties in Sample	Standard Deviation (\$)
LOT SIZE LESS THAN 5000 SQ.FT.			
Non-Control Group			
Rezoned lots	9673.53	34	2116.27
Non-rezoned lots	9884.27	62	
Ring 1	9385.00	10	96
2	9510.41	24	
3	11275.00	12	
4	15415.38	13	
5	9446.73	19	
6	8256.34	11	
7	10267.86	7	
Control Group			
All lots (not rezoned)	10831.21	28	2537.21
Ring 1	10892.59	17	2369.53
2	9506.00	1	0.00
3	0.00	0	0.00
4	10540.00	10	2826.93
LOT SIZE GREATER THAN OR EQUAL TO 5000 SQ.FT.			
Non-Control Group			
Rezoned lots	14064.70	17	3932.10
Non-rezoned lots	13844.04	109	
Ring 1	13642.86	7	126
2	14360.00	10	
3	13842.86	14	
4	13420.00	15	
5	13536.11	18	
6	12618.52	27	
7	15130.00	35	
Control Group			
All lots (not rezoned)	13525.80	31	5110.38
Ring 1	15700.00	1	0.00
2	10475.00	2	671.81
3	11588.46	13	1702.96
4	15466.66	15	6652.96

Note: * Period 1

periods of study. From this table it can be seen that between Period 1 and Period 2 smaller non-rezoned lots increased at greater rates on average (23.2 per cent) than did rezoned lots (6.8 per cent). The same pattern was apparent in larger lots: 15.8 per cent for the non-rezoned compared to -4.6 per cent for the rezoned. Thus, anticipation of the zoning change as evidenced by the rezoning study appears to have had little

Table 8
AVERAGE PRICES BY LOT SIZE AND LOCATION
December 1, 1958 to June 30, 1961*

	Mean Price (\$)	Number of Properties in Sample	Standard Deviation (\$)
LOT SIZE LESS THAN 1000 SQ.FT.			
Non-Control Group			
Rezoned lots	15119.29	7	2888.13
Non-rezoned lots	12178.00	25	
Ring 1	11256.00	2	1767.76
2	16600.00	5	
3	13617.50	4	
4	13875.00	4	
5	13750.00	3	
6	15000.00	6	
7	13500.00	3	
Control Group			
All lots (not rezoned)	11175.00	4	5186.11
Ring 1	11166.66	3	
2	0.00	0	
3	0.00	0	
4	14000.00	1	
LOT SIZE GREATER THAN OR EQUAL TO 1000 SQ.FT.			
Non-Control Group			
Rezoned lots	11816.66	12	2932.90
Non-rezoned lots	16029.78	35	
Ring 1	12200.00	5	4119.72
2	14285.71	7	
3	13655.55	9	
4	15321.13	8	
5	16643.75	6	
6	14296.66	15	
7	17916.66	15	
Control Group			
All lots (not rezoned)	14174.38	16	3567.58
Ring 1	17280.00	2	
2	11600.00	2	
3	15750.00	7	
4	14568.00	5	

Note: * Period 2

impact on average sale prices between the periods. Moreover, no evidence of registered options against property was uncovered. Thus, there was no unequivocal indication of speculative activity. It was impossible to rule this out entirely, however, as there appeared to be a disproportionate number of sales to non-residents.

Table 9
AVERAGE PRICES BY LOT SIZE AND LOCATION
July 1, 1961 to March 31, 1963*

	Mean Price (\$)	Number of Properties in Sample	Standard Deviation (\$)
LOT SIZE LESS THAN 1000 SQ.FT.			
Non-Control Group			
Rezoned lots	12217.78	9	2673.61
Non-rezoned lots	12091.66	21	
Ring 1	12786.66	3	4367.25
2	11933.33	6	
3	14587.50	4	
4	13000.00	6	
5	12900.00	4	
6	13500.00	7	
7	14566.66	1	
Control Group			
All lots (not rezoned)	11923.22	3	2149.84
Ring 1	10930.00	2	
2	11216.66	1	
3	0.00	0	
4	13900.00	1	
LOT SIZE GREATER THAN OR EQUAL TO 1000 SQ.FT.			
Non-Control Group			
Rezoned lots	22151.50	10	4251.50
Non-rezoned lots	19396.66	30	
Ring 1	18238.50	3	3574.81
2	26125.00	5	
3	12900.00	1	
4	14280.00	5	
5	13900.00	10	
6	18760.00	5	
7	19754.54	9	
Control Group			
All lots (not rezoned)	14266.00	13	4531.61
Ring 1	0.00	0	
2	12960.00	1	
3	12000.00	5	
4	13750.00	7	

Note: * Period 3

Table 10
ECONOMIC INDICATORS, 1955-1963

Year	(\$) Per Capita Personal Income		(Units) Housing Starts		(Per Cent) Bond Yields Federal		(Per Cent) Mortgage Interest Rates		(1951=100) GNE Price Deflator		(Per Cent) Unemployment Rate	
	Canada	B.C.	Canada	B.C.	Canada	B.C.	Canada	B.C.	Canada	B.C.	Canada	B.C.
1955	1355	1671	97,386	10,848	3.45		5.37		89.7		4.4	3.8
56	1463	1774	87,309	10,468	3.94		6.24		93.0		3.4	2.8
57	1515	1841	84,875	9,702	3.80		6.85		95.0		4.6	5.0
58	1565	1811	121,697	14,953	4.62		6.79		96.3		7.0	8.6
59	1608	1881	103,991	11,875	5.09		6.97		98.3		6.0	8.5
1960	1656	1959	76,687	6,442	5.31		7.17		99.5		7.0	8.5
61	1651	1898	92,741	7,765	4.95		7.00		100.0		7.1	8.5
62	1764	1975	96,388	9,465	5.12		6.97		101.4		5.9	6.6
63	1840	2065	120,950*	12,559	5.17		6.97		103.2		5.5	6.4

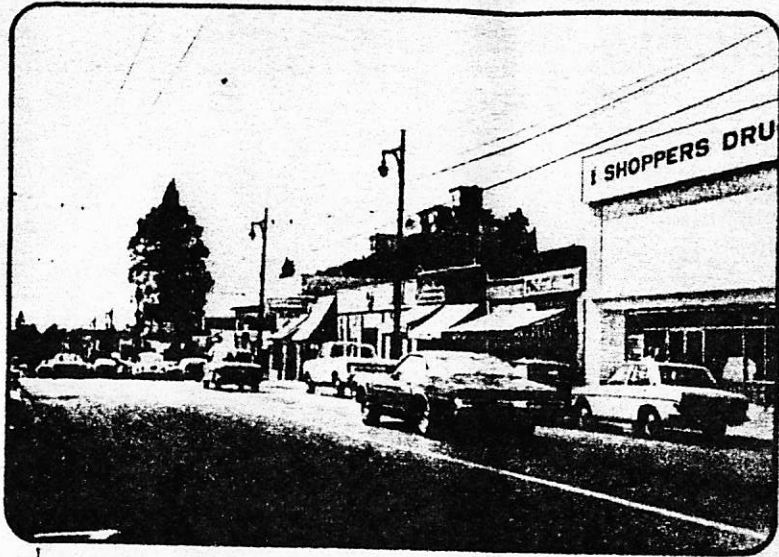
Year	(Thousands) Unemployment		(Thousands) Employment		(\$ Millions) Residential Construction**		(\$) Average New NHA House Price		(\$ Millions) Trade		(\$) New NHA House Price	
	Canada	B.C.	Canada	B.C.	Canada	B.C.	Canada	B.C.	Canada	B.C.	Canada	B.C.
1955	245	18	5364	462	1377	168	12,841		13,073		12,597	
56	197	14	5385	589	1947	173	13,854		14,774		13,348	
57	278	27	5731	509	1430	174	14,278		15,423		14,044	
58	432	47	5766	561	1782	211	14,479		16,139		14,267	
59	372	36	5870	521	1752	225	14,729		17,087		14,462	
1960	446	48	5965	516	1556	174	14,639		17,391		14,773	
61	466	49	6055	527	1467	149	14,888		17,752		14,463	
62	390	39	6225	551	1587	202	15,233		16,073		14,684	
63	374	39	6375	571	1713	268	15,682		17,137		15,768	

Notes: * Census over 5,000 inhabitants
** Includes new construction and repairs
Sources: 1) Housing Data, CMHC
2) Macroeconomic Data, Statistics Canada

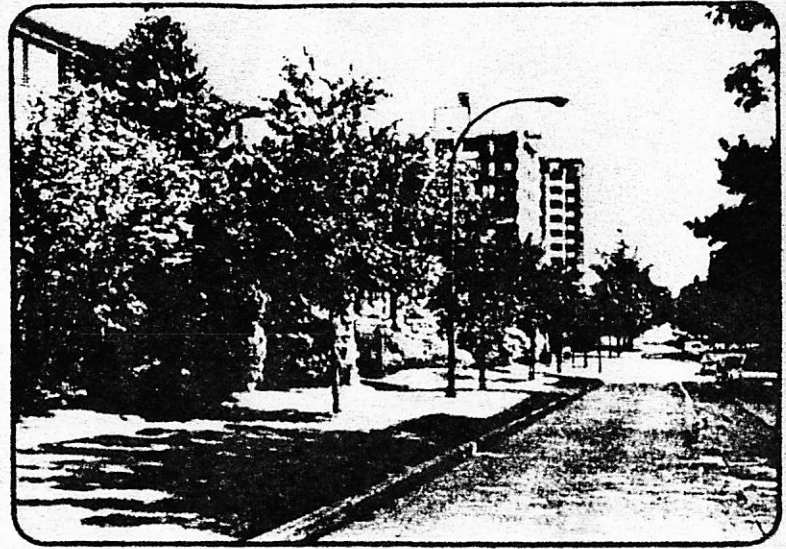
The situation changes considerably, however, after the rezoning. Between Periods 2 and 3 (e.g., before and after the rezoning), one observes that smaller rezoned properties (29.8 per cent) greatly outpaced the non-rezoned ones (-0.7 per cent); this phenomena was again independent of lot size. Larger lots appreciated more rapidly, however, as is to be expected since larger land parcels entail fewer transactions in the land assembly process. The increase in rezoned lot prices is particularly dramatic since the non-rezoned properties were experiencing significant declines during the period consistent with general economic recession during the early 1960s (see Table 10, which shows per capita income, housing starts, and retail trade all remaining below their 1959 levels until 1963).

Armed with this information one can now return to the questions posed at the outset. First, zoning does have a significant impact on land use and value. In the case at hand, rezoned properties appreciated greatly in value relative to non-rezoned properties. On average, over the study period, rezoned properties increased in price by roughly 40 per cent compared with the roughly 5 per cent increase recorded by non-rezoned properties. Second, the effects were limited spatially to rezoned areas.

It seems clear that rezoning does matter in terms of increasing the value of the affected properties. Furthermore, the evidence shows that zoning has no appreciable impact on the values of adjacent non-rezoned properties (the properties in rings 3 to 7 changed in value at approximately the same rate as did the control area properties which were situated in Kerrisdale, a significant distance away). This impression that rezoning does not adversely affect surrounding property values is strengthened by a visual inspection of the rezoned area and the remaining single family homes immediately adjacent to it. The following photographs are numbered and can be identified on Map 3. Essentially, photographs 1 and 2 give some idea about the relationship between the rezoned area (high rise towers) and the existing commercial area along West 41st Avenue between Yew and Larch Streets. Photographs 3 and 4 depict the high rise and low rise multi family housing built as a result of the rezoning. Lastly, photographs 5 through 8 represent the remaining single family zone and place it in its context adjacent to the rezoned area. No blight has resulted from the rezoning, and the area is still a solid and sought-after single family area.

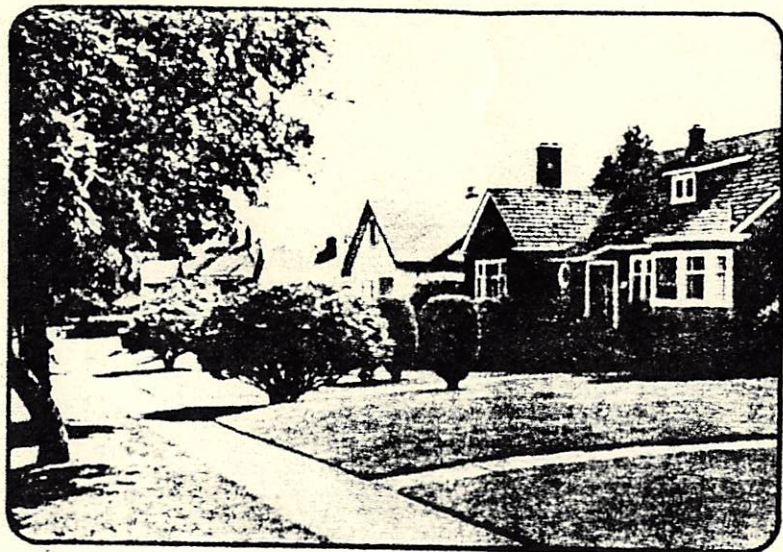


41st Avenue in Kerrisdale



The apartment zone in Kerrisdale

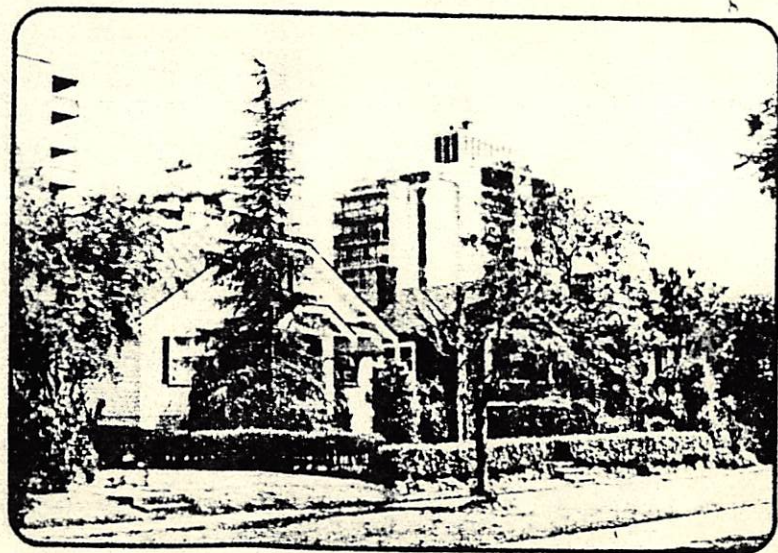




Single-family homes adjacent to apartments on Larch Street



Larch and 39th in Kerrisdale: single and multi-family zones



In summary, rezoning has had a very significant impact on the value of the rezoned properties. It has not, however, adversely affected the value of the remaining neighboring single family zone, nor has it hurt the area from an aesthetic point of view. Turning to the speculation question, we can see from the above that rezoned properties did increase significantly, relative to those that were not rezoned. Speculation was encouraged by the presence of the possibility of a zoning change. Analysis of the pattern of options registered and of sales to non-resident owners reveals that these indicators of speculative activity declined with distance from the rezoned area and were greatest in the rezoned rings, though the data were limited, and strong conclusions cannot be drawn on the question of speculation.

It appears, therefore, that the presence of zoning (and more specifically the possibility of changes in zoning) created a speculative environment within which investors/speculators were encouraged to move into the area to "bet" on the likelihood of zoning alterations. Such a finding is really not surprising. It has been observed in foreign exchange markets where so-called "fixed exchange rates" (e.g., tying a currency such as the Canadian dollar to another currency such as the pound and then using central bank reserves to maintain this fixed rate of exchange) tended to be destabilizing. The present system of flexible exchange rates (the so-called floating rate) which Canada has been following since 1970 appears to have allowed the Canadian dollar to absorb speculative and transaction demands by foreign exchange traders. There is an analogy to a kind of "floating zone" where speculative as well as "transactions demands" (e.g., user-dominated demands) for real property can be absorbed without the rigidity of the fixed uses prescribed by zoning.

Summary of empirical findings for Vancouver

1. Zoning changes do lead to changes in real property values; however, these changes are not always predictable. A number of rezonings that *a priori* would have been classed as upzonings to higher uses led to a decline in property values.
2. Changing zoning from a lower use (RS-1) to a higher and supposedly incompatible use (RM-3) led to increases in relative values for rezoned properties in Kerrisdale.
3. This rezoning also promoted some speculative activity in anticipation of the rezoning and higher real property

values, although this finding needs further investigation.

4. An examination of house price changes in adjacent areas and control groups showed no measurable negative external effects from the rezoning. Adjacent areas appreciated in value at the same rates as places farther away. A physical inspection of the area today, some seventeen years later, shows the single family district to be healthy and well maintained.
5. These findings are consistent with the other empirical studies reviewed earlier in this volume and lend further support to the rising criticism of zoning as virtually the sole land use and development control in common use in North America.

Some qualifications, extensions, and implications

A number of caveats should be registered. The data appear reasonable, as Tunnicliffe established by cross-matching of Assessor's records. Additional information would be desirable, however, to fully uncover the mechanism of price change. Most importantly, more data are needed about the houses described in the sample. Much of the variation observed in sale prices could be the result of different attributes of the particular houses. Dividing the transactions into properties of less and greater than 5,000 square feet accounts for only some of this variation. It was impossible, however, to obtain more detailed, reliable, and relevant information about the houses.

The study should be extended up to the present to test for the presence of externalities in areas close to the rezoned sectors. Also, in this vein, parallel studies should be attempted elsewhere to see if these findings are specific to the Vancouver region with its unique topography or if they are more broadly applicable to urban real property markets generally.

The foregoing implies that some of the stated objectives of zoning appear to be founded on improper assumptions about real property markets. More specifically, there appear to be only minimal (and usually unmeasurable) external effects. The stability of neighborhoods that zoning seeks to protect thus appears to be endangered by the rezoning that is part and parcel of the zoning by-laws in the first place.

Proponee's Exhibit "D"

PLANNING...AN OVERVIEW:

FACTS OF LAW

- 1) Federal Planning
- 2) State Planning
- 3) Regional Planning
- 4) Local Planning

The current State Planning Act (Stats. 1965, Ch. 1880) according to James Longtin in his "LAND USE REGULATIONS"...now requires each planning agency to prepare and the legislative body to adopt a comprehensive, long-term general plan for the physical development of the county or city, and also of any land outside its boundaries which in the planning agency's judgement bears relation to its planning. This general plan shall consist of a statement of development policies and shall include diagrams and text setting forth objectives, principles, standards, and plan proposals...

The first serious attempt by the courts to describe the nature of a general plan is contained in O'Loane V. O'Rourke (1965). The court stated:

"...the adoption of the general plan is, in effect the adoption of a policy, and in many respects, entirely new policy. The plan is of a permanent and general character, it is a declaration of public purpose and, as such...represents the judgement of the electors of the city with reference to the physical form and character the city is to assume...it is apparent that the plan is, in short, a constitution for all future developments within the city ...Any zoning ordinance adopted in the future would surely be interpreted in part by its fidelity to the general plan as well as by the standards of due process...If the general plan is anything at all, it is a meaningful enactment...the plan sets out that it is to become 'the frame work within which specific planning can be undertaken' and to be the 'basis for the preparation of precise plans.'"

In a leading planning article, entitled "Hear, The Master Plan:" An Impermanent Constitution, 20 Law and Contemporary Problems, 353 (1955), states:

"A general plan is or should be used by planners as:

- a) a source of information
- b) a program for correction
- c) an estimate of the future
- d) an indicator of goals
- e) a technique for coordination

Longtin states: "...to sum up the foregoing, it does appear, that the general plan is, in a sense, a "constitution" for the future development of a city or county, in that it purports to bind future legislators when they enact implementing provisions..."

It can also, so states Professor Hagman, be used as a changeable constitution in that it purports to bind future legislatures when they enact implementing provisions.

PLANNING...AN OVERVIEW

Page -2-

He continues, "...finally the general plan is or should be a guide against the arbitrary. In these days more and more decisions on the control of land use are being made on ad hoc basis. Such a system makes discrimination, granting of special privilege, and denial of equal protection possible. If the local ordinance requires that zoning decisions be based on the general plan, and if the decision can be supported by principles established by the plan, an attack on the decision should be very difficult to make...

And further under section 1.25 (2) under the subheading ④ Consistency, Conformity, Compliance and Cooperation in General:

"...once adopted, the general plan should be utilized by city and county planning departments and other agencies and departments as a general guide to the future development of the city, and as a basis for making land use decisions, especially in the areas of zoning...In this regard, the legal provisions requiring or encouraging Consistency, Conformity, Compliance, and Cooperation with the general plan elements becomes very important.

The Attorney General stated in 58 Ops Atty Gen 21: "...it is quite apparent that the 'consistency' or 'conformity' need not require an exact identity between the zoning ordinance and the general plan..."

In the 1973 landmark Selby Supreme Court decision stated in part, "...the plan is by its very nature...tentative and subject to change..."

Longtin states: "...the most notable statement regards planning and zoning is contained in O'Loane V. O'Rourke (1965)...where in the court cites..."

"...while municipal planning embraces zoning, the course does not hold true. They are not convertible terms. Zoning is not devoid of planning, but it does not include the whole of planning. Zoning is a separation of the municipality into districts, and the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land. This is the constitutional sense of the term...Planning has a much broader connotation. It has in view, as we have seen, the physical development of the community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a 'master plan' based on 'careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality,' and embodying scientific teaching and creature experience. In a word, this is an exercise of the State's inherent authority outdating the Constitution itself, to have recourse to such measures as may serve the basic common moral and material needs. Planning to this end is as old as government itself--of the very essence of an ordered and civilized society..."

As Professor Haar has said in his notable contribution to the subject, "In accordance with a Comprehensive Plan, '86 Harvard Law Review 1154, 1156, the city master plan is a long-term general outline of projected development....

General acceptance of the theory of zoning was brought about through the promulgation of the Standard State Zoning Enabling Act by the Department of Commerce in 1926 and its general adoption in many states.

Professor Hagman in his "Zoning Practice" states on pg. 10, "...the general plan will be incorporated as an integral part of the zoning ordinance, and permission to develop will be conditioned on attainment of the objectives stated in the plan...rather than permanence and certainty in zoning being the goal, the goal will be greater flexibility---controlled change...permission to develop will be tailored to the situation in order to be fairer to the applicant..."

On page 12 Professor Hagman says, "...in the past, zoning was often held invalid if the value of zoned property was measurably depressed by it (ie zoning). Zoning is now sustained (by the courts) when there is a substantial decline in value---even to the point at which the land becomes almost valueless. 20 CR 638

LAND USE

Neuberger et al v. City of Portland et al (CA 7976) (SC 25945)
(On petition for rehearing) Planning and Zoning: Procedure: Judicial Review: Ex parte contacts, under circumstances of case, did not invalidate city council's decision to allow zone change; Supreme Court did not remand zone change decision for reconsideration by city council in light of statewide planning goals where substantive concerns addressed by most goals in question were considered by council and opponents did not preserve issue on appeal. Petition for rehearing denied.
288 Or 585 (1980)

LAND USE

Columbia County v. Land Conservation and Development Commission
(14616) State-Wide Planning Goals: Specific county land use decisions made prior to adoption and acknowledgement of comprehensive plan must be consistent with state-wide planning goals.
44 Or App 749 (1980)

LAND USE

WILLAMETTE UNIVERSITY et al v. Land Conservation and Development Commission et al, and City of Eugene, (12934), Former ORS 197.300
(1) (d) held to permit LCDC review of quasi-judicial rezoning ordinance; local land use decisions must comply with statewide planning goals.
45 Or App 335 (1980)

LAND USE PLANNING - Comprehensive Plan Amendments

South of Sunnyside Neighborhood League v. Board of Commissioners of Clackamas County, Land Use Planning: Comprehensive Plan: Amendments:
Board of commissioners had jurisdiction to act on comprehensive plan map amendment; single-tract amendment to comprehensive plan map must be consistent with unamended portions of the plan and must not violate specific provisions of any applicable statewide planning goal; statewide planning goals adopted by LCDC govern comprehensive plan amendments adapted after their operative date.
280 Or 3 (1977)

BOARD OF COMMISSIONERS OF CLACKAMAS COUNTY v. Department of Land Conservation and Development (9470)

Land Use Planning: ORS 197.300 (1): ORS 197.310: In a petition for review of zone change by LCDC, under former jurisdiction statute, ORS 197.300 (1), it is the allegations of the petition, not the petitioner's conclusion as to which statutory subsection is applicable confers jurisdiction, and thus LCDC properly took jurisdiction where allegations were that county failed to consider and apply statewide goals. LCDC's authority under ORS 197.310 to "review" includes authority under subsection (3) to declare validity or invalidity of local land use planning actions, and authority under subsection (6) to take action if it appears that the local government intends to ignore LCDC's interpretation.
35 Or App 725 (1978)



edward w. riley

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August 20, 1981

Planning Commission
City of Brookings
City Hall
Brookings, Oregon

RE: Rezone Review Hearing (8-18-81)
Tax Lot 8100, 8302, and portion of 8310.

Ladies and Gentlemen:

In response to the challenge made at the hearing concerning "other available property" I would submit the following to support my statement.

I would appreciate it if this would be included as a statement for the record.

Very truly yours,

EDWARD W. RILEY
Architect-Engineer

cc: Dr. Joy

EWR:d

Court rules on land use

SALEM, Ore. (UPI) — The Oregon Supreme Court agreed Tuesday in an important land-use planning decision that 610 acres of land in northwest Portland should be rezoned, upholding a move by the Portland City Council and paving the way for the development of Forest Park Estates.

At issue in the long-disputed rezoning flap was whether a 610-acre parcel adjacent to Forest Park should be rezoned so that single family homes could be built on lots of 19,000 square feet instead of 20,000 square feet.

Some 90 persons, led by former Oregon Democratic Sen. Maurine Neuberger, opposed the rezoning and took the matter to court. In Multnomah County Circuit Court, Judge William Dale upheld the rezoning by the city council.

On appeal, the Oregon Court of Appeals sent the matter back to city commissioners for further hearings on the issue of whether other locations for

the project were available and suitable.

On further appeal, the Supreme Court Tuesday reversed the appeals court's decision to send the matter back to the city council for further proceedings. The Supreme Court allowed the city council's decision to stand.

The case provides an important departure from a 1973 Supreme Court land-use planning case in which the court said that certain standards must be applied for rezoning matters.

Those standards include requirements that zone changes must conform with comprehensive land use plans, that there is a public need for the change, and that the public need is best met by the proposed change.

In the Forest Park Estates case, the Supreme Court did not apply those standards, saying the Legislature has "produced significant legislation dealing with local planning" since its 1973 decision.

While lawmakers earlier were content to let such land use squabbles be settled in the courts, that's no longer the case, the Supreme Court said. Now, the Land Conservation and Development Commission has written rules that speak to the problems of zone changes.

Those LCDC rules, said the court, make no mention of a requirement that the "site of a proposed zone change be compared with other available property."

Public need should be shown, the court said, citing LCDC requirements, but not as a mandatory rule, as a guideline.

The Supreme Court said it found no state legal requirements that "a showing of either public need or a comparison with available property is a specific and independent prerequisite to a zoning amendment."

The court added that the LCDC and lawmakers have "not found it necessary to impose such requirements."

THE WORLD 12-5-79

Proponent Exhibit "F"

To the City of Brookings
Planning Commission
City Council

April 1, 1981

RE: Rezone application by Gerrid C. Joy et al for parcel
tax lot numbers 81.00 and 83.02

To whom it may concern:

This is to assure above agencies and its members that I fully support Dr. Joy's application to have above lots 81.00 and 83.02 rezoned from its present R1 status to RH status which will allow Dr. Joy et al to construct multiple units on those two properties.

I have personally watched the development of Dr. Joy's current condominium project BROOKINGS SMUGGLER'S COVE by the sea which is now under construction next to lot number 81.00. I find this condominium development an asset to our community. Its architectural style blends beautifully into the environment of the North Bank of the Chetco River. The project site has been kept exceptionally neat and clean and does not look cluttered and untidy like most construction sites.

I am convinced that Dr. Joy et al will utilize the two proposed rezone properties in an equally enhancing and community serving manner.

Very truly yours,

Richard L. Lantieri

Henry J. Hayner

Bob Hess

Janice M. Miller

Proponents Exhibit "G"

Mrs. Pat Widmer
P.O. Box 907
Brookings, Oregon 97415

August 12, 1981

City of Brookings
Planning Commission
City Council

Gentlemen:

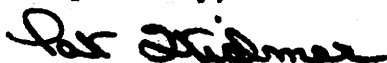
The certainties of this world - besides death and taxes - is change. It happens if it is invited or not. How it is used is what makes or breaks you.

One cannot bury their head in the sand and expect change to go away. It will run over you and bury you. Instead, one must accept change as a challenge and investigate various avenues to make the change work for you in bettering your position and your surroundings. - Whether it be competition, or complement.

The economic condition is such that any change which might help Brookings-Harbor situation should be encouraged. If not, those opposing change could see revenues supporting every day services of the city and county diminish to the point of these services being cut back or curtailed.

If not for improvement and growth, change must be accepted for survival.

Respectfully,



Mrs. Pat Widmer

Proponents Exhibit "H"

August 13th, 1981

City of Brookings Planning Commission
City Council
Brookings, Oregon

Re: Rezoning application by Gerrid C. Joy, et al for parcel tax lot numbers 81.00 and 83.02.

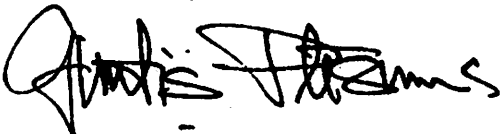
The controversy surrounding the above application has been brought to my attention, and I urge the Council to give it favorable consideration.

It is wise to use vacant land within the city. Such an approach is least burdensome on the city services. Cluster housing and other low-rise high density housing is nationally considered the optimum form of housing regardless of community size. Continuation of urban sprawl and the scattering of development, so characteristic of the Brookings area, is detrimental to the community and destructive of precious natural resources and the recreational amenities. The City of Brookings Comprehensive Land Use Plan projects doubling of population by the year 2000. Our system of government and free enterprise has no effective means for stopping growth. The life style of the community could, indeed, be destroyed if growth is not accommodated through more compact housing. Increased density within the walking distance of the commercial area should be in the interest of Brookings.

The condominiums in question make a most sincere effort to be sensitive to the beautiful setting. They will weather nicely and become complementary to the landscape, contrary to many exploitive ventures which are merely rude eyesores.

I trust that the Council will not be swayed by emotional pressures and consider the interests of the community above all else.

Sincerely,



Guntis Plésums
Architect and Associate Professor of the University of Oregon

1410 East 20th Avenue
Eugene Oregon 97403

Proponent's Exhibit "I"

CITY OF BROOKINGS
PLANNING COMMISSION
AN OPEN LETTER

August 17, 1981

Dear Editor:

As a resident of Brookings, I wish to respond to a recent complaint by a few other residents regarding the Smugglers Cove Condominiums being developed by Dr. and Mrs. Gerrid Joy.

I would certainly agree with the letter to the editor written by these concerned citizens that we who are fortunate enough to live in the Brookings area have found a beautiful land.

What I must strongly oppose, however, is the cruel and distorted portrayal of Dr. Joy as a scheming, heartless land developer gleefully extracting his ill-gotten gains at the expense of his neighbors.

Hogwash!

Before any construction began, the Joys spent over 18 months and countless thousands of dollars for the very purpose of not offending their neighbors. Even during the construction phase, when no building site can be a beauty spot, they are going to tremendous effort and expense to carefully landscape the property, so their neighbors view would be protected.

Growth is not only inevitable, it is necessary if our community is to survive, and that growth does not have to be detrimental if it is carefully planned and controlled as the builders and our city officials have been doing at Smugglers Cove.

Naturally, the Joys hope to make a profit from their enterprise; I don't think that's become an official sin in our country, and it certainly doesn't turn them into the evil, greedy plunderers ... they were portrayed to be in that letter.

No, I would suggest the truly selfish ones are those few, but very vocal neighbors who have made their little nest and now want to put the whole forest off-limits to anyone else.

The writers stated that there is no need for condominiums in Brookings (which means of course that THEY have no need for condominiums in Brookings). But what of the many people who are getting on in years and find themselves unable to handle the maintenance and yard work of a conventional home? What about those many area residents who travel extensively and will be able to leave their condominium home with complete assurance that it will be safely maintained while they are away? Aren't they allowed the pride of home ownership too, or must they be denied that simply because a few neighbors don't want to share the street?

With the implication of dogs and children running rampant in the streets, the writers have employed the usual scare tactics that are so typical when there is no logical reason to oppose something. We all know that for years Del Norte Lane has served as a popular playground for dogs and children and should these condominiums result in another member or two of either species, I'm sure the area can absorb them.

I would only hope that most thinking people would see beyond their words to the simple truth that it is the Doctor Joys of this world who help communities grow in some kind of orderly fashion and that with orderly growth also comes that orderly supply of revenue so desperately needed to run our schools and our government.

Dear Editor:

page 2

Personally, I commend not only Dr. and Mrs. Joy, but also our city officials who have worked so hard on the project, and the vast majority of area residents who have given their support and understanding. Without their kind of openminded people, Brookings would still be an abandoned mill town somewhere between Crescent City and Gold Beach.

Respectfully submitted,

W. J. Goulden
Brookings, Ore.

Proponents Exhibit "5"

We the undersigned...do support the idea, the attitude and approach of Dr. Gerrid Joy in making use of that presently unused land along the north bank of the Chetco River.

The plan, land use concept and above all, the need for such facilities are clearly defined...and in this case adhered to in the Brookings Comprehensive Plan.

NAME	ADDRESS
Jessie Vance R Deal	Brookings Ore.
Fabiana Williams "	"
S. John Zia "	HARBOR, 22 TITUS LN
Jessie Brittain "	Harbor, Ore - Harbor Hill
Dail Eide "	Harbor Ore So Bank
Howard Cook "	1821 TAPER OF BROOKING
Walter Ellgaard	Railroad Ave Brookings
Ray O. ...	Brookings Ore
Richard ...	Harbor Ore
Edward ...	Brookings Ore
Bruce ...	Brookings Ore
Lawrence ...	Brookings Ore
Thomas Carson	Brookings Ore
Wes Skye	Brookings
Mike Cavan	Brookings Ore
Deborah Brown	old Brookings residents
C. J. Brown	old Brookings residents
Rocky McKay	old Brookings residents
Walter ...	old Brookings residents
Shirley Jones	old Brookings residents
Cathy Anderson	97826 S Bank Chetco Ref Brookings
Jesse Martin	Brookings Oregon
PJ Anderson	Brookings - ORE
Mrs Mrs. ...	Brookings
* Dorothy Speer	301 Birch St. Brookings Ore.

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NAME	ADDRESS
DONALD J. MOSS	P.O. Box 213 Brookings
Bob L. Schaefer	347 Spruce Dr. - Brookings, Ore.
Ronald L. Willard	P.O. Box 1651 Brookings, OR
Debbie Beate	18058 RAYBURN Brookings OR
Angie Andrews	Box 61, Brookings, Or.
Thomas H. Misfeldt	15869 Sunset Strip Brks, Ore.
Lita L. Misfeldt	15869 SUNSET STRIP " Ore.
Lyle Irons	P.O. Box 1211, Brookings, Ore
Deanna A. Leane	P.O. Box 1211, Brookings, Ore.
Carol P. Williamson	P.O. Box 41146 Brookings, OR
Maurice E. Fleck	P.O. Box 1553 Brookings Oregon
Dianne Hauke	
Cassius Harris	
	D. A. Brookings

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NAME	ADDRESS
Ronald L. Smith JoAnn Wesel T SHIRTS SHOP	P.O. Box 2973 Harbor, OR. 97415
Carol Lockman RAY'S AUTO	P.O. Box 2142 Harbor, Ore. 97415
Phil Yarger	1041 Chetco Ave, Brookings, Ore
Merlitta Yarger PAINT STORE	1029 Chetco Ave, Brookings, OR
Charly Sanders BROOKINGS GLASS	1029 Chetco Ave Brookings Ore.
Matt ESCAPE HATCH	P.O. Box 1688 Brookings Ore
Carl Hoppe	P.O. Box 1662 " "
James Stark VITRA	97884 CHILCOTE LN BROOKINGS
Luisa Keel Brookings	P.O. Box 370 Brookings
David A. Elrod	P.O. Box 205 Brookings
Nancy Saungley THE DRESSING ROOM	Box 2997 Harbor 98466 S. BANK RD. - HARBOR.
Allen D. Smith BROOKINGE FLOORS	Box 818 Brookings Oregon
Myrtle Jarman BROOKINGS PAINT & FLOOR COV.	98018 Shelton Ln Brookings.
Leo Appel APPEL'S	1251 Hub St Brookings.

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NAME	ADDRESS
THOMAS COX	
TED FREEMAN JR.	760 Old County Rd Brookings
KARL JOHNSON	AUT # Lane - Brookings, Or.
PATRICIA WIDMER	P.O. Box 1466 BROOKINGS (316 RAILROAD)
CAROLYN HUBBARD	P.O. Box 2865 Harbor Or - 627 Meadow Lane Brookings
BARBARA ROCK	P.O. Box 1779 Brookings
ROSE PHILLIPS	P.O. Box 1418 Brookings Ore (RECREATION SPECIMENS)
RAYMOND J. BRESHEARS	1199 Ocean View Dr Smith River Ca 95567
WARREN D GLOVER *	Allen Park Brookings, Or
MILDRED E GLOVER *	332 Mel Route
JOANNE JOHNSON	97972 - Highway
LEO SHURTLEFF *	97972 - Hwy Way
MARGARET ZABALDANO	1330 Crissey Circle -
JOE ZABALDANO	320 Monterey Lane -
MARIAN FOUNTAIN *	351 Spruce Dr:
JIM CARSON	221 King st.
DAVID F. NYLAND	831 Paradies Ln.
DANIS PHOTO	1215 Chetco PO Box 4026 Spindrift Motel
DUANE ZECKMAN	1215 Chetco P.O. Box 4026 Spindrift Motel
VIOLA GOULDIN	
RUSS BUSHEY	
MARY ALICE BUSHEY	
BILLIE MILLER	P.O. Box 62 - Brookings Ore
R. H. CASSEL	Box 2874 Harbor Ore
JIMMIE J. WILSON	P.O. Box 4049 Brookings Ore
JACKLYN K. WILSON	P.O. Box 4049 Brookings Ore
BONNIE MOREL	P.O. Box 639 Brookings, Ore
RALPH MORSE	1040 A CHEYENNE AVE Brookings Ore

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NAME	ADDRESS
Thomas Cox	18724 - Seaside Hwy RD Brookings
Ted Freeman Jr	760 Old County Rd Brookings
Karl Johnson	AUT # Lane - Brookings, Or.
Patricia Widmer	10000 W. Harbor Rd. Brookings
Carolyn Hubbard	P.O. Box 1466 BROOKINGS (316 RAILROAD)
Barbara Rock	P.O. Box 2865 Harbor Or -
Rose Phillips	627 Meadow Lane Brookings
Raymond J. Resneras	P.O. Box 1779 Brookings
Warren D. Glover	P.O. Box 1418 Brookings Ore (RECREATION SPECIMITIES)
Mildred E. Glover	1199 Ocean View Dr Smith River Ca 95567
Joanne Johnson	Alta Hunt Brookings, Or
Leo Shurtliff	332 Red Route
Margaret Zabaldano	97972 - Hot Way
Joe Zabaldano	97972 - Hot Way
Marian Fountain	1330 Crissey Circle -
Jim Carson	320 Monterey Lane -
David F. Nyland	351 Spruce Dr.
Daniel Macke	221 King st.
Quane Zeckman	821 Paradise L.
Viola Gouldin	1215 Chetco PO Box 4026 Spindrift Motel
Russ Bushey	1215 Chetco P.O. Box 4026 Spindrift Motel
Mary Alice Bushey	
Bellie Miller	P.O. Box 62 - Brookings Ore
R. H. Cassel	Box 2874 Harbor Ore
Jimmy J. Wilson	P.O. Box 4049 Brookings, Ore.
Jacklyn A. Wilson	P.O. Box 4049 Brookings, Or
Bonn Moran	P.O. Box 639 Brookings, Or
Ralph Morris	1040 A CHETCO AVE Brookings

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The plan, land use concept and above all, the need for such facilities are clearly defined...and in this case adhered to in the Brookings Comprehensive Plan.

NAME	ADDRESS
James R Jones	Box 686 Brookings O.
Harry C. Kelley	P.O. Box 569 Brookings
Royce M. Maroney	RT 2 Box 69 Brookings
Paul Hildebrand	P.O. BOX 1313
M Mitchell	96149 Sandown Dr. Brookings
James J. Howell	P.O. Box 1233 BROOKINGS.
Chet Sengler	

We the undersigned...do support the idea, the attitude and approach of Dr. Gerrid Joy in making use of that presently unused land along the north bank of the Chetco River.

The plan, land use concept and above all, the need for such facilities are clearly defined...and in this case adhered to in the Brookings Comprehensive Plan.

NAME

David M. Hicks

Harbor Coffee Shop

ADDRESS

Box 236

Holm, Ore

We the undersigned...do support the idea, the attitude and approach of Dr. Gerrid Joy in making use of that presently unused land along the north bank of the Chetco River.

The plan, land use concept and above all, the need for such facilities are clearly defined...and in this case adhered to in the Brookings Comprehensive Plan.

NAME

ADDRESS

Earl Thoncker

541 Chetco Ave

Gail L. Richardson

557 Spruce St.

Bob J. Larson

620 Meadow Ln.

Rick Maynahan

on BACK OF RUBIOS

James D. Carpenter

I do not ormett

James Christensen Jr.

1000 125 Harbor, Dec 9/15

William Smith

We the undersigned...do support the idea, the attitude and approach of Dr. Gerrid Joy in making use of that presently unused land along the north bank of the Chetco River.

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NAME

William C Colley

ADDRESS

20315 Whalehead Rd.

Exhibit K - Proponents

Mr. Lynn R. Stuart
City Manager
City of Brookings

Dear Mr. Stuart:

Pursuant to your letter dated September 10, 1981, wherein you specifically requested findings of fact and conclusions of law related to applicable zoning ordinance, Brookings Comprehensive Land Use Plan and applicable LCDC goals, please be informed of the following:

We believe our rezoning proposal application is in conformance with the City of Brookings Comprehensive Land Use Plan. The subject property at issue is presently zoned for residential use (refer to City of Brookings Land Use Plan page 24). On page 241 of the Comprehensive Plan the area titled "General Land Use" (LCDC Housing Study, 1976) also designated the subject property as "residential". On page 252 of the Comprehensive Plan the area titled "Urbanization Suitability" designates the subject property as suitable for residential use.

At issue, and therefore the very purpose of this rezoning request, is not a request for change in the character of the allowed use of the subject property, but rather one of density.

The basic concept of the Smuggler's Cove idea was to allow a greater number of people to enjoy the Chetco Harbor Boat Basin environment. The adverse impact was not and will never be severe. As stated previously, we did not compete for the property - no one ever wanted it...it had never been used. The city streets were in...the water system existed (we approved it)...the city sewage system was there as were power telephones, etc. Referring to the City of Brookings Comprehensive Land Use Plan under "Visual Resources" pages 163-164...

"...The visual resources of the south coast are varied and outstanding. Much of the attractiveness of the area derives from its association with the Pacific. Shorelines, the meeting place of land and sea, and areas of dynamic beauty...further visual interest is added by the rivers and streams themselves; by the picturesque harbor; by the abundance of wildlife, including shore birds and migrating waterfowl;...by the many native ornamental shrubs...by the myrtlewood groves and by the wind-pruned trees and shrubs on the bluffs overlooking the sea.

This resource has both aesthetic and economic values. The visual beauty of the area is one of the main reasons people choose to live and continue to live here. The economic values are intimately tied to the aesthetic values. Brookings profits from the influx of individuals attracted to the south coast. Property values are also related to the quality of the visual experience.

Preserving aesthetic values could be done by encouraging building designs that do not conflict with or dominate the scenery; by encouraging site designs and construction methods that minimize physical disturbance of an area; by encouraging use of natural materials in construction; and by encouraging uses consonant with the quality of the visual experience.

Areas of exceptional beauty that merit special attention in planning and building and site design evaluations include the bluffs... overlooking the estuary..."

Granted...it seems the aforementioned visual experience might possibly justify our request for higher residential density adjacent to the Smuggler's Cove project...but what effect would a higher density factor have on our coveted "open space" or simply "elbow room"...?

Again, referring to the City of Brookings Comprehensive Land Use Plan on page 164...

"...there are large areas of open space in and around the City of Brookings. Two large state parks totalling 263 acres are located within the city limits. The Pacific Ocean provides 63,750,000 miles of open space to the citizens of Brookings...very large areas with (417 acres) the Urban Growth Area are designated as open space. Because of environmental limitations to development these areas are well suited to this use. Open space in large ownership tracts that are used for timber management surround the City of all landward sides..."

Plus there are additional thousands of acres of state and national parks in the immediate and general area.

It is interesting to note under the sub-heading "Housing Element" on page 55 of the Comprehensive Land Use Plan, "...the development trend in Brookings is toward higher residential densities. As land prices and construction costs rise this trend can be expected to continue...most units are owner occupied. There are few units, if any, available for rent at any given time... Brookings will assure there is an affordable and adequate supply of housing for purchase and for rent to accommodate existing residents and anticipated population growth."

Under the statement of Policies under the Housing Element:

- #1. It is the policy of Brookings to ensure the availability of adequate numbers of housing units...and allow for flexibility of housing location, type and density.
- #5. Brookings will encourage the construction of more rental units as well as alternatives to conventional housing.
- #6. Brookings location on the Oregon Coast and its potential for continuing recreation and tourist oriented development, indicate that the city has opportunities for development of quality residential and recreational facilities with a more flexible design than has generally been true in the past.

For this reason, Brookings will encourage... "Planned Unit Development..."

Under subsection of the Housing Element - "STRATEGIES:"

- #1. "Brookings shall designate and maintain an adequate supply of land zoned for high...density residential development.
- #2. "Brookings shall consider alternatives to minimize lot size and siting of structures such as cluster concepts, Planned Unit Development, percentage of land covered requirements, etc. etc..."

Under subsection - "Implementation Procedures:"

* >

- #1. a) Encourage clustering residential use in appropriate areas to preserve open space amenities.
c) Encourage building designs that do not conflict with or dominate the scenic resources in order to preserve aesthetic values.
d) Encourage site designs and construction methods that minimize physical disturbance of an area.
e) Encourage use of natural materials in construction.
f) Advocate uses compatible with the quality of the usual experience.

On page 14 of the Comprehensive Land Use Plan the number one problem under the issue of "HOUSING", states "...There is a general lack of available rental units in Brookings at any given time as well as a shortage of property designated for high density development..." And under the same issue "HOUSING" under subsection "Issues..."

- #1. How can the city encourage the development of additional multi-family units...?
- #3. Should the city take a look at alternative forms of residential development such as planned unit development and permitting construction up to the property line?"

On Page 18 of the City of Brookings Comprehensive Land Use Plan under the heading "GROWTH MANAGEMENT AND DENSITY," in part paragraph #2..."high land and construction costs are leading to denser development. The preference of many retired persons for small lots also contributes to the trend. Since unit dwellings on small lots provide privacy and space while minimizing property upkeep..." Paragraph #3 (in part), "...The city proposes to encourage growth by providing land use densities...which will accomodate this growth..." Paragraph #4 (in part), "...The City of Brookings recognizes that growth will occur and desires to provide land properly designated for that growth..."

On page 31 under the heading "URBANIZATION", paragraph #2 under the subheading "POLICIES", "...to encourage the development of existing buildable lands within the City prior to developing lands in the Urban Growth Area."

Property, single family residential building lots on the north bank of the Chetco River sell (or are for sale) anywhere from \$70,000 to \$125,000 each, when they are available. Who in this room can afford such prices...much less our children?

On page 4 under "STATEMENT OF DIRECTION" - Population Growth:

"...the population of Brookings is expected to increase by 3,600 through the year 2000...currently, the number of retired citizens is growing more rapidly than other age groups..."

Gentlemen, this means doubling our present population in less than 20 years... if our attitude as related to housing (as with many other things) is not tempered or slightly changed...where will your children live? As each of us reach our twilight years where will we live?

Our present plan was literally years in the planning/make-up process and as so stated on page two of our Comprehensive Land Use Plan:

"...the agencies most directly involved in the process were:

Curry County Planning Department
Coos-Curry Council of Governments
Coos-Curry-Douglas Economic Improvement Association
Coos-Curry Regional Housing Authority
Brookings-Harbor School District 17-C
Port of Brookings
Oregon Department of Environmental Quality
Oregon Department of Fish and Wildlife
Oregon State Marine Board
Oregon State Police
Oregon Division of State Lands
Oregon Department of Transportation
Oregon State Forestry Department
U.S. Bureau of Land Management
U.S. Army Corps of Engineers
U.S. Department of Housing and Urban Development
Portland General Electric
Community Action Program
Center for Population Research and Census, Portland State University
Brookings-Harbor Chamber of Commerce

We do not believe the Comprehensive Plan is in error...but as the plan so states itself the plan simply needs thoughtful expansion in order to satisfy our ever changing life-styles, patterns, economic situations, personal values, etc., etc.

In consideration of applicable LCDC goals and objectives as you have so requested, please be informed of the following:

BASIC PROPOSAL: The purpose of this zone change is (R-1 to R-II) to allow the construction of multi-family housing within the confines of a unique shoreline natural area.

In keeping within the provision of the STATEWIDE PLANNING GOALS AND GUIDELINES OF THE OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION (LCDC):

Goal #10: HOUSING

...to provide for the housing needs of the citizens... also within the framework of this aforementioned goal, "buildable lands"...lands in urban and urbanizable areas, that are suitable, available and necessary for residential use...

Under subheading "Guidelines" - Section A Planning: Paragraph #2 (in part)...such land should be necessary and suitable for housing that meets the housing needs of households of all income levels...

Paragraph 4 under Section A Planning states (in full): "Ordinances and incentives should be used to increase population densities in urban areas taking into consideration (1) key facilities (my comment: such as fire protection, police protection of property, solid waste disposal, community water service, and revenue, community sewage disposal service and revenue, public power, telephone service and TV cable, existing city maintained paved street/road, near medical services, postal services, schools, churches etc., etc.) (2) the economic, environmental, social and energy consequences of the proposed densities and (3) the optional use of existing urban land particularly in sections containing significant amounts of unsound substandard structures...."

Goal #14 URBANIZATION

...to provide for an orderly and efficient transition from rural to urban land use...

Factors mandated to be considered under the provisions of the above aforementioned goal:

- (2) Need for housing, employment opportunities, and livability;
- (3) Orderly and economic provision for public facilities and services;
- (4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- (5) Environmental, energy, economic and social consequences;

Continuing under mandated considerations:

...land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- (1) Orderly, economic provision for public facilities and services;
- (2) Availability of sufficient land for the various uses to insure choices in the market place;
- (3) LCDC goals; and,
- (4) Encouragement of development within urban areas before conversion of urbanizable areas.

Under the subheading "Guidelines" - Section A.
Planning: Paragraph #2...the size of the parcels at urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels."

We feel after an exhaustive in-depth examination of the above stated goals and objectives of the OREGON LAND CONSERVATION and DEVELOPMENT COMMISSION (LCDC), as well as the needs, goods and objectives of our own specific community of Brookings...and in so much as our own personal goal is to provide much needed housing within our community (within the specific framework of GOAL #10: Housing) ...we petition our city to allow the aforementioned rezone (ie, R-1 to R-H) to occur.

We justify our petition principally, on the basis and finding of LCDC GOAL #14: URBANIZATION...some but not all of our feelings of justification are:...under said goal (refer paragraph #2), "need for housing, employment opportunities and livability..." The need for housing is without question, the construction of the proposed facilities, also without question, provide employment opportunities/ Of utmost importance is the fact that, at present, every man employed on the present SMUGGLER'S COVE project is a resident of the City of Brookings. Not one single individual is out of state, nor even out of City. Therefore, the entire present project payroll is recirculated within the City of Brookings in one manner or another.

And in conclusion of said paragraph #2 "...livability..." We, as developers, believe we are creating a "livability" atmosphere beyond comparison. We are the first to, in our opinion, take an unused, neglected overgrown unwanted parcel of urbanizable non-tax producing land and literally transform this parcel to a unique nautical motif environmental attuned livability complex...

Under paragraph (4) of LCDC GOAL # 14: URBANIZATION..."...maximum efficiency of land uses within and on the fringe of the existing urban area;"

As you will note from the site plan, the subject property at issue is a urbanizable parcel " within" (paragraph # 4) an urban area.

The project would not require any new or additional public services or facilities (paragraph # 3).

There would be no adverse social consequences, adverse economical implications, nor significant energy demands. The project is and would be designed to be reflective of the immediate nautical environment (paragraph # 5).

This section states in part: "...programs shall be provided that will ... (3) promote healthy and visually attractive environments in harmony with the natural landscape character..."

We believe that we are perhaps the only developers who have added as a part of our landscape program native landscape stones and plants as our present project (Smuggler's Cove) progresses. We have had this very same native stone crushed for roof covering; further we are the only developers to add extensive roof planters with native plants to accent our natural landscape environment... Naturally this sensitivity of our environment will be expanded to include any adjacent development.

Under the subheading "Open Space" - GOAL #5 the statement is made "... consists of lands used for agricultural or forest uses..."

The subject property contains no such lands...and so we conclude the term does not apply in this petition.

Under the subheading "WILDERNESS AREAS" - GOAL #5 the statement is made "...areas where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. It is an area of undeveloped land retaining its primeval character and influence, without permanent improvement or human habitation..."

The subject property, again, contains no such lands...and, again, we conclude the term does not apply in this petition.

Under the subheading "GUIDELINES" SECTION A. PLANNING: Paragraph #7 states: "...local, regional and state governments should be encouraged to investigate and utilize...cluster developments...and similar techniques to implement this goal (ie Goal #15).

LCDC GOAL #6 AIR, WATER AND LAND RESOURCES QUALITY

After review of our existing aforementioned resources we can only conclude our proposed project will absolutely have no adverse effect whatsoever.

LCDC GOAL #7 AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

This section states in part, "...Areas of Natural Disaster and Hazards are areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and disposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas..."

Inasmuch as no man, nor work of man, stands beyond the reach of an Act of God... perhaps there is no area of total safety.

However, in a broad sense, it would appear the most apparent danger any riverfront development might experience would be flooding. In all cases any permanent facilities would be established above the flood level as established by the National Flood Insurance Act of 1968.

LCDC GOAL # 9 ECONOMY OF THE STATE

The very goal of this section (# 9) is "... to diversify and improve the economy of the state."

This section states in part: "...plans and policies shall contribute to a stable and healthy economy in all regions...plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability; labor market factors; transportation; current market forces; availability of renewable and non-renewable resources; availability of land; and pollution control requirements... Economic growth and activity in accordance with such plans shall be encouraged in areas that have underutilized human and natural resource capabilities and want increased growth and activity..."

Under the sub-section heading "IMPROVE THE ECONOMY OF THE STATE", ...refers to a beneficial change in those business industrial and commercial activities which generate employment, products and services consistent with the availability of long-term human and natural resources.

Additionally, under the sub-section heading "Area which have underutilized Human and Natural Resource Capabilities"...refer to cities...which are characterized by chronic unemployment or a narrow economic base, but have the capacity and resources to support additional economic activity..."

From the above goals and objectives we can only conclude that the project at issue will provide our economically depressed community with two (at least) sorely needed products...: jobs and an on-going healthy tax-base (finished product), and needless to say the immediate generation of construction capital (materials purchased locally).

Referring to the goals and objectives of LCDC GOAL # 16 - ESTUARY RESOURCES: (in part)"...protect, maintain, where appropriate develop... Oregon's estuaries..."

Continuing under the sub-heading "PRIORITY" under the provisions of LCDC GOAL # 16 ESTUARINE RESOURCES:

"Priorities for use of each of the management units shall be designated which maintain, promote, encourage, or enhance uses and activities compatible with the requirements of this Goal (#16), the capability of the resources, and the objectives of the classification..."

Paragraph #3 "...water related uses which do not degrade or reduce the natural estuarine resources and values..." and

Paragraph #4, "...non-dependent, non-related uses which do not alter, reduce or degrade the estuarine resources and values..."

It is our opinion that a loving and sensitive use of adjacent estuarine properties would in no way reduce or degrade the estuarine resources and values...and, if anything would only endorse those values by establishing pride of environment and ownership in such a unique locale.

In conclusion Mr. Stuart, and Honorable Council Members, we sincerely believe that our findings of fact and conclusions of law as related to the zoning ordinances, the Brookings Comprehensive Land Use Plan and applicable LCDC Goals not only provide and allow for our application...they almost mandate it for the overall well-being of the community, as a whole, excluding special interest groups...whoever they may be.

Thank you.

Very truly yours,

Gerrid C. Joy

Gisela A. Joy

*Please include under subsection - "Implementation Procedures:" (page 3)

- #1. Brookings will attempt to provide a wide range of housing...by exercising zoning concepts that allow...a variety of housing types such as single-family dwellings, cluster housing...and condominiums..."
- #2. "Brookings shall develop innovative regulations for developments which allow for flexibility by designing Planned Development areas..."

On page 36 & 37 under OPEN SPACE & NATURAL RESOURCES: under the section "Strategies:"

- #1. a) Encourage clustering residential use..etc, etc.

Proposed Exhibit "L"

To: Members of the Panel...
All Interested Citizens...

Pursuant to that application for rezone known as the Peterson/Joy Rezone Proposal for those properties located off Del Norte Lane (North Bank-Chetco River) noted on the attached plat....please be informed of the following:

In reference to Resolution No. 213, Section 4 "Burden of Proof," paragraph B, items #1 - #7...

Item #1..."conformance with the comprehensive plan and when appropriate, city zoning ordinance..."

We believe our rezone proposal application is in conformance with the City of Brookings Comprehensive Land Use Plan. The subject property at issue is presently zoned for residential use (refer to City of Brookings Land Use Plan page 24). On page 241 of the Comprehensive Plan the map titled "Generalized land-use" (CCCOG Housing Study, 1976) also designates the subject property as "residential." On page 252 of the Comprehensive Plan the map titled "Urbanization Suitability" designates the subject property as "suitable" for residential use.

At issue...and therefore the very purpose of this meeting is not a request for change in the character of the allowed use of the subject property, but rather one of density.

As each of you are aware the subject property is presently zoned "R", residential. Our request is still for residential...but of a higher density-"R-H."

As previously stated, we believe our request is in conformance with the City of Brookings Comprehensive Land Use Plan and we base this request on the following Comprehensive Plan's goals, objectives, policies and strategies:

The subject property, although presently zoned residential, is now sitting idle-vacant, and has been since day one. To our knowledge no one has ever been even remotely interested in the use of this property for residential use or any other purpose.

As your Panel is aware we were the very first developers to visualize the idle lands of the North Bank of the Chetco River appropriate for a new concept of residential use in the City of Brookings. As we state, this idea is new only for Brookings...the concept in itself is as old as man himself. The concept is simply "cluster dwellings"...when first developed (who knows when?) this housing concept provided safety and security from the dangers of those days...man or beast.

Over the thousands or tens of thousands of years the very basic reasoning for "cluster dwellings" has changed little, if any. However over the past few centuries there was one significant change or development by man that caused the basic reasoning for "cluster dwellings" to become less important...that development was gunpowder! No longer did people have to cluster together for protection...and then also, the West was opened with its countless millions of acres for the taking...everyone could provide for their own protection and build a dwelling located in the middle of vast acreage.

But times have changed...and continue to change. We now have police protection fire protection...we have city streets, city water, sewage disposal, etc.etc. And once again people gather close together to dwell in cities and towns... although today the reasons are different (employment, hospitals, schools, etc.). The end result is pretty-much the same.

Today new problems present themselves to local government. Our vast untouched acreage is gone...not disappeared but gone for the taking! We have tens of millions of more people competing for the same goods and things. Therefore as each of you are aware prices of everything are skyrocketing completely out of sight.

If our attitude as related to housing (as with many other things) is not tempered or slightly changed...where will your children live? As each of us reach our twilight years where will we live?

Property, single family residential building lots on the north bank of the Chetco River sell (or are for sale) anywhere from \$70,000 to \$125,000 each, when they are available. Who in this room can afford such prices...much less our children?

Those of you who can...one question: You have the money to buy at any price, and build to your hearts pleasure...but do you have the right to be the sole benefactor of the riverfront environment?

The basic concept of the Smuggler's Cove idea was to allow a greater number of people to enjoy the Chetco Harbor Boat Basin environment. The adverse impact was not and will never be severe. As stated previously, we did not compete for the property - no one ever wanted it...it had never been used. The city streets were in...the water system existed (we improved it). The city sewage system was there as were power telephone, etc. Referring to the City of Brookings Comprehensive Land Use Plan under "Visual Resources," pages 163-164...

"...The visual resources of the south coast are varied and outstanding. Much of the attractiveness of the area derives from its association with the Pacific. Shorelines, the meeting place of land and sea, and areas of dynamic beauty...further usual interest is added by the rivers and streams themselves; by the picturesque harbor; by the abundance of wild-life, including shorebirds and migrating waterfowl;...by the many native ornamental shrubs...by the myrtlewood groves and by the wind-pruned trees and shrubs on the bluffs overlooking the sea.

This resource has both aesthetic and economic values. The visual beauty of the area is one of the main reasons people choose to live and continue to live here. The economic values are intimately tied to the aesthetic values. Brookings profits from the influx of individuals attracted to the south coast. Property values are also related to the quality of the visual experience.

Preserving aesthetic values could be done by encouraging building designs that do not conflict with or dominate the scenery; by encouraging site designs and construction methods that minimize physical disturbance of an area; by encouraging use of natural materials in construction; and by encouraging uses consonant with the quality of the visual experience.

Areas of exceptional beauty that merit special attention in planning and building and site design evaluations include the bluffs...overlooking the estuary...

Granted...it seems the aforementioned visual experience might possibly justify our request for higher residential density adjacent to the Smugglers Cove project...

But what effect would a higher density factor have on our coveted "open space" or simply "elbow room"...?

Again referring to the City of Brookings Comprehensive Land Use Plan on page 164...

"...there are large areas of open space in and around the City of Brookings. Two large state parks totalling 263 acres are located within the city limits. The Pacific Ocean provides 63,750,000 square miles of open space to the citizens of Brookings...very large areas within (417 acres) the Urban Growth Area are designated as open space. Because of environmental limitations to development these areas are well suited to this use. Open space in large ownership tracts that are used for timber management surround the City on all landward sides..."

Plus there are additional thousands of acres of state and national parks in the immediate and general area.

It is interesting to note under the sub-heading "Housing Element" on page 55 of the Comprehensive Land Use Plan, "...the development trend in Brookings is toward higher residential densities. As land prices and construction costs rise this trend can be expected to continue...most units are owner occupied. There are few units, if any, available for rent at any given time... Brookings will assure there is an affordable and adequate supply of housing for purchase and for rent to accommodate existing residents and anticipated population growth."

Under the statement of Policies under the Housing Element:

- #1. It is the policy of Brookings to ensure the availability of adequate numbers of housing units...and allow for flexibility of housing location, type and density.
- #5. Brookings will encourage the construction of more rental units as well as alternatives to conventional housing.
- #6. Brookings location on the Oregon Coast and its potential for continuing recreation and tourist oriented development, indicate that the city has opportunities for development of quality residential and recreational facilities with a more flexible design than has generally been true in the past.

For this reason, Brookings will encourage "...Planned Unit Development..."

Under subsection of the Housing Element - "STRATEGIES:"

- #1. "Brookings shall designate and maintain an adequate supply of land zoned for high...density residential development.
- #2. Brookings shall consider alternatives to minimize lot size and siting of structures such as cluster concepts, Planned Unit Development, percentage of land covered requirements, etc. etc..."

Under subsection - "Implementation Procedures:"

- #1. Brookings will attempt to provide a wide range of housing...by exercising zoning concepts that allow...a variety of housing types such as single-family dwellings, cluster housing...and condominiums..."
- #2. "Brookings shall develop innovative regulations for developments which allow for flexibility by designing Planned Development areas..."

On page 36 & 37 under OPEN SPACE & NATURAL RESOURCES: under the section "Strategies:"

- #1. a) Encourage clustering residential use in appropriate areas to preserve open space amenities.
- c) Encourage building designs that do not conflict with or dominate the scenic resources in order to preserve aesthetic values.
- d) Encourage site designs and construction methods that minimize physical disturbance of an area.
- e) Encourage use of natural materials in construction.
- f) Advocate uses compatible with the quality of the usual experience.

Item #2. & #4 "...the public need for the proposal...how the public will best be served...etc., etc.,..."

On page 14 of the Comprehensive Land Use Plan the number one problem under the issue of "HOUSING," states "...There is a general lack of available rental units in Brookings at any given time as well as a shortage of property designated for high density development..." And under the same issue "HOUSING" under subsection "Issues..."

- #1. How can the city encourage the development of additional multi family units...?
- #3. Should the city take a look at alternative forms of residential development such as planned unit development and permitting construction up to the property line?"

We sincerely believe items #2, #3, & #4 of Resolution #213 are answered very well by the above quotations from our own Comprehensive Plan.

Item #5 "Mistake in the original comprehensive plan, if any:"

We do not believe the Comprehensive Plan is in error...but as the plan so states itself the plan simply needs thoughtful expansion in order to satisfy our ever-changing life-styles, patterns, economic situations, personal values, etc., etc.

Item #6 "...Change in the character of the neighborhood, if any:"

There should be no significant adverse change in the character of the neighborhood...there would be no reason for change.

Item #7 "...Such other factors which relate to the public need for helpful, safe, and aesthetic surroundings and conditions..."

On page 18 of the City of Brookings Comprehensive Land Use Plan under the heading "GROWTH MANAGEMENT AND DENSITY," in part paragraph #2..."high land and construction costs are leading to denser development. The preference of many retired persons for small lots also contributes to the trend. Since unit dwellings on small lots provide privacy and space while minimizing property upkeep..."

Paragraph #3 (in part), "...The city proposes to encourage growth by providing land use densities...which will accomodate this growth..."

Paragraph #4 (in part), "...The City of Brookings recognizes that growth will occur and desires to provide land properly designated for that growth..."

On page 31 under the heading "URBANIZATION," paragraph #2 under the subheading "POLICIES," "... to encourage the development of existing buildable lands within the City prior to developing lands in the Urban Growth Area."

And in conclusion, Members of the Panel, interested citizens and others present...we wish to conclude our summary of items under burden of proof, as required under paragraph C, Resolution #213, with this statement duly signed by the proponents of this issue and thank each and everyone of you for your patience, your time, and your interest on this matter whether pro or con.

Don Peterson - Proponent

Dr. & Mrs. G. Joy - Proponent

Marshall B. Jones - Agent

BEFORE THE COMMON COUNCIL OF THE
CITY OF BROOKINGS

In the Matter of the Application of)
Dr. and Mrs. G. Joy/D. Peterson for) FINDINGS OF FACT AND
a Zone Change for R-L to R-H.) ORDER DENYING APPLICATION
File No. Z-81-1

NOW BEFORE the Common Council of the City of Brookings,
State of Oregon, at a regularly called meeting for a hearing on
an application for a change in zone on land within the City of
Brookings;

AND IT APPEARING TO THE BOARD:

1. That the parcels of land subject to this proceeding
are Tax Lots 8100, 8302 and a portion of 8310 lying between Del
Norte Lane and the West bank of the Chetco River.

2. That the existing uses within the district affected
by the requested zone change are single family residential except
for a few multiple dwelling units recently constructed by the
applicant following a zone change requested by the applicant.

3. That the character of the neighborhood adjoining
and surrounding the parcels subject to the requested zone change
were, at the time of the adoption of the Comprehensive Plan for
Brookings, primarily single family residential with open wooded
areas on the Westerly shore of the Chetco River. The physical
characteristics and conditions now existing in the neighborhood
are substantially the same.

4. That within the City of Brookings there exists significant parcels of land zoned R-H.

5. The area between Del Norte Lane and the Chetco River is generally an open space that generally has never been developed by man.

6. The area between Del Norte Lane and the Chetco River that is immediately adjacent to the Chetco River is coastal shoreland.

7. That the Brookings Planning Commission has held two hearings on this matter and the Common Council has held one previous hearing on this matter and that all evidence received at all previous hearings is admitted into evidence for purposes of this hearing and that evidence consisting of the Brookings Comprehensive Plan map adopted in 1970 and the Brookings Comprehensive Plan under compilation is admitted in evidence and made a part of the record of this proceeding.

8. Motor vehicle traffic will be substantially increased on Del Norte Lane, a narrow County lane.

Based on the foregoing and based further on the lack of evidence supportive of the application for the zone change, the Common Council finds that:

1. The requested change in zone from R-L to R-H is not in conformance with the existing Comprehensive Plan, (the 1970 Plan) (the comprehensive plan for Brookings now under compilation inapplicable to this matter and further, no zoning ordinance has been enacted to implement the same).

2. The existing uses in the area affected by the requested zone change are single family residential and such uses have remained substantially unchanged since the enactment of the 1970 Comprehensive Plan and the existing zoning ordinance No. 216 as amended and that a zone change as requested would change such character.

3. The proponent of the zone change has failed to prove the unavailability of R-H zoned land within the City of Brookings for the development of high density housing.

4. The area between Del Norte Lane and the Chetco River is an open space and is partially coastal shoreland within the Chetco River estuary and as such the same can best be conserved and protected and priority uses thereof promoted, within the meaning and intent of LCDC goals and guidelines 17 and 5, if high density residential housing is not permitted therein.

5. That the proponent of the zone change has failed to prove public need for the zone change and likewise has failed to prove an economic benefit to the community resulting from high density housing on the subject area (economic benefit from money expended on construction is short term and not the "economic benefit" or "advantage" to the community of Brookings required to be proven).

IT IS HEREBY ORDERED that the application of Dr. and Mrs. G. Joy/D. Petersen for a change in zone of parcels within the City of Brookings, described as Tax Lots 8100, 8302 and 8310,

from residential low density (R-L) to residential high density
(R-H) be and the same is hereby denied.

DATED this _____ day of September, 1981.

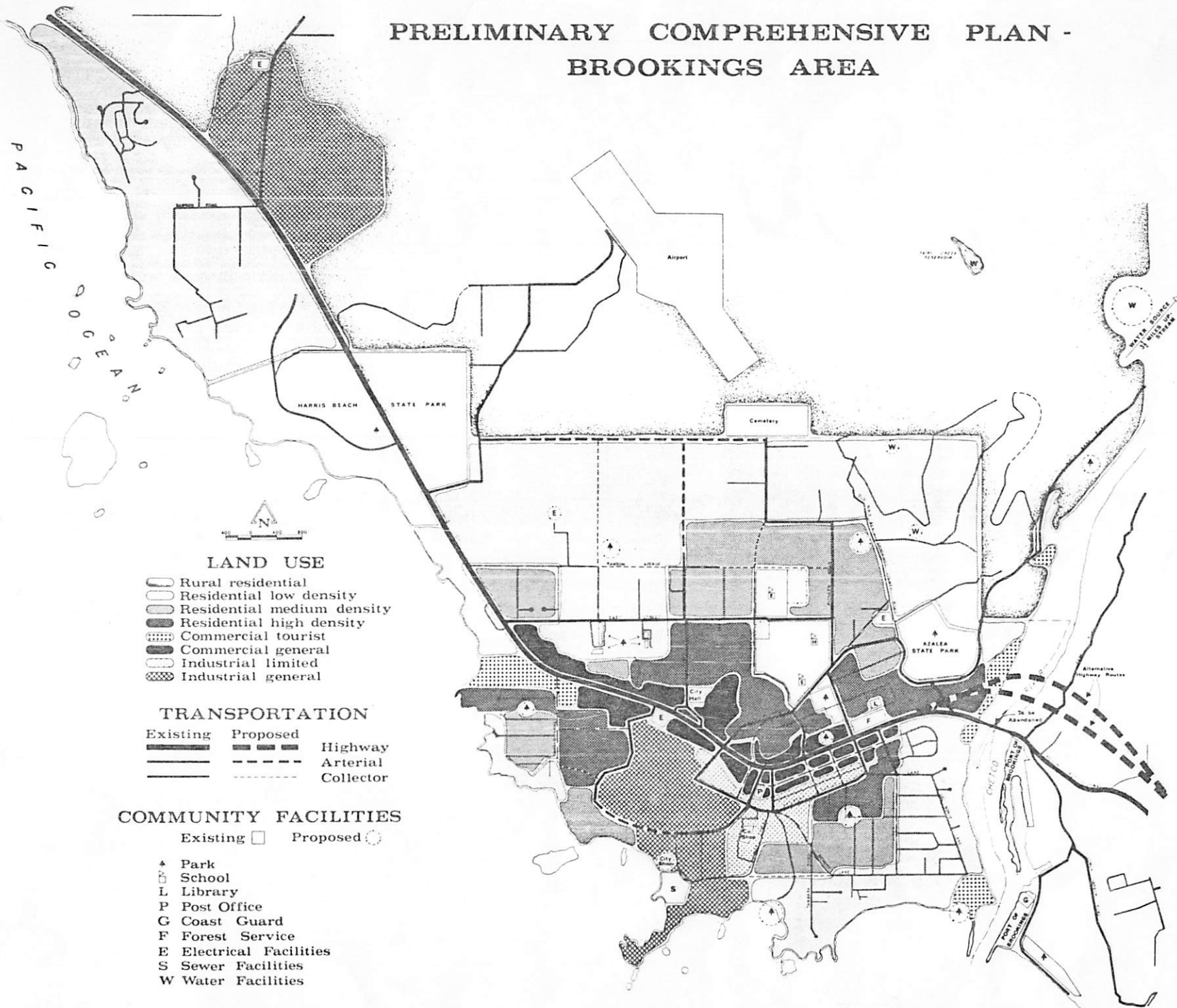
THE COMMON COUNCIL OF THE
CITY OF BROOKINGS

By: _____
Mayor

By: _____
City Recorder

PRELIMINARY COMPREHENSIVE PLAN - BROOKINGS AREA

Opponent Exhibit "B"



LAND USE

- Rural residential
- Residential low density
- Residential medium density
- Residential high density
- Commercial tourist
- Commercial general
- Industrial limited
- Industrial general

TRANSPORTATION

- | | | |
|-----------------|-----------------|-----------|
| Existing | Proposed | |
| | | Highway |
| | | Arterial |
| | | Collector |

COMMUNITY FACILITIES

- Existing Proposed
- * Park
 - School
 - L Library
 - P Post Office
 - G Coast Guard
 - F Forest Service
 - E Electrical Facilities
 - S Sewer Facilities
 - W Water Facilities

Mr. Mayor, Councilmen, interested citizens:

Thank you for this opportunity to provide new testimony in opposition to rezone request File # Z-81-1 in the City of Brookings.

I will address 3 areas that are of serious concern to the undersigned residents of Brookings:

1. That this zone change is not in conformance with the Comprehensive Land Use Plan for the City of Brookings.
2. That there is no public need for this change.
3. That the public need is adversely served by this change.

To begin, let's accurately define the type of land upon which applicant for this zone change wants to erect high density housing structures. According to the Comprehensive Land Use Plan¹ of the City of Brookings, and hereafter I will refer to it as 'the plan', this property, which lies between the bluff line and the Chetco River, is part of the Chetco River estuary and, as such, is called shorelands. Gentlemen, the plan² informs us that shorelands require special protection for reasons of great importance to the people of Brookings. I think that it is imperative to keep this in mind as you approach the time to decide on this issue.

Now, to prove non conformance with the plan, let me quote from the Resource Management section². "Massive alteration of the shrub and forest area on the side of the bluff could cause erosion which would result in further shoaling within the river as well as degradation of the water supply. For this reason the city will protect this riparian vegetation." Let me add that the U.S. Army Corps of Engineers, Portland District³ has also issued this warning. The results of misuse of this area could have a debilitating effect on both commercial and recreational use of the Port of Brookings. Common sense tells us that a project of this size will replace massive sections of shrub and forest.

Also, in the Coastal Element⁴ of the plan, it is stated that development actions which would potentially alter the estuarine ecosystem must be preceded by a clear presentation of the impact of the proposed alteration, and a demonstration of the public's need and gain which warrant such modification or loss. Obviously, placement of high density onto steeply sloping shorelands, greater than 30% in this case, is fraught with potential damage to the Chetco estuary. Have this presentation and demonstration been made? If not, then conformity to a basic requirement of the plan has been ignored. 22

But there is other non conformance with the plan. Gentlemen, let me continue.

- Policy #3 of the Housing Element⁵ states that high density development should be in close proximity to the downtown area and that low density should be used for the outer

portions of the city. With this site located on the SE rim of the City, non conformance of an essential policy is obvious.

- Under Growth Management and Density⁶ the plan directs the city to prevent an incompatible mixture of zoning which can cause congestion, blight, and a general reduction of property values. We heartily endorse this logic and call to your attention that the placement of high density development in the middle of a large area of almost entirely low density zoning does not conform with the plan.
- Under Open Space Land Use Policy⁷ the plan states that scenic undeveloped areas, such as this site, are important to the character of the city and that the city, as it grows, will consider establishing additional parks. The requested zone change, if granted, will deprive the people of the City of Brookings the opportunity to enjoy these magnificent lands as either parks or open spaces and will lock them in hands of the few who can afford the very high prices of the projected development. Another example of non conformance with the plan.

As you know, the north shore of the Chetco River from the 101 bridge to the ocean is, except for one cancer, one of the outstanding visual experiences on the South Oregon coast. It is why many of us loved Brookings at first sight. And in the Visual Resources section⁸ of the plan, we recognize that the beauty of our area has both economic and aesthetic values and that the economic values are intimately tied to the aesthetic. This beauty is why people choose to come to live here and why people choose to stay here. We say that our community profits from the influx of tourists attracted to this beauty. How many, I wonder, see Brookings for the first time from the Port area. And we state unequivocally that property values are related to the quality of the visual experience. To replace the natural beauty of the north bank with enormous manmade structures cannot be in conformance with this section of the plan.

Elsewhere in the plan under Prospects⁹, inevitability of growth is admitted but the impact to scenic beauty and other resources must be kept at minimal levels as growth occurs. Then, in the Open Space section¹⁰ we read Brookings will endeavor to protect its scenic and natural resources. And, again, in Strategies¹¹ of the same section, Brookings will advocate uses compatible with the visual experience. Once again, gentlemen, we insist that replacing our treasured natural beauty with the wonders of man is not in conformance with these three parts of the plan.

In the Recreation section,¹² our planners wisely recognize as a vital resource the special ambience of Brookings - that small town atmosphere with the sense of isolation. How, then, will this peaceful and quiet section of our town fare under the flood of cars and people when this and adjacent developments reach maxim density. Again, we say, non conformance.

In the Residential Land Use Policy section¹³ our planners tell us RH zoning is to provide areas suitable for high density, multi-unit style of uses. Later in the Environmental Suitability for Urbanization section¹⁴ they quote research that has determined that the cost of construction doubles when the slope reaches 18% and that the cost continues to rise sharply for each degree of slope over 18%. Therefore, a building density range is recommended to be used to compensate for these constraints. It is our opinion that the slope for the parcel in question, steeper²⁴ than 30%, would qualify for the marginal/unsuitable category and a recommended density of 0.35 units per acre. As we have mentioned before, this property is unsuitable for RH zoning because of the incompatible mix of zones, because of the need to preserve scenic areas, to avoid potential damage to our Chetco River estuary, because of its distance from the downtown area, and to preserve the special ambience of our town. For these reasons of unsuitability, this change is not in conformance with the plan.

Secondly, is there a public need for this proposed change? Our answer is NO, we find none. Our obligation then must be to weigh the validity of applicant's claim that there is public need. He uses very few words in support of his claim, perhaps that tells us something: absent convincing argument, the less said the better.

In responding to this question on his application¹⁵ for zone change, he says "...lack of this character and nature of housing within city limits of Brookings ... refer to GOAL #10 - HOUSING LCDC under 'BASIC PROPOSAL', this application ...". Our response to the first part is that merely saying there is a lack of anything is not the same as proving there is a lack, and proof is exactly what is required on this document by law!¹⁶ We urge you to read with critical care the applicant's response to Goal #10; it is appended to the application on a separate sheet. We find nothing remotely resembling proof of public need. But don't take our word for it: read it and you'll see how applicant's response waltzes around this gravely serious question.

On page 4 of the applicant's response to Brookings Resolution 213 Burden of Proof¹⁸ requirements, applicant answers items 2 (the public need question) plus items 3 and 4 with just 12 lines. Incredulously, 5 of those 12 lines are interrogative and 2 of the remaining 7 self-congratulate. Only one attempt at proof is made, yet even this solitary offering is arguable. Applicant quotes from the Housing section of the plan in an attempt to prove a general lack of available rental units in Brookings as well as a shortage of RH zoned property. This statement is highly subjective and though it is repeated in the plan, it is not supported by factual data. In fact, the first part of the statement is repudiated by data in two separate parts of the plan. One set of data¹⁹ proves that Brookings has an adequate overall vacancy rate and another set of data²⁰ proves that the rental vacancy rate of Multi-Family Units is higher by almost 2% than the rate which provides the "renter with an adequate stock from which to choose". If, in your judgment, these data do not refute applicant's statement about the lack of rental units, they must at the very least signal that the statement needs corroborative evidence before it can be received as proof. The alleged shortage of RH property does not in any way demonstrate, let alone prove, a public need for this proposed zone change. Especially in light of the fact that applicant owns unimproved RH zoned land elsewhere in Brookings, land that, in

the words of the Brookings Planning Commission Chairman, is "also a beautiful piece of property".²³

We conclude that the applicant has submitted not one shred of factual evidence in proof of public need for the requested change. We insist that this very absence of proof irrefutably supports our claim that there is complete absence of public need.

As to the third question, is the public need best met by changing the zone on this property. We emphatically say NO and will prove that this change will place an economic burden on the people of Brookings.

Let's look first at applicant's response to the question we address. On his application for change, he answers "...at present we (Brookings) have a market void in regards to this nature of housing. Water-front properties, river, lake, or ocean, are presently beyond the means of the majority of our people".

We argue neither pro or con but point out that the first statement does not address the central question of public benefit. Applicant's concern about 'market void' is totally non-responsive to a matter of critical community importance.

In his second sentence applicant at last becomes specific. Here we have area for agreement and we support his contention²⁴ by saying those property costs are reflected in the very high prices²⁴ applicant is presently charging for housing units on his riverfront property adjacent to this parcel. We think that applicant proves conclusively that this proposed change will penalize the people of Brookings because the resultant housing will be beyond the financial means of the majority of them.

We previously pointed out that in applicant's response to the Resolution 213 Burden of Proof requirements, the few words used to answer the question of best meeting the public's need are the same few words¹⁸ used to answer two other important questions. We have shown the inadequacy of applicant's answer to the previous question and cite the same arguments in demonstration of its inadequacy as an answer to this question.

Let's discuss briefly the economic costs the people of Brookings will be expected to bear should this proposed zone change be granted.

Recall that the plan⁸ recognizes that economic values are tied to our visual resources and that the natural beauty of our area has a significant bearing on property values. The conclusion logically follows that by replacing the natural beauty of the Chetco shorelands with building after building after building, the economic burden our town will have to carry will be significant.

To change the zoning on this property will reinforce the public's conception of zoning instability²⁴ in this appropriately and long-time RL zoned area. Realtors tell us this instability has a depressant effect on property values. Another economic burden for the people of Brookings.

The cost of environmental damage to the Chetco estuary as a result of development sanctioned by the sought zone change would be borne by both commercial and recreational users of the estuary, as well as those who provide users with supplies and services. Beyond the Army Corps of Engineers warnings³ of shoaling and water degradation, we are concerned about damage from increased water runoff, from irrigation, from vehicle waste drippings, and from vehicle washing on site.

And, most importantly, we are concerned about the costs of increased city services that will be required if this project goes to the maximum development sought by applicant. Our police and fire departments will have to assure public safety in an area of flammable construction, served by narrow access lanes, on steep slopes, bordered by a sometimes turbulent river. The problems within our sewer system²¹ are well known. Streets in the area²² are merely adequate for the area's historical light traffic volumes. Improvement districts are sure to follow, and these costs will be suffered by residents of the area, many of whom, as you know, live on fixed incomes.

To summarize then, we believe we have shown adequate proof that this application for change is not in conformance with the Comprehensive Land Use Plan of Brookings; that the application does not contain one iota of the factual evidence required by law in regards to the questions 'is there a public need for the change' and 'is the public need best met by the change'. Further, by the evidence we have presented, we believe that we have proven that there will be significant economic, social and environmental costs borne by the people of the City of Brookings should this sought change be approved. Though we accept the inevitability of growth in our city, we are not prepared to pay the exorbitant price of inappropriate, short-sighted, and damaging changes to our community as exemplified by this request for zone change.

In closing, we want to add just a few comments about the 8/16/81 Planning Commission hearing on this zone change. We believe that that hearing, which was held at your request, was not a quasi-judicial hearing. The chairman set down two rulings governing testimony which placed a burden on the opponents of the change and, we firmly believe, prejudiced our case. These rulings were not included in the minutes of the meeting.

[REDACTED]

Thank you for hearing our testimony. We believe both sides have had the opportunity to present their cases. We strongly contend that the applicant's arguments utterly fail to meet the burden of proof as required under law and urge you to reject that application and to do so tonight.

Sources of Supporting Testimony

Unless otherwise identified, all references are to the City of Brookings Comprehensive Land Use Plan.

1. Pages 170, 172
2. Page 48
3. Final Environmental Impact Statement Chetco, Coquille, and Rogue Estuaries, US Army Corps of Engineers, Portland District, December, 1975, Pages 4 - 22, 23
4. Pages 49, 50 #1
5. Page 55 #3
6. Page 18
7. Page 22
8. Page 163
9. Pages 9,10
10. Page 36
11. Page 37 f.
12. Page 222
13. page 20 d.
14. Page 249
15. Application for Zone Change, City of Brookings, File # Z-81-1, Page 4, B.
16. Application for Zone Change, City of Brookings, File # Z-81-1, Page 4,6.
17. Application for Zone Change, City of Brookings, File # Z-81-1, Page 4, 6, Appended.
18. Application for Zone Change, City of Brookings, File # Z-81-1, five pages appended.
19. Page 236, Occupancy Rates
20. Page 189 Table 30
21. Page 253 Sewage Systems
22. Page 6 Street and Road Conditions
23. Tape recording of meeting of Brookings Planning Commission, 6/18/81
24. Informal survey of Realty Brokers and Agents of the Brookings area.

We the undersigned acknowledge that this testimony has been prepared by a group of our friends and neighbors so that we may collectively present to the City of Brookings many of the underlying reasons for our opposition to the proposed zone change of property on Map # 41-13-5 CD, Tax Lots 8100 & 8302 & 8310 in the City of Brookings.

We have read this testimony, agree with its findings and affix our signatures to attest to this fact. Dated 8 September, 1981.

William H. Godsey

Barbara Packer

Gonadine Seber

Nelson Amie

Clarence M. Seber

Raymond K. Bellin

Winnifred Fitzgerald

Mary Della Gray

Walter R. Wollenbecker

Ruth Wollenbecker

and
Lynn

Brother Humphreys

Anna P. May

Robert Corrigan

We the undersigned acknowledge that this testimony has been prepared by a group of our friends and neighbors so that we may collectively present to the City of Brookings many of the underlying reasons for our opposition to the proposed zone change of property on Map # 41-13-5 CD, Tax Lots 8100 & 8302 & 8310 in the City of Brookings.

We have read this testimony, agree with its findings and affix our signatures to attest to this fact. Dated 8 September, 1981.

~~Paul Jenkins~~
Dorothy Jenkins

Mr. and Mrs. O. C. Wood

L. J. Lessard

Grace Lessard

Eric O. Ask

Mr. + Mrs. John R. Haskinson

Joan Heavry

Fred C. Hummel

Barbara C. Hummel

Don Danner

Hyllis Farmer



Carol Combs

To: Members of the Panel...
All Interested Citizens...

Response

Pursuant to that application for rezone known as the Peterson/Joy Rezone Proposal for those properties located off Del Norte Lane (North Bank-Chetco River) noted on the attached plat....please be informed of the following:

In reference to Resolution No. 213, Section 4 "Burden of Proof," paragraph B, items #1 - #7...

Item #1..."conformance with the comprehensive plan and when appropriate, city zoning ordinance..."

We believe our rezone proposal application is in conformance with the City of Brookings Comprehensive Land Use Plan. The subject property at issue is presently zoned for residential use (refer to City of Brookings Land Use Plan page 24). On page 241 of the Comprehensive Plan the map titled "Generalized land-use" (CCCOG Housing Study, 1976) also designates the subject property as "residential." On page 252 of the Comprehensive Plan the map titled "Urbanization Suitability" designates the subject property as "suitable" for residential use.

At issue...and therefore the very purpose of this meeting is not a request for change in the character of the allowed use of the subject property, but rather one of density.

As each of you are aware the subject property is presently zoned "R", residential. Our request is still for residential...but of a higher density-"R-H."

As previously stated, we believe our request is in conformance with the City of Brookings Comprehensive Land Use Plan and we base this request on the following Comprehensive Plan's goals, objectives, policies and strategies:

The subject property, although presently zoned residential, is now sitting idle-vacant, and has been since day one. To our knowledge no one has ever been even remotely interested in the use of this property for residential use or any other purpose.

As your Panel is aware we were the very first developers to visualize the idle lands of the North Bank of the Chetco River appropriate for a new concept of residential use in the City of Brookings. As we state, this idea is new only for Brookings...the concept in itself is as old as man himself. The concept is simply "cluster dwellings"...when first developed (who knows when?) this housing concept provided safety and security from the dangers of those days...man or beast.

Over the thousands or tens of thousands of years the very basic reasoning for "cluster dwellings" has changed little, if any. However over the past few centuries there was one significant change or development by man that caused the basic reasoning for "cluster dwellings" to become less important...that development was gunpowder! No longer did people have to cluster together for protection...and then also, the West was opened with its countless millions of acres for the taking...everyone could provide for their own protection and build a dwelling located in the middle of vast acreage.

B

But times have changed...and continue to change. We now have police protection fire protection...we have city streets, city water, sewage disposal, etc.etc. And once again people gather close together to dwell in cities and towns... although today the reasons are different (employment, hospitals, schools, etc.). The end result is pretty much the same.

Today new problems present themselves to local government. Our vast untouched acreage is gone...not disappeared but gone for the taking! We have tens of millions of more people competing for the same goods and things. Therefore as each of you are aware prices of everything are skyrocketing completely out of sight.

If our attitude as related to housing (as with many other things) is not tempered or slightly changed...where will your children live? As each of us reach our twilight years where will we live?

Property, single family residential building lots on the north bank of the Chetco River sell (or are for sale) anywhere from \$70,000 to \$125,000 each, when they are available. Who in this room can afford such prices...much less our children?

Those of you who can...one question: You have the money to buy at any price, and build to your hearts pleasure...but do you have the right to be the sole benefactor of the riverfront environment?

The basic concept of the Smuggler's Cove idea was to allow a greater number of people to enjoy the Chetco Harbor Boat Basin environment. The adverse impact was not and will never be severe. As stated previously, we did not compete for the property - no one ever wanted it...it had never been used. The city streets were in...the water system existed (we improved it). The city sewage system was there as were power telephone, etc. Referring to the City of Brookings Comprehensive Land Use Plan under "Visual Resources," pages 163-164...

"...The visual resources of the south coast are varied and outstanding. Much of the attractiveness of the area derives from its association with the Pacific. Shorelines, the meeting place of land and sea, and areas of dynamic beauty...further usual interest is added by the rivers and streams themselves; by the picturesque harbor; by the abundance of wild-life, including shorebirds and migrating waterfowl;...by the many native ornamental shrubs...by the myrtlewood groves and by the wind-pruned trees and shrubs on the bluffs overlooking the sea.

where is the close quote?

This resource has both aesthetic and economic values. The visual beauty of the area is one of the main reasons people choose to live and continue to live here. The economic values are intimately tied to the aesthetic values. Brookings profits from the influx of individuals attracted to the south coast. Property values are also related to the quality of the visual experience.

Plan reads

TOURISTS

Preserving aesthetic values could be done by encouraging building designs that do not conflict with or dominate the scenery; by encouraging site designs and construction methods that minimize physical disturbance of an area; by encouraging use of natural materials in construction; and by encouraging uses consonant with the quality of the visual experience.

Areas of exceptional beauty that merit special attention in planning and building and site design evaluations include the bluffs...overlooking the estuary...

Granted...it seems the aforementioned visual experience might possibly justify our request for higher residential density adjacent to the Smugglers Cove project...

But what effect would a higher density factor have on our coveted "open space" or simply "elbow room"...?

Again referring to the City of Brookings Comprehensive Land Use Plan on page 164...

"...there are large areas of open space in and around the City of Brookings. Two large state parks totalling 263 acres are located within the city limits. The Pacific Ocean provides 63,750,000 square miles of open space to the citizens of Brookings...very large areas within (417 acres) the Urban Growth Area are designated as open space. Because of environmental limitations to development these areas are well suited to this use. Open space in large ownership tracts that are used for timber management surround the City on all landward sides..."

Plus there are additional thousands of acres of state and national parks in the immediate and general area.

It is interesting to note under the sub-heading "Housing Element" on page 55 of the Comprehensive Land Use Plan, "...the development trend in Brookings is toward higher residential densities. As land prices and construction costs rise this trend can be expected to continue...most units are owner occupied.

There are few units, if any, available for rent at any given time.. Brookings will assure there is an affordable and adequate supply of housing for purchase and for rent to accommodate existing residents and anticipated population growth."

75/76 data refuted by 1979 census

Under the statement of Policies under the Housing Element:

- #1. It is the policy of Brookings to ensure the availability of adequate numbers of housing units...and allow for flexibility of housing location, type and density.
- #5. Brookings will encourage the construction of more rental units as well as alternatives to conventional housing.
- #6. Brookings location on the Oregon Coast and its potential for continuing recreation and tourist oriented development, indicate that the city has opportunities for development of quality residential and recreational facilities with a more flexible design than has generally been true in the past.

For this reason, Brookings will encourage "...Planned Unit Development..."

Under subsection of the Housing Element - "STRATEGIES:"

- #1. "Brookings shall designate and maintain an adequate supply of land zoned for high...density residential development.
- #2. Brookings shall consider alternatives to minimize lot size and siting of structures such as cluster concepts, Planned Unit Development, percentage of land covered requirements, etc. etc..."

Under subsection - "Implementation Procedures:"

- #1. Brookings will attempt to provide a wide range of housing...by exercising zoning concepts that allow...a variety of housing types such as single-family dwellings, cluster housing...and condominiums..."
- #2. "Brookings shall develop innovative regulations for developments which allow for flexibility by designing Planned Development areas..."

On page 36 & 37 under OPEN SPACE & NATURAL RESOURCES: under the section "Strategies:"

- #1. a) Encourage clustering residential use in appropriate areas to preserve open space amenities.
- c) Encourage building designs that do not conflict with or dominate the scenic resources in order to preserve aesthetic values.
- d) Encourage site designs and construction methods that minimize physical disturbance of an area.
- e) Encourage use of natural materials in construction.
- f) Advocate uses compatible with the quality of the usual experience.

Item #2. & #4 "...the public need for the proposal...how the public will best be served...etc., etc.,..." *what is etc?*

On page 14 of the Comprehensive Land Use Plan the number one problem under the issue of "HOUSING," states "...There is a general lack of available rental units in Brookings at any given time as well as a shortage of property designated for high density development..." And under the same issue "HOUSING" under subsection "Issues..."

REFUTED BY 1979 CENSUS

WRONG SEE ZONE MAP

- #1. How can the city encourage the development of additional multi family units...?
- #3. Should the city take a look at alternative forms of residential development such as planned unit development and permitting construction up to the property line?"

We sincerely believe items #2, #3, & #4 of Resolution #213 are answered very well by the above quotations from our own Comprehensive Plan. *WHAT DID HE PROVE?*

Item #5 "Mistake in the original comprehensive plan, if any:"

We do not believe the Comprehensive Plan is in error...but as the plan so states itself the plan simply needs thoughtful expansion in order to satisfy our ever changing life-styles, patterns, economic situations, personal values, etc., etc.

Item #6 "...Change in the character of the neighborhood, if any:"

There should be no significant adverse change in the character of the neighborhood...there would be no reason for change.

UPPROVEN

Item #7 "...Such other factors which relate to the public need for helpful, safe, and aesthetic surroundings and conditions..."

On page 18 of the City of Brookings Comprehensive Land Use Plan under the heading "GROWTH MANAGEMENT AND DENSITY," in part paragraph #2..."high land and construction costs are leading to denser development. The preference of many retired persons for small lots also contributes to the trend. Since unit dwellings on small lots provide privacy and space while minimizing property upkeep..."

(17)

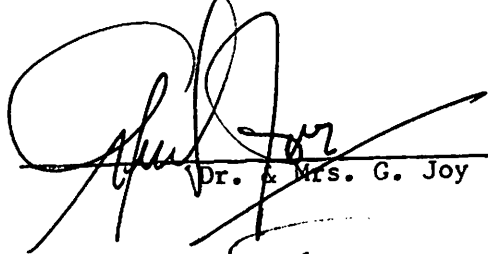
Paragraph #3 (in part), "...The city proposes to encourage growth by providing land use densities...which will accomodate this growth..."

Paragraph #4 (in part), "...The City of Brookings recognizes that growth will occur and desires to provide land properly designated for that growth..."

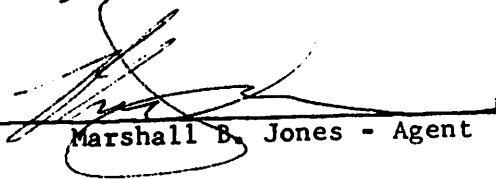
On page 31 under the heading "URBANIZATION," paragraph #2 under the subheading "POLICIES," "... to encourage the development of existing buildable lands within the City prior to developing lands in the Urban Growth Area."

And in conclusion, Members of the Panel, interested citizens and others present...we wish to conclude our summary of items under burden of proof, as required under paragraph C, Resolution #213, with this statement duly signed by the proponents of this issue and thank each and everyone of you for your patience, your time, and your interest on this matter whether pro or con.

Don Peterson - Proponent



Dr. & Mrs. G. Joy - Proponent



Marshall B. Jones - Agent

Opponent Exhibit "F"

Mr. Mayor, Councilmen, Interested Citizens:

In the Matter of the Application of Dr. and Mrs. G. Joy/
D. Peterson for a Zone Change for R-L to R-H.

This Application is not in conformance with the Statewide Planning Goals and Guidelines of the Oregon Land Conservation And Development Commission. I refer specifically to Goals #5, 6, 7, 9, 10, 14, 16, and 17 and will cite nonconformance with each goal separately.

Goal # 5 To conserve open space and protect natural and scenic resources. Programs shall be provided that will:
2) protect scenic and historic areas and natural resources for future generations, and 3) promote healthy and visually attractive environments in harmony with the natural landscape character.

And under the inventory of resources to be preserved we find:

- e. Ecologically.....significant natural areas...;
- f. Outstanding scenic views and sites;

This property is ecologically significant because of its physical¹ relationship with the Chetco River estuary and floodway. That it is an outstanding scenic site is proven time and again by the abundance of photographs of the west bank of the Chetco River that are in continuing circulation², or simply by speaking with any tourist as he or she looks across the river from the Port of Brookings toward that beautiful wooded bank. Removing the natural shrub and forest cover³ and replacing it with a succession of dreary buildings would both jeopardize the ecological safety of the estuary and would take from the people of Brookings as well as our many thousands of visitors that first

impression of scenic beauty we have when crossing the Chetco River bridge.

To destroy this natural beauty so that a few people may realize a profit is not in conformance with this goal.

Goal # 6 To maintain and improve the quality of the air, water and land resources of the state.

The key words in the next long paragraph of Goal # 6 as it relates to this requested zone change are: All waste discharges from future development when combined with waste discharges from existing development (ie, cumulative impact is addressed) and then: such discharges shall not 2) degrade such resources (river basins).

The U.S. Army Corps of Engineers warns that massive alteration of the shrub and forest on the property in question could cause erosion which would result in further shoaling within the river and degrade the water supply.³ We believe the Corps of Engineers is as expert and as impartial a witness as will be heard in this case, but we cite other concerns.

Presently, the admitted planned maximum development of this property and the adjacent property is for 34 dwelling units.⁴ What will be the impact from the removal of protective vegetation necessary to make room for 34 units; what will the increased water runoff generated by roof tops and by the paved and smoothed areas needed to accomodate 50-75 vehicles wash into the river; and what of the impact of the waste drippings and spillage of all those vehicles on the Chetco estuary.

Applicant responds to Goal # 6 with just one lonely sentence stating that the "proposed project will have absolutely no adverse effect whatsoever".⁵ We consider this to be a shallow response to a most serious issue.

Goal # 7 To protect life and property from natural disasters and hazards.

Placement of high density dwellings on steeply sloping river-banks part of which is the floodway of a coastal river is an operation any prudent person, were they forced to do so, would approach with utmost caution and consideration of the safeguards needed to protect, at the very least, human life.

Applicant's response to Goal # 7 is to philosophize that "perhaps there is no area of total safety", and then adds only one solitary statement that might charitably be considered a serious response: "In all cases any permanent facilities would be established above the flood level, etc."⁵ The inquisitive mind wonders what non-permanent facilities would be established in the floodway that might lure the foolhardy to hazardous areas to attempt to protect their property.

What safeguards have been planned to protect the very young and the elderly who will have to negotiate steep and slippery slopes during violent winter storms a few yards above a raging river.

We believe applicant's response to Goal # 7 shows a cavalier attitude toward the very real natural hazards that exist on the property of concern.

Goal # 9 To diversify and improve the economy of the state.

A timely and worthy goal. Applicant immediately dangles the carrots of jobs and tax ratables, then unabashedly offers the promise of "immediate generation of construction capital (all materials purchased locally)".

This response, we believe, epitomizes the concern of the Oregon Supreme Court when they wrote, in the landmark Fasano ruling,

of "the dangers of the almost irresistible pressures that can be asserted by private economic interests on local government." Nevertheless, economic benefit from money expended on construction is short term and not the "economic benefit" or "advantage" to the community of Brookings required to be proven.

We insist there are economic burdens that will be borne by the residents of this community, should this request be approved, that suggest that, at best, we will have a lopsided tradeoff of benefits vs costs which will highly favor the applicant. We list these costs as:

- 1) Shrinkage of tourist dollars⁶ after the natural beauty of the Chetco River bank is replaced by a succession of dreary buildings sitting on barren land.
- 2) Depressed property values⁶ in the local area due to the public perception of zoning instability in this appropriately and long time RL zoned area.⁹
- 3) Burden assumed by homeowners in this area when attempting to sell their property.⁶ An already shrunken market is further reduced by the withdrawal of that number of people who would not consider living next to high density development.
- 4) The cost of any environmental damage to the Chetco River estuary. The sources of this damage have been identified in our response to Goal # 6.
- 5) The costs of increased city services that will be required when this and the adjacent project go to maximum development sought by the applicant. These include: the costs to assure public safety in an area of flammable construction served by narrow access lanes, on steep slopes bordered by a sometime turbulent river; and the costs of improvement districts needed to address the problems of increased sewage⁷ and increased vehicular traffic.⁸

Goal # 10 To provide for the housing needs of the citizens of the state.

The key words in this goal are 'buildable lands', indeed they are the only kind considered, and are defined as: "lands in urban and urbanizable areas that are suitable, available, and necessary for residential use".

We would have expected applicant to attempt to justify why lands with slopes far greater than 30%¹⁰ and bordering on an estuary are buildable. We might also have expected applicant to prove how such uncommon land was necessary for high density residential use. He did neither.

What he did do was to respond to Goal # 10 by parroting the very words of Goal # 10 itself!

The fact that applicant chose not to respond to this goal will not hinder our response; we do question both suitability and necessity of this property for high density use.

In our response to Goals #5, 6, & 7 we identified the unique qualities of the property, its environmental sensitivity, and its relationship to a hazardous area.

There is another economic reason for unsuitability: the severely increased building costs¹¹ incurred when building on steep slopes. Applicant estimates slope at 30%;¹⁰ other less optimistic estimates range from 45% to 60%.¹⁰

As to necessity, there is adequate unimproved buildable land¹² available in the city already zoned RH, enough to take far greater development of the type and character applicant proposes. The applicant himself owns a choice piece of such property elsewhere in the city.¹³

Lacking proof of suitability and necessity for residential high

density use, we find the property of concern not to be 'buildable land' for such use.

Goal # 14 To provide for an orderly and efficient transition from rural to urban land use.

Under ordinary circumstances we would mount no argument with regards to this property being "urbanizable" as it lies entirely within the boundaries of an urban area, the City of Brookings. Unfortunately the issue is clouded by a very small map in the Brookings Comprehensive Land Use Plan under development which shows the river banks and coastal bluffs to be as equally suitable for urbanization as the property adjacent to Chetco Avenue (US 101). Informal conversations with professional planners from CCOG reveal this map is "too broad in scope", but this is what is printed in the plan.

Nevertheless, applicant strangely justifies his request for change⁵ "principally, on the basis and findings of LCDC GOAL # 14: URBANIZATION". That we do not understand applicant's logic in homing on Goal # 14 is of no consequence; that we find his supporting arguments to be without merit is more meaningful.

Applicant claims "need for housing is without question"⁵, an unsupported statement which is refuted by data from the 1979 special census which showed Brookings to have an adequate overall vacancy rate¹⁴ and a higher than adequate rate for multi-family units.¹⁵ A casual perusal of the local weekly newspaper classified ad section,¹⁶ and conversations with realtors⁶ also provide refutation of applicant's claim.

Applicant next would have us believe his "project would not require any new or additional public services or facilities"⁵ and "there would be no adverse social consequences, adverse economic implications, nor significant energy demands".⁵

We have identified the need for new or additional public services or facilities as well as the adverse economic impacts

in our response to Goal # 9. The social consequences¹⁷ are the familiar ones that result from an incompatible mixture of zoning: cynicism, followed by lack of interest in maintaining one's property, followed by blight. The elderly and retired people who reside in the area of concern may be unable to adjust to the change from a bucolic neighborhood to one of the hustle and bustle of destination oriented travellers shuttling out and back from their riverbank sanctuary.

Goal # 16 To recognize and protect the unique environmental, economic and social values of each estuary, etc.

Applicant's response to Goal # 16 is "N/A" (not applicable).

This seems a curious way to respond since the property in question borders on the west bank of the Chetco River.¹² The lower section of that property is part of the estuary proper; the upper section slopes steeply toward it.¹⁸

We add that Priority 1 of Goal # 16 calls for "uses which maintain the integrity of the estuarine ecosystem"; and Priority 4 permits only those "non-dependent, non-related uses which do not alter, reduce, or degrade the estuarine resources and values".

We have identified the potential danger to the integrity of the estuary in our responses to Goals # 5 & 6. We do not believe this proposed development can ever approach planned maximums⁴ without necessitating physical change of the riverbank, change which would be fraught with potential damage to the Chetco River estuary.

Goal # 17 To conserve, protect, where appropriate develop and where appropriate restore the resources and benefits of all coastal shorelands, etc. Identification--- Land contiguous with estuaries shall be identified as coastal shorelands.

Applicant's response to Goal # 17 is, again, "N/A" (not applicable).

The property in question borders on the west bank of the Chetco River.¹² The upper section of the property is contiguous with the Chetco River estuary and as such is identified as coastal shorelands.

We add that Priority 1 of Goal #17 in addressing the overall use of shorelands is to "Promote uses which maintain the integrity of estuaries and coastal waters"; and Priority 6 is to "Permit non-dependent, non-related uses which cause a permanent or long term change in the features of coastal shorelands only upon a demonstration of public need".

We have identified the potential damage to the integrity of the estuary in our responses to Goals # 5 & 6. Nowhere in applicant's application is there any proof of a demonstration of public need for this zone change.

In conclusion, I'd like to quote just one sentence from Resolution 213, Section 4, Paragraph A: "The more drastic the change or the greater the impact of the proposal in an area, the greater is the burden of proof upon the proponent". Changing a zone at anytime is an act of extreme nature, but to change the zoning in a long established, stable, problem-free and thriving neighborhood is an act of utmost consequence.

You have had opportunity to read the application and its addenda - I trust you are convinced as I am that applicant has provided you with neither proof nor supporting factual evidence in support of their request that will help you to prepare the 'adequate findings' as required under Fasano. The applicant has given you merely unsupported opinion, embellished with such puffery as "grande hillside development", "viewshed", "lovings and sensitive use", "unique nautical motiff (sic) environmental attuned livability complex", and applicant even found time and space to include a few words about the development of gunpowder.

You asked for proof - you received gobbledygook!

We are convinced that we have legal grounds to request a denial of this application because the burden of proof has not been met by the proponents. But we must do more than that. Therefore, we have responded to the 'burden of proof' as if it were our own, the opponents, responsibility also. Our goals in this endeavor were:

- 1) to prove that this change neither benefits our community nor is it in conformance with local or state-wide planning goals
- 2) to provide you with sufficient information so that you may make your best decision
- 3) to provide support for your findings should you order denial.

We believe our goals have been met with the presentation of

these many pages of factually supported testimony and exhibits.

The nearly 200 signed letters in opposition to this requested zone change which we submitted at the 8/16/81 meeting of the Planning Commission are just a sample of how undesirable this change is to a broad spectrum of our community.

We say, finally, that for all the reasons included in this and preceding testimony, this requested zone change is not in the best interests of the people of Brookings and application for such change should be denied, and denied tonight.

1. Discussions with CCOG planners, zoning map, and Chetco River Estuary Inventory.
2. Pages 75, 81, and 101 of Brookings CLUP
3. Final EIS Chetco, Coquille, and Rogue River Estuaries, US Army Corps of Engineers, Portland District, Dec. 1975, pages 4-22, 23
4. Ad for adjacent Smuggler's Cove Condo development (23 unit max) and testimony (on tape, not in minutes) of applicant's agent before Brookings Planning Commission
5. Application for zone change, City of Brookings, File #Z-81-1
6. Informal survey of Realty Brokers and Agents in the Brookings area
7. Brookings CLUP, Page 253, sewage systems
8. " " 6, Street and Road Conditions
9. " " 1970, Zone Map
10. Minutes of 6/16/81 Brookings Planning Commission Meeting and informal survey of realtors and area property owners
11. Salem Homebuilders Assoc., quoted on page 249, Brookings CLUP
12. Zoning District Map, City of Brookings
13. Testimony of Chairman of Brookings Planning Commission (on tape and not in minutes of 6/16/81 meeting)
14. Curry County Census, 1979, page 9
15. Curry County Census, 1979
16. Curry Coastal Pilot, Brookings, Or.
17. Brookings CLUP, Page 18
18. LCDC Goal 17, Identification

We, the undersigned, acknowledge that this testimony has been prepared by a group of our friends and neighbors so that we may collectively present to the City of Brookings many of the underlying reasons for our opposition to the requested zone^{change} for property on Map# 41-13-5 CD, Tax Lots 8100, 8302, and 8310 in the City of Brookings.

We have read this testimony, agree with its findings, and affix our signatures to attest to this fact. Dated 23 September 1981.

Barbara A. Hummel
Arthur C. Woods
Myrtle P. Woods
Dorothy Jenkins
Saul Jenkins
Barbara Packer
Nelson L. Linn
Bernadine D. Sebera.
Gilbert J. Gray
Fred C. Hummel



These **CONDOMINIUMS OF DISTINCTION** Are

**EXCLUSIVE - EXPENSIVE
EXCELLENT IN QUALITY**

*Exhibit "C"
Opponents*

WELCOME ABOARD

BROOKINGS.....

SMUGGLER'S COVE

CHETCO RIVER
222 DEL NORTE LANE
BROOKINGS, OREGON

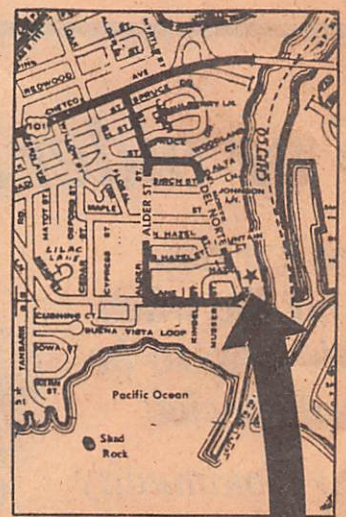


....by the sea....

**We Invite You
To Tour
Our Condominiums
During The
Holiday Weekend**

Exciting lower units, dock and spa,
now ready for your inspection.
These prime units have an unobstructed
river and harbor view (coastline view
from units no. 9 and 10)

"Smugglers Cove Property Management"
now has units in Phase I and II available
for rent, by day, week or month (two day
minimum.) For rates and details phone
(503) 469-5015



**222 Del Norte Lane
Brookings, Ore.**

**There are definite benefits and tax advantages
for the unit owners.**

P.S. If you have a boat use our dock-side entrance.

EXHIBIT NO. 1

EXHIBIT NO.2



**South Coast
TOWN & COUNTRY REAL ESTATE**

97984 SHOPPING CENTER RD. & HWY. 101 SOUTH
BROOKINGS, OREGON 97415



TO: *M. G. Chamberlin*

CHA 00X 17111471 09/11/80
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

*Strens 12 - J
East End
New York, N.Y. 10028*

BROOKINGS
SMUGGLERS COVE CONDOMINIUMS
BY THE SEA

WELCOME ABOARD

BROOKINGS



....by the sea....

"condominiums of distinction"

designed and built by
Marshall "Bud" Jones

INDIVIDUAL UNITS FEATURE:

- * Skylights throughout
- * Bronzed tinted windows
- * Ceramic tile entries and tile floors
master and half baths
ceramic tile window sills
- * Ceramic tile Roman Tub in Master Bath
- * Ceramic tile kitchen counters
- * Oak kitchen cabinets
- * Oak doors throughout
- * Jennair range, GE Dishwasher, Garbage Disposal in kitchen
- * Wall to wall carpeting (in areas which are not tiled)
- * Intercom and security system built in
- * Electric water baseboard heat

OPTIONAL EXTRAS INCLUDE:

- * Stack washer and dryer (unit already wired and plumbed)
- * Microwave oven (wiring in)
- * Garage door opener (wiring in)
- * Refrigerator
- * Drapes
- * Built in vacuum system (tubing in)
- * Free standing fireplace
- * Dining room and entry hanging lamps

Brookings SMUGGLER'S COVE....by the sea
Condominiums on the North Bank of the Chetco
River snuggled into a wooded setting with
a breathtaking view of the boat basin of the
Port of Brookings offers:

- * 23 units (maximum) of 2 & 3 bedrooms with
2½ baths and 1 bedroom with 1½ baths. Some
units have garages and carports
- * A unique location
- * A fantastic view from each unit
- * A rugged architectural design with Greenpole
construction, cedar shake siding, 2 x 6
exterior walls, 5/8" sheetrock throughout,
soundboards and extra insulation between
units, with decks on each unit and walkways
connecting the seven buildings planned
- * An 80' long dock for temporary tie up use
- * A recreation-spa with jacuzzi and individual
lockers for each unit owner
- * A sense of carefree living with outdoor
features and landscaping taken care of
through the homeowners association
- * Shopping Centers, churches, banks, schools
close by
- * Ocean beach access within walking distance
- * Model unit available for inspection



RESERVATIONS ARE ACCEPTED NOW on Phases I through VI-as of this printing July 1980
Phase I units 1,2 and 2 of Phase V units are reserved-Prices quoted as Phases developed
REPRESENTED BY SOUTH COAST TOWN AND COUNTRY REAL ESTATE-M. Reay Brallier Broker
97984 Shopping Center Rd. & Highway 101 South Brookings, Oregon 97415

(503) 469-7421

Additional Photographs upon request

Opponents Exhibit "H"

235 Del Norte Lane,
Brookings, Oregon, 97415.

252 Del Norte Lane,
Brookings, Oregon, 97415.

9/21/81.

To The Honorable Mayor and City Council,
Brookings, Oregon, 97415.

Gentlemen:

Mrs. Winnifred Fitzgerald and myself reside on opposite sides of Del Norte Lane, near property upon which zone change is sought. We have opposed this change from the beginning and continue to do so today. Any new thing we learn about the proposed development only serves to reinforce our belief that the project would not be in the best interests of the City of Brookings.

Our opposition to this development arises mainly in two areas of concern: first, that our pleasant neighborhood will be drastically changed for the worse; (there will be, I believe, approximately 34 units on the river bank, while there are twenty-five houses on Del Norte Lane, and we who live on the Lane will have to bear the obvious consequences, tax-wise, traffic-wise, sewer-wise, fire protective, etc.;) second, the beautiful green river bank which is enjoyed so much by the people of Brookings and tourists alike, will no longer be green or beautiful when covered with those unattractive, dingy buildings.

We have never attempted to hide our dislike of this project. So it was not surprising to have Mrs. Gerrid Joy visit us individually in an attempt to present her view and change our minds. When she finally realized in each case she

had no chance of success she said to each of us, "Aren't you ashamed of being so terribly, terribly selfish? Do you want to keep all this beauty just for yourselves?" Mrs. Joy is a young woman, perhaps half our ages, and she was a guest in our homes.

We are sure every right-thinking citizen of Brookings has the judgment to know that the pristine beauty of our river banks belongs to all people for all time. Under this developer's plan, near the mouth of the Chetco it is fast vanishing now; and when and if more of those mud-colored buildings are erected, with the beautiful trees and bushes gone, it cannot but look like some foreign shambles. A green and pleasant landscape has already been partially destroyed. More of the same will constitute a horror.

When we bought our homes on Del Norte Lane we felt the Planning Commission had the welfare of the town at heart, and we know it does still. Then how has this distressful situation come about?

As concerned citizens,

Most Sincerely,

(Mrs.) Barbara Packer
(Mrs. Donald Packer)

Winnifred C Fitzgerald
(Mrs. John Fitzgerald).

PAUL JENKINS, 221 MUSSER ST. BROOKINGS,
HONORABLE MAYOR & CITY COUNCIL:

MAY I SUBMIT 2 ADS, FROM THE SUBJECT
DEVELOPERS, AS EXHIBITS TO BE INCLUDED
AS PART OF THE PUBLIC RECORD OF THIS
HEARING?

EXHIBIT #1 IS A PAID AD FROM THE ^{JULY} 2 / 81
ISSUE OF THE CURRY COASTAL PILOT
OFFERING WEEKEND AND WEEKLY RENTALS,
OF THE CONDOMINIUMS AT SMUGGLERS COVE,
THE DEVELOPMENT ADJACENT TO THE
PROPERTY IN QUESTION WHICH IS ALSO
OWNED BY TWO OF THE APPLICANTS FOR
THIS REQUESTED ZONE CHANGE.

THIS AD CLEARLY ILLUSTRATES THE
INTENT OF THE DEVELOPERS TO INCORPORATE
A VACATION ORIENTED-ELEMENT AS PART
OF THEIR ORIGINAL PROJECT.

WE CAN, THEREFORE, LOGICALLY EXPECT
THIS ELEMENT TO SPILL OVER OR EVEN TO
BE PLANNED FOR THE PROPERTY NOW
BEING CONSIDERED.

NOTHING COULD BE MORE OUT OF CHARACTER
WITH THE NOW PEACEFUL DEL NORTE LANE
THAN VACATION RENTALS WITH ITS
ACCOMPANYING NOISE, BOISTEROUSNESS AND
OVER INDULLGENCE.

NEXT: I WOULD LIKE TO NOTE FOR THE
RECORD THAT AT THE PUBLIC HEARING ON
THIS MATTER HELD BY THE BROOKINGS

PLANNING COUNCIL ON JUNE 18TH,
MRS. JOY, ONE OF THE APPLICANTS FOR
THIS REQUESTED ZONE CHANGE, TESTIFIED
AS TO THE MARKETING EFFORT BEING MADE
IN SAN FRANCISCO AND LOS ANGELES ON
BEHALF OF THE SMUGGLERS COVE
CONDOMINIUMS. SHE NEGLECTED TO
MENTION THE MARKETING CAMPAIGN
BEING DONE IN NEW YORK CITY!
EXHIBIT #2 IS A SMUGGLERS COVE
ADVERTISEMENT AIMED FOR THE
NEW YORK MARKET:

THIS ACROSS THE NATION ADVERTISING PROGRAM
ILLUSTRATES VERY CLEARLY HOW THIS
HYPER-EXPENSIVE HOUSING IS
CERTAINLY NOT THE KIND BROOKINGS
NEEDS NOR SHOULD, IN FACT, BE
PERMITTED IN THEIR LOW DENSITY
COMMUNITY!
THANK YOU.

Paul Jenkins

Exhibit "J" - Opponents

Good Evening Gentlemen:

My name is Clarence Sebern, and I live at 301 Maple.

We have heard the earlier testimony on the 1975 Corps of Army Engineers report, and of the erosion that would result if the vegetation were removed from the area in question. Now, I'd like to expand on the ramifications that would result if this were allowed.

I am a commercial fisherman. Each winter I must risk my life crossing the Chetco River Bar because of shoaling caused by up-river rape of the ground cover. Forestry is the main cause; but add to that, land developers and gravel removal from upstream, and you have a situation which makes the lot of all fishermen, both commercial and sport, a grave ~~lot~~ endeavor.

Silt from all of these operations is deposited right on the bar as the river meets the sea. Surely your memories are not so short that you cannot remember some of the boats that have been lost on the Chetco Bar.

And now we are being asked to tolerate another operation with even a greater magnitude. The rainy season is upon us, and yet the Joys are asking us for permission to rape again. One has but to observe the bare land they have already cleared and not restored, and you get an idea of what lies ahead. Will you be a part of this.

Thank you,

Clarence Sebern

Opponents Exhibit "K"

Sept. 13, 1981

TO: Brookings City Council

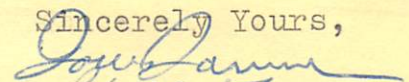

Dear Members,

My wife and I have had the opportunity to examine the application for zone change by the Joys and Petersen. We are not legal minds but it seems to us that the applicants answers to many questions are loose and without substance. It is our feeling, that the burden should fall upon the applicants to be fully factual and complete in their answers. I refer, of course, to questions required by law to be answered (Brookings Resol. 213, LCDC goals, Ore. Supr. Ct. Fasano ruling).

It seems strange to us that the applicants with their vast educations; would find answering these questions, satisfactorily, a task too difficult. Or, did they feel for some reason that it wasn't necessary.

We would have a right to assume now that the city council members have had much the same feelings about this application. Therefore, we prevail upon them to reconsider this application and its obvious content of indifference and disinterest in the needs of the citizens of this community; and vote against the Zone change.

Sincerely Yours,

Tom Farmer, Phyllis
Farmer 808 Paradise
Lane Brookings

Opponents Exhibit "L"

17 September 1981

To Mayor and Council of the City of Brookings

Gentlemen:

As artists, we are concerned about the destruction of the natural beauty of the West bank of the Chetco River as the result of construction of high density housing in the Del Norte Lane area. We believe this river bank is a scenic treasure that should be conserved for the people of Brookings of this generation and of future generations. The beauty of the area both enriches our lives and supports the value of every piece of real property in our city.

To conserve this scenic resource for the people of our community as well as its visitors, we believe that development of the lowest possible density should be the only kind permitted. We urge you to deny the request for change of zone from low to high density.

Respectfully,

M. Jay Gill HARBOR
Leis Armstrong, Harbor
Beth James!
"B.W. Buzz" Stewart
"PLEASE" - Julie & Hutman

Opponent's Exhibit "M"

16 Seascap Court
Brookings, Oregon
September 21, 1981

Honorable Robert L. Kerr
Mayor, City of Brookings
Dear Mr. Kerr,

As a Brookings home-owner and resident, I ask your indulgence in hearing my concern over the drift of our city's development, as epitomized by the pending Smugglers' Cove rezoning application.

I oppose the application, and not because I am anti-growth. I am enthusiastically pro-growth, provided growth is planned and equitably regulated in ways that (1) enhance the natural beauty of our city, and (2) maximize its potential tax base. I believe that these two objectives are

reinforcingly compatible.

For whatever it may be worth, it is my view that the Smugglers' Cove project was ill-designed and badly executed. It derives whatever value it may have, parasitically, at the expense of an area of natural beauty that is quite possibly Brookings' most valuable landward scenic resource on one side, and from a neighborhood of attractively maintained homes on the other.

The builders of Smugglers' Cove have previously applied for (and received) variances to the original permit that have had the effect of squeezing more ticky-tacky onto an already over-impacted site. The pending application

for rezoning to permit expansion of the project could be granted only at uneconomic cost to our city's scenic values. Although my house is, fortunately, over 250 feet from Smugglers' Cove, it seems to me that I have a stake in this matter because the proposed expansion of the project would decrease property values throughout the city.

I further believe that the present issue portrays a problem basic to the long-term welfare of our city. In my view, if Brookings is to survive the phase-down of its timber-based economy as a viable community, it must preserve and nurture the values that will make it attractive to numbers of people who will perceive

it as a desirable place to live, and who will be able and willing to make the creative, substantial investments in homes that will establish the tax base essential to an attractive, economically workable community. The sort of grossly exploitive, tasteless development exemplified by Smugglers' Cove is repugnant to discriminating investment.

Sound development will come about only if high standards are formulated and rigorously maintained. Quality doesn't come easy. The granting of variances and rezonings on a capricious, ad hoc basis just won't fill the bill. The chairman of our planning commission has remarked, in respect to development, that you either go forward or backward, a proposition that does not invite rebuttal.

But there appears to be substantial,
basic disagreement as to the meanings
of "forward" and "backward" in the
context of our city's development in
general, and of the pending rezoning
application in sharply focussed
particular. It seems to me that it
is high time that the direction and
quality of Brookings' development
be defined in terms of plans and
standards acceptable to, and supported
by, our fellow citizens. ^{SINCE LAST NIGHT, THOSE PLANS AND STANDARDS} ~~And that the~~ ^{ARE IN PLACE.}
^{LET THEIR FA} ~~integrity of those standards~~ ^{RW} be main-
tained in the face of the inevitable
self-seeking pleas for exception.

Respectfully,
Robert W Heavey