

City of Sherwood
Planning Commission

AGENDA

September 21, 1987
855 No. Sherwood Blvd.
7:30 P.M.

- I. Call to Order
- II. Approval of Minutes, August 17, 1987
- III. Comments from public
- IV. The QT Tavern Minor Land Partition request
- V. Work Session to discuss DEQ Noise Standards, Mr. Terry
Obteshka
- VI. Recommendation on the proposed Meinecke Road annexation
- VII. For Your Information
 - A. Commercial zones analysis
 - B. LCDC Memo, The "Takings" Issue

STAFF REPORT

TO: City of Sherwood
Planning Commission

DATE: September 10, 1987

FROM: Carole W. Connell, Consulting Planner
The Benkendorf Associates

FILE NO: 2271-62

SUBJECT: Request for a Minor Land Partition

I. PROPOSAL DATA

Applicant: Ray and Bettie Jo Bert
Route 5 Box 313
Sherwood, Oregon 97140

Owner: Same as above

Location: Located on the SE side of U.S. Highway 99 about $\frac{1}{4}$ mile south of the intersection of Highway 99 and Meinecke Road, and further described as Tax Lot 200, Map 2 S 1 31B.

II. BACKGROUND DATA

The subject parcel is occupied by a tavern, a residence and an abandoned building, all located along the property's highway frontage. The remaining acreage is vacant. The proposed partition segregates the tavern and the abandoned building from the existing residential parcel. The intent of the partition is to separate the commercial land from the residential land.

III. SHERWOOD CODE PROVISIONS

- A. Chapter 2, Section 2.107 Neighborhood Commercial NC
- B. Chapter 2, Section 2.103 Medium Density Residential Low MDRL
- C. Chapter 4, Section 4.100 Application Content
- D. Chapter 7, Section 7.500 Minor Land Partitions
- E. Sherwood Comprehensive Plan

IV. FINDINGS OF FACT

- A. The subject parcel is 6.1 acres and the proposed division would result in two parcels, Parcel "A" which is .7 acre and Parcel "B" which is 5.4 acres.
- B. Parcel "A" is occupied by the QT Tavern and an abandoned building. Parcel "B" is occupied by a residence and open land.
- C. The subject property is zoned both Neighborhood Commercial and Medium Density Residential Low. The NC zone covers the highway frontage and extends east towards the back of the lot. The MDRL zone covers approximately the back half of the lot.
- D. The minimum lot size in the MDRL zone is 5000 square feet and the maximum lot size in a NC zone is three acres. There is no minimum lot size in the NC zone. Parcels "A" and "B" will comply with the lot size requirements. The applicant's **Exhibit A** illustrates the proposed lot configurations and **Exhibit B** illustrates the location and setbacks of the two buildings. The proposed division complies with zone setback standards.
- E. It is assumed that access to the existing and proposed parcels will occur from Highway 99. Comments from ODOT have not yet been received. There are no proposed roads on or adjacent to the site.

- F. There are no easements on the property.
- G. Water service to the site includes one well serving both the tavern and the residence. Both uses are served by separate septic tank and drainfields. City sewer and water service is not in the immediate area.
- H. The Tualatin Fire District, Washington County Health Services and the Oregon Department of Transportation were notified of this request. The fire district responded having "no conflict" with the proposal. The other agencies have not responded to date.
- I. There is no new development proposed with this application.
- J. The following is a response to the required findings of fact for a minor land partition, Section 7.502:
1. No roads or streets are being created by this proposal.
 2. The partition complies with the NC and MDRL zoning district requirements, and other applicable code standards.
 3. The proposed partition cannot be served by city sewer and water at this time. However, legal provisions must be made to guarantee Parcel "B" future use of the existing water well now located on Parcel "A" and shared by the two existing uses. Further, Parcel A will be divided into a parcel too small to accommodate an alternate drainfield, if needed. A legal provision must be made to guarantee that Parcel "A" will have the right to establish a replacement drainfield on Parcel B in the event of failure of the current drainfield now serving the tavern.
 4. Adjoining land can be developed or is provided access that will allow development in accordance with this code.

IV. RECOMMENDATION

Staff recommends **approval** of the minor land partition subject to the following conditions:

1. There shall be State approval of Highway 99 access to each parcel.
2. The deed which creates Parcel "B" shall have a provision therein which guarantees that the owner of Parcel "A" will have the right to establish a replacement drainfield on Parcel "B" in the event of the failure of the current drainfield now serving the tavern, if such replacement is required by the county Health Department prior to the time the subject parcels are served by the city sewer.
3. A binding agreement shall be drafted by the applicant's attorney and executed prior to or simultaneously with the execution of the deeds which create the two parcels. This agreement will guarantee the owner of Parcel "B" that the owner of Parcel "A" will supply water to Parcel "B" (subject to availability) until city water becomes available to Parcel "B".
4. The owner of the property shall enter into a non-remonstrance agreement with the City for future public improvements associated with the two parcels.
5. Prior to deed recording, a legal description prepared by a licensed surveyor shall be submitted and approved by the Washington County Surveyor. The lot division and legal description shall be reviewed and approved by the City Manager or his designee prior to recording.

2271-62.RPT

ALLISON & ALLISON

Farming, Forestry and Land Use Consulting

P.O. Box 273
Sherwood, Oregon 97140
Phone 628-1613



August 25, 1987

TO: Planning Commission, City of Sherwood.
FROM: Jim Allison, Land Use Consultant.
RE: Minor partition of tax lot 200, 2S1 31B.

STATEMENT ADDRESSING RELEVANT CRITERIA FOR A MINOR PARTITION WHICH PROPOSES TO DIVIDE A TAX LOT INTO TWO PARCELS, SAID TAX LOT HAS SPLIT ZONING AND UPON WHICH TWO DIFFERENT USES CURRENTLY EXIST.

A review of the provisions of Chapter 4 (Planning Procedures) of the city's Community Development Code indicates that there 71 (seventy-one) information items to be addressed in all minor partition applications.

However, Section 4.100 states that the City Manager or his or her designee is authorized to waive information requirements that are clearly not material or relevant to the specific proposal being made.

Based upon my conferences with Carole Connell, Consulting City Planner for the city of Sherwood, this statement addresses ONLY THOSE ITEMS DEEMED TO BE GERMANE TO THIS APPLICATION.

* * * * *

- 1--A copy of the latest tax map is included herewith.
- 2--The name and address of the applicants is shown on the application form.
- 3--For the acreage, lot lines and dimensions of the two proposed parcels--see EXHIBITS "A" and "B."
- 4--The subject parcel has split zoning--NC and MDRL.
- 5--Maximum allowable density--See sections 2.101.01 and 2.107.01 of the city code.
- 6--No easements exist.
- 7--ACCESS: Both parcels have direct access to Highway 99-W.

8--Existing Services:

A--Water--one well serves both existing uses--
a tavern and a single family dwelling.

B--Sewer--Both uses are served by separate
septic tanks and drainfields.

- 9--No improvements or changes are planned at this time.
- 10--For proposed configuration, dimensions, acreage, etc.
see EXHIBITS "A" AND "B." The proposed configuration
meets all set back requirements.
- 11--The sole purpose of this partition is to create a
separate parcel upon which the existing commercial
use (a tavern) will be located.
- 12--It is agreed that the deed which creates parcel "B"
will have a provision therein which guarantees that
the owner of parcel "A" will have the right to estab-
lish a replacement drainfield on parcel "B" in the
event of the failure of the current drainfield now
serving the tavern--if such replacement is required
by the county Health Department prior to the time
the subject parcels are served by the sewer.
- 13--It is agreed that a separate binding agreement will
be drafted by the applicants' attorney and executed
prior to or simultaneously with the execution of the
deeds which create the two parcels. This agreement
will guarantee the owner of parcel "B" that the
owner of parcel "A" will supply water to parcel
"B" (subject to availability) until city water
becomes available to parcel "B."
- 14--It is also agreed by the applicants that the documents
described in 12 and 13 above shall be submitted to
(*) for approval prior to
the actual recording of the deeds which create the
parcels.

(*) Name of city official to be inserted.

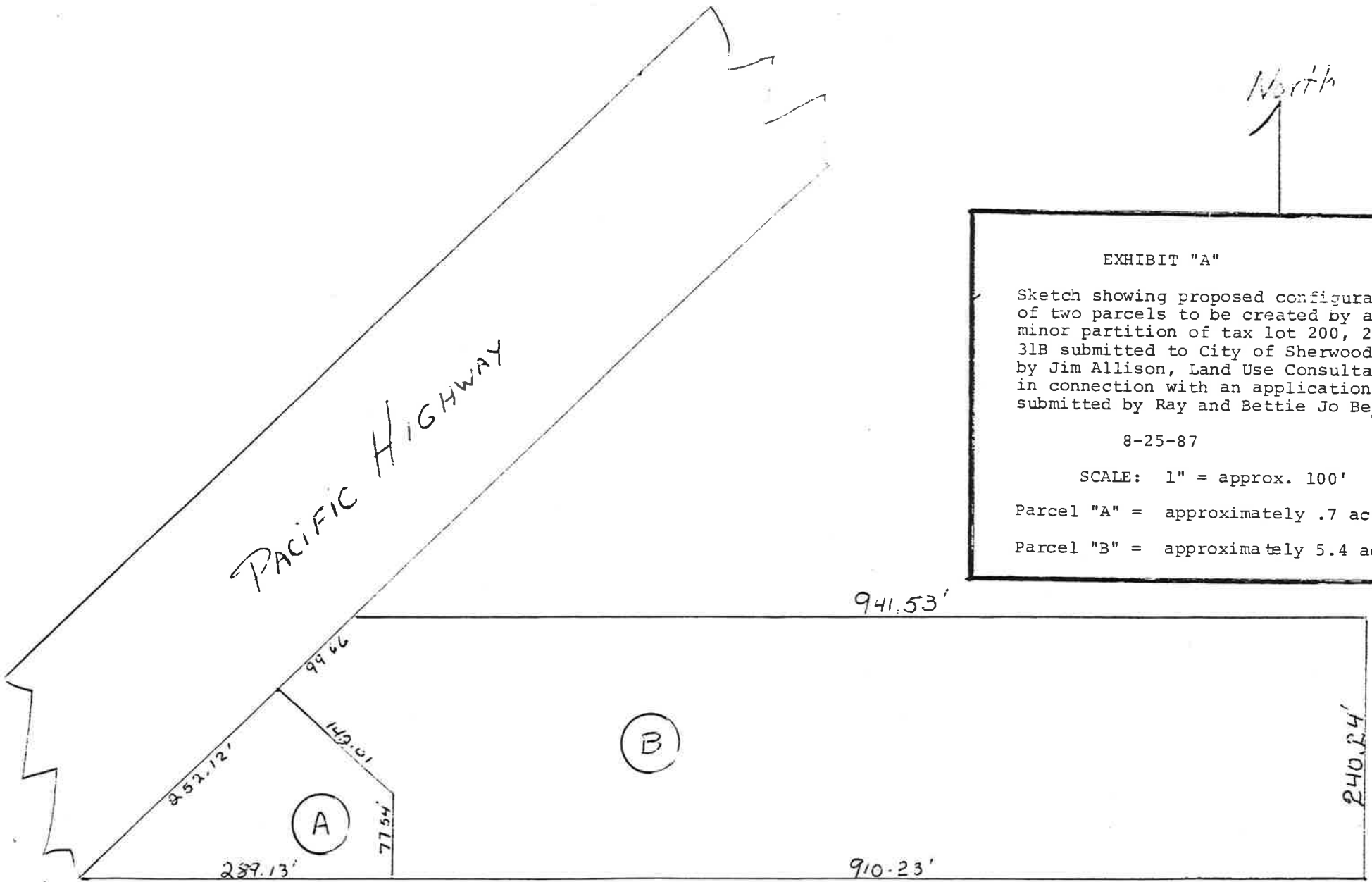


EXHIBIT "A"

Sketch showing proposed configuration of two parcels to be created by a minor partition of tax lot 200, 2S1, 31B submitted to City of Sherwood by Jim Allison, Land Use Consultant in connection with an application submitted by Ray and Bettie Jo Bert.

8-25-87

SCALE: 1" = approx. 100'

Parcel "A" = approximately .7 acre

Parcel "B" = approximately 5.4 acres

North

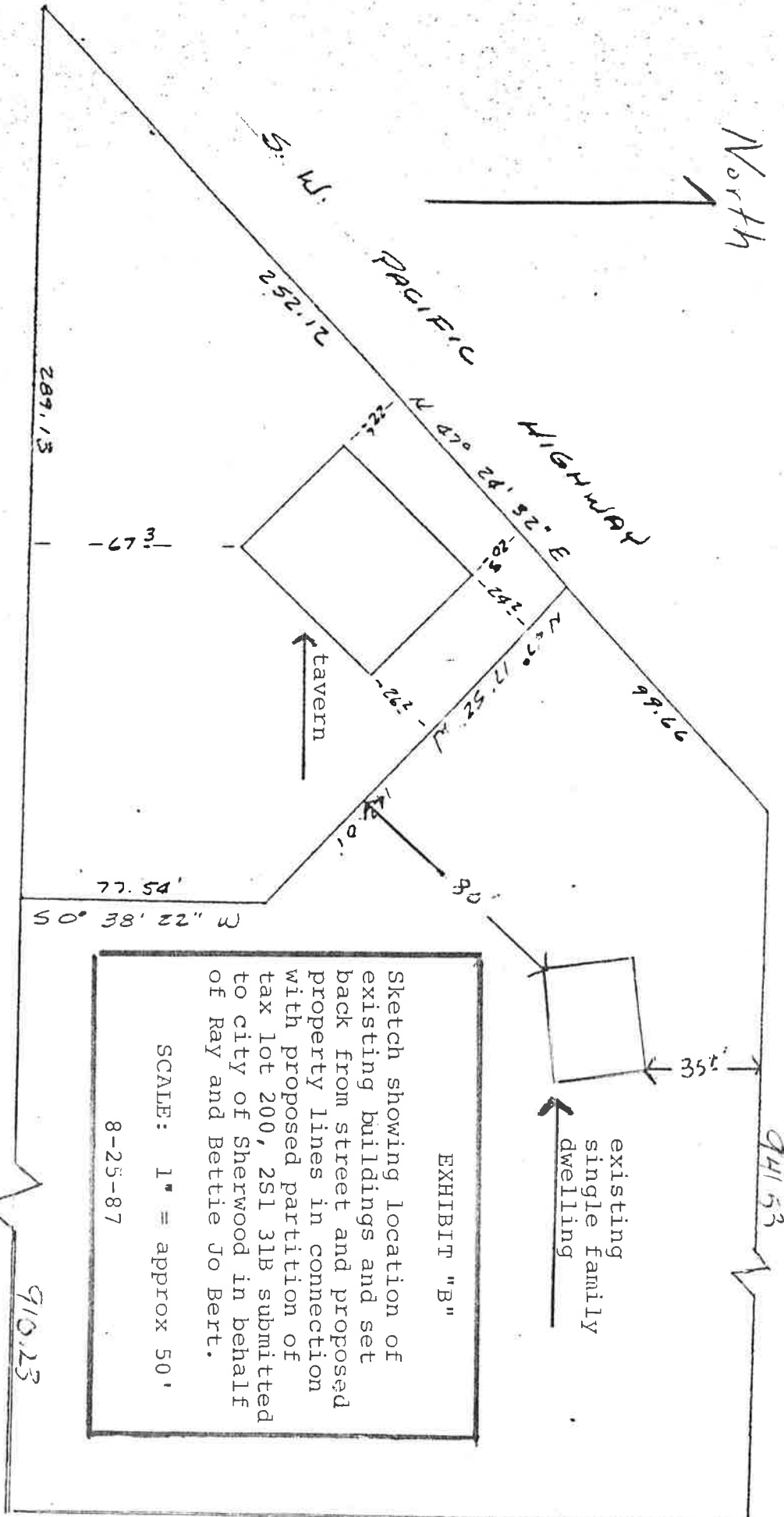


EXHIBIT "B"

Sketch showing location of existing buildings and set back from street and proposed property lines in connection with proposed partition of tax lot 200, 2S1 31B submitted to city of Sherwood in behalf of Ray and Bettie Jo Bert.

SCALE: 1" = approx 50'

8-25-87

North
↑

EXHIBIT "A"

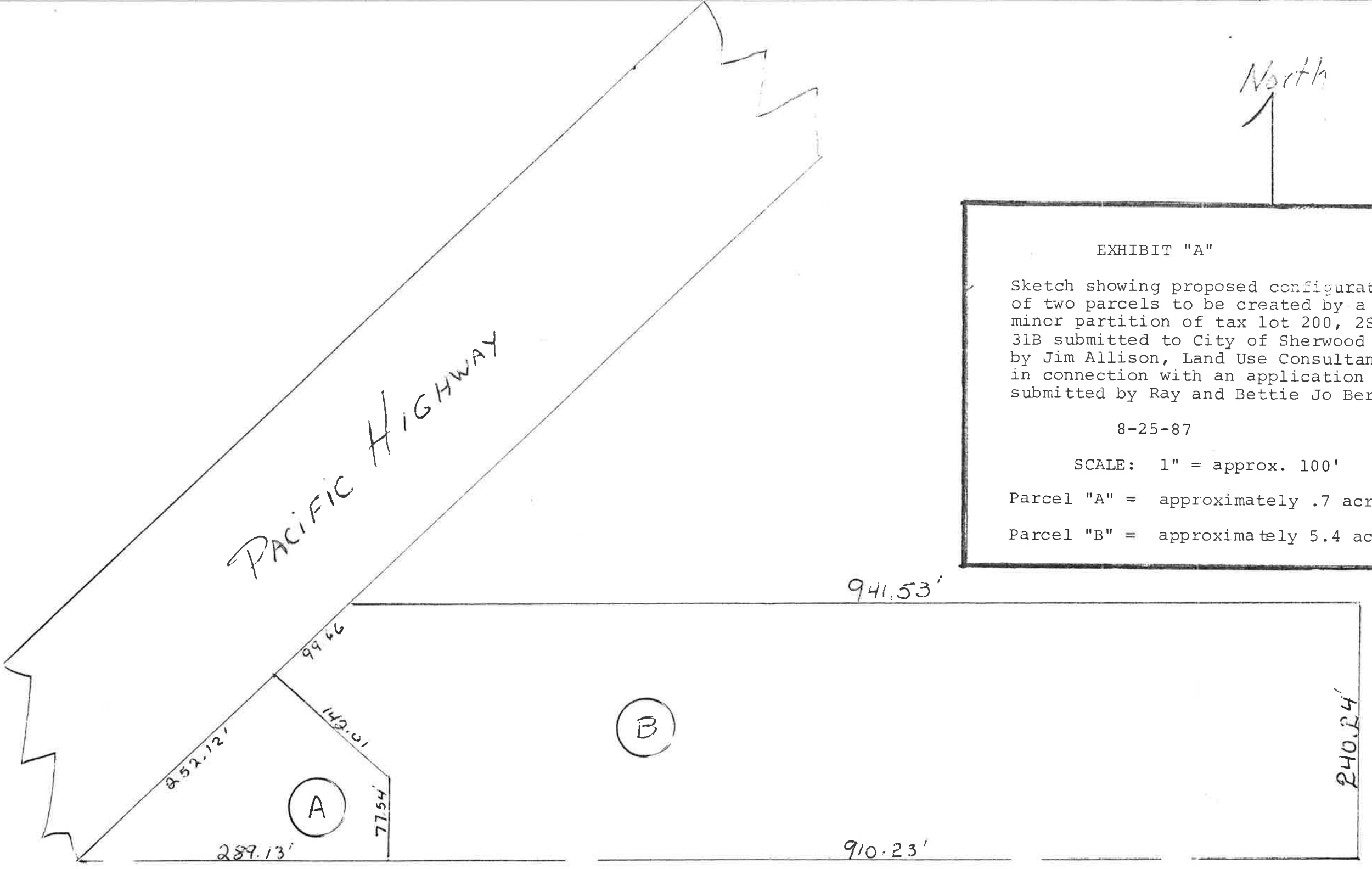
Sketch showing proposed configuration of two parcels to be created by a minor partition of tax lot 200, 2S1, 31B submitted to City of Sherwood by Jim Allison, Land Use Consultant in connection with an application submitted by Ray and Bettie Jo Bert.

8-25-87

SCALE: 1" = approx. 100'

Parcel "A" = approximately .7 acre

Parcel "B" = approximately 5.4 acres



City of Sherwood, OR

Resolution No. 87-

A RESOLUTION INITIATING THE ANNEXATION TO THE CITY OF SHERWOOD OF AN "ISLAND" TERRITORY TOTALLY SURROUNDED BY THE CITY LIMITS, MORE PARTICULARLY DESCRIBED AS:

A parcel of land situated in the southwest one-quarter of Section 30 and the north one-half of Section 31, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, beginning at the intersection of the easterly right-of-way line of N.W. Meinecke Road and the southeasterly right-of-way line of S.W. Pacific Highway; thence North 51 degrees 53' East 530 feet, more or less; thence leaving said southeasterly right-of-way line of S. W. Pacific Highway South 38 degrees 07' East 356.6 feet, more or less, to a point on the north line of said Section 31; thence North 89 degrees 12' East, along said north line 150 feet, more or less; thence leaving said north line South 640 feet, more or less, to a point on the northerly right-of-way line of said N.W. Meinecke Road; thence continuing South 40 feet, more or less, to a point on the southerly right-of-way line of said N. W. Meinecke Road; thence North 89 degrees 30' East, along the said southerly right-of-way line, 60 feet, more or less; thence leaving said southerly right-of-way South 640 feet, more or less; thence North 89 degrees 35' East 462 feet, more or less; thence South 00 degrees 37' East 325 feet, more or less; thence South 89 degrees 18' West 660 feet, more or less; thence South 315 feet, more or less; thence South 89 degrees 35' West 660 feet, more or less, to a point on the westerly line of the northeast one-quarter of said Section 31; thence North along said westerly line 1033.36 feet, more or less; thence leaving said westerly line West 939.84 feet, more or less, to a point on the said southeasterly right-of-way line of S.W. Pacific Highway; thence along the said southeasterly right-of-way line North 47 degrees 08' East 1325 feet, more or less, to the point of beginning. Consisting of 43.14 acres, more or less.

WHEREAS, annexation to the City of the territory so bounded would constitute a "minor boundary change" under the boundary commission law, ORS 199.410 to 199.519, and a so-called "island" annexation under ORS 222.750, and

WHEREAS, by authority of ORS 199.490(3)(a) and 222.750 the City Council may initiate the annexation.

NOW THEREFORE, THE CITY OF SHERWOOD RESOLVES AS
FOLLOWS:

Section 1. The Council, pursuant to ORS 199.490(3)(a) hereby initiates proceedings for annexation of this territory to the City.

Section 2. The Council hereby approves the proposed annexation and requests the Portland Metropolitan Area Local Government Boundary Commission to approve and effect it as soon as possible.

Section 3. The City Recorder is hereby directed to file a certified copy of this resolution with the Boundary Commission at once.

Norma Jean Oyler, Mayor
City of Sherwood

Polly Blankenbaker, Recorder

	<u>AYE</u>	<u>NAY</u>
OYLER	_____	_____
CHAVEZ	_____	_____
BIRCHILL	_____	_____
STEWART	_____	_____
NIGHTINGALE	_____	_____

PMALGBC FORM #6

BOUNDARY CHANGE DATA SHEET FOR
ANNEXATION TO THE CITY OF Sherwood

I. EXISTING CONDITIONS OF TERRITORY DESCRIBED IN BOUNDARY CHANGE

A. Land Area: Acres 48.14 or Square Miles _____

B. General Description of Territory: (include topographic features such as slopes, vegetation, drainage basins, flood plain areas which are pertinent to this proposal)

Territory is generally level and contains no flood plain area. Eight residential homes, a food market, an out-of-business plant nursery, and an evergreen tree farm are within territory. Territory exhibits mixed field and woodland vegetation

C. Existing Land Use:

Number of single family units 8 multi-family units 0

Number of commercial structures 3 industrial structure 0

Public facilities or other uses (Please describe)

none

D. Total Current Year Assessed Valuation \$ 744,900.00

E. Total Estimated Population: 20

F. Current County Zoning Status (if territory contains more than one land use zone, please indicate tax lot numbers and existing zoning designation for those tax lots)

See prior information submitted with Annexation proposal No. 2396

G. Is the area adjacent to the territory to be annexed (and not in the city or district) of the same general character or degree of development as the territory to be annexed?

Yes _____ No _____ N/A

If Yes, why isn't the adjacent area included in the proposal?

If No, how does the adjacent area differ?

II. PROPOSED DEVELOPMENT OF TERRITORY DESCRIBED IN BOUNDARY CHANGE

A. If the property is entirely or substantially undeveloped, what are the plans for future development? (Be specific--if site or development plans have been prepared please submit a copy.)

N/A

B. Can the proposed development be achieved under current county zoning? N/A
Yes _____ No _____

If No, has a zone change been sought from the county either formally or informally for the property under consideration.

Yes _____ No _____

Please describe outcome of zone change request if answer to the above question is 'Yes'

C. Is the proposed development compatible with the county comprehensive plan and/or the Regional Framework Plan?

Yes _____ No _____ N/A

Briefly explain compatibility or incompatibility.

D. Is the proposed development compatible with the city's Comprehensive Land Use Plan for the area? N/A

Yes _____ No _____ City has no plan for the area _____

Has the proposed development been discussed either formally or informally with any of the following: (please indicate)

City Planning Commission x City Planning Staff x

City Council x City Manager x

Please describe the reaction to the proposed development from the persons or agencies indicated above. Supportive - Commission endorsed annexation

and Council approved annexation resolution

E. If a city and/or county-sanctioned citizens' group exists in the area of the annexation, please list its name and the name and address of a contact person.

N/A

III. REASON FOR BOUNDARY CHANGE

A. ORS 199.462 of the Boundary Commission Act states: "When reviewing a boundary change, a boundary commission shall consider economic, demographic, and sociological projections pertinent to the proposal, and past and prospective physical developments of land that would directly or indirectly be affected by the proposed boundary change." Considering these points, please provide the reasons the proposed boundary change should be made. Please be very specific. Use additional pages if necessary.

Territory is an "island" totally surrounded by incorporated City property.

In addition seven of the eight ownerships receive City water service.

B. If the reason is to obtain specific municipal services such as water service, sewerage service, fire protection, etc., please indicate the following:

- 1. Proximity of facilities (such as water mains, sewer laterals, etc.) to the territory to be annexed. (Please indicate location of facilities--for example: 8" water main in Durham Rd. 500 feet from east edge of territory.). Please indicate whose facilities they are and whether in fact these facilities will be the ones actually providing service to the area. If the facilities belong to another governmental entity, explain the agreement by which they will provide the service and what the city's policy is on subsequent withdrawal and/or compensation to the other unit.

City water service to seven of eight property ownerships within territory to be annexed. Please see documents and mapping submitted with prior Annexation proposal No. 2396 for full details.

- 2. The time at which services can be reasonably provided by the city or district. for sewer: as part of future development as demand dictates

- 3. The estimated cost of extending such facilities and/or services and what is to be the method of financing? (Attach any supporting documents.)

Sewer line extension at \$20.00 - \$22.00 linear foot. Approx. 1100 feet from existing main to edge of territory

- 4. Availability of the desired service from any other unit of local government. (Please indicate the government.)

for sewer: no other source

IV. EXISTING GOVERNMENTAL SERVICES IN THE TERRITORY

- A. If the territory described in the proposal is presently included within the boundaries of any of the following types of governmental units, please so indicate by stating the name or names of the governmental units involved:

City _____ County Service Dist. _____
Hwy. Lighting Dist. _____ Park & Rec. Dist. _____
Rural Fire Dist. Tualatin Rural _____ Sanitary District Unified Sewerage Agency
Water District _____

- B. If any of the above units are presently servicing the territory (for instance, are residences in the territory hooked up to a public sewer or water system), please so described.

NAME: James Rapp City Manager
(Title)

ADDRESS: 90 NW Park Street, Sherwood

TELEPHONE NO: 625-5522

AGENCY: City of Sherwood

DATE: _____

PMALGBC FORM #5

(This Form is NOT the Petition)

ALL THE OWNERS OF PROPERTY INCLUDED IN BOUNDARY CHANGE PROPOSAL AREA

(To be completed IF the proposal contains 10 or fewer properties--tax lots or parcels). Please indicate the name and address of all owners of each property regardless of whether or not they signed an annexation petition. This is for notification purposes.

NAME OF OWNER	ADDRESS	PROPERTY DESIGNATION (Indicate Tax Lot, Section Number, and Township Range)	
(1)	Edna and James Wallace	9606 Podium Drive Vienna, VA 22180	1900:2S1 31A
(2)	Robert and Lila Salisbury	1765 NW Meinecke Road	1000:2S1 31A
(3)	Tad and Janice Milburn	Rt. 3, Box 9B	1001:2S1 31A
(4)	Charles and Margaret Berry	1530 Meinecke Road	800:2S1 31A
(5)	Westside Produce	21970 SW Pacific Hwy	900:2S1 31A
(6)	Robert and Janet Rogers	21930 SW Pacific Hwy	900:2S1 30D
(7)	Thor and Martha Pederson	21900 SW Pacific Hwy	901:2S1 30D
(8)	John and Winona Billick	Rt. 5, Box 316	100:2S1 31B
(9)			

PMALGBC FORM #4

CERTIFICATION OF LEGAL DESCRIPTION AND MAP

I hereby certify that the description of the property included within the attached petition (located on Assessor's Map 2S1:30D, 31A, 31B) has been checked by me and it is a true and exact description of the property under consideration, and the description corresponds to the attached map indicating the property under consideration.

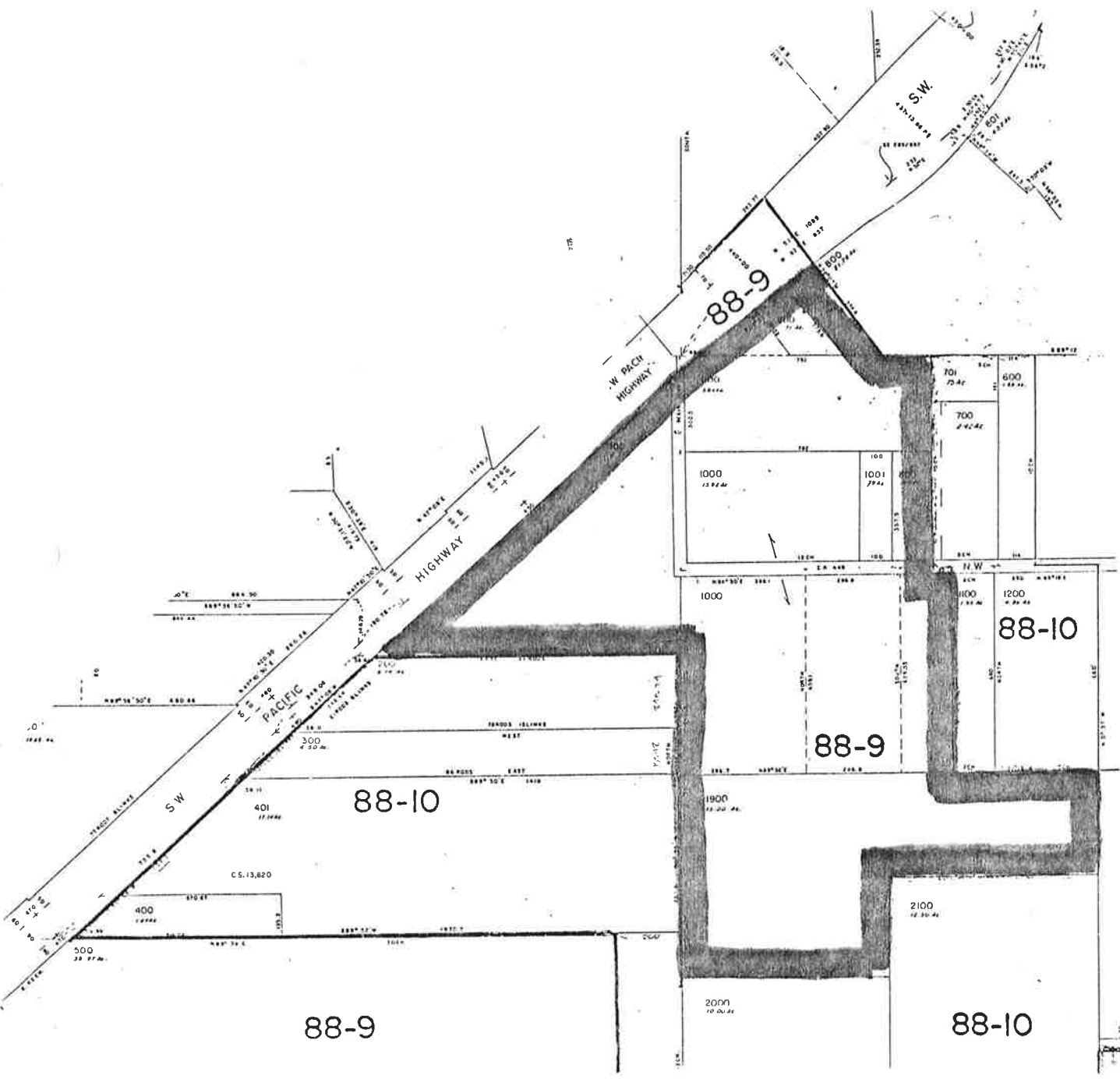
NAME _____

TITLE _____

DEPARTMENT _____

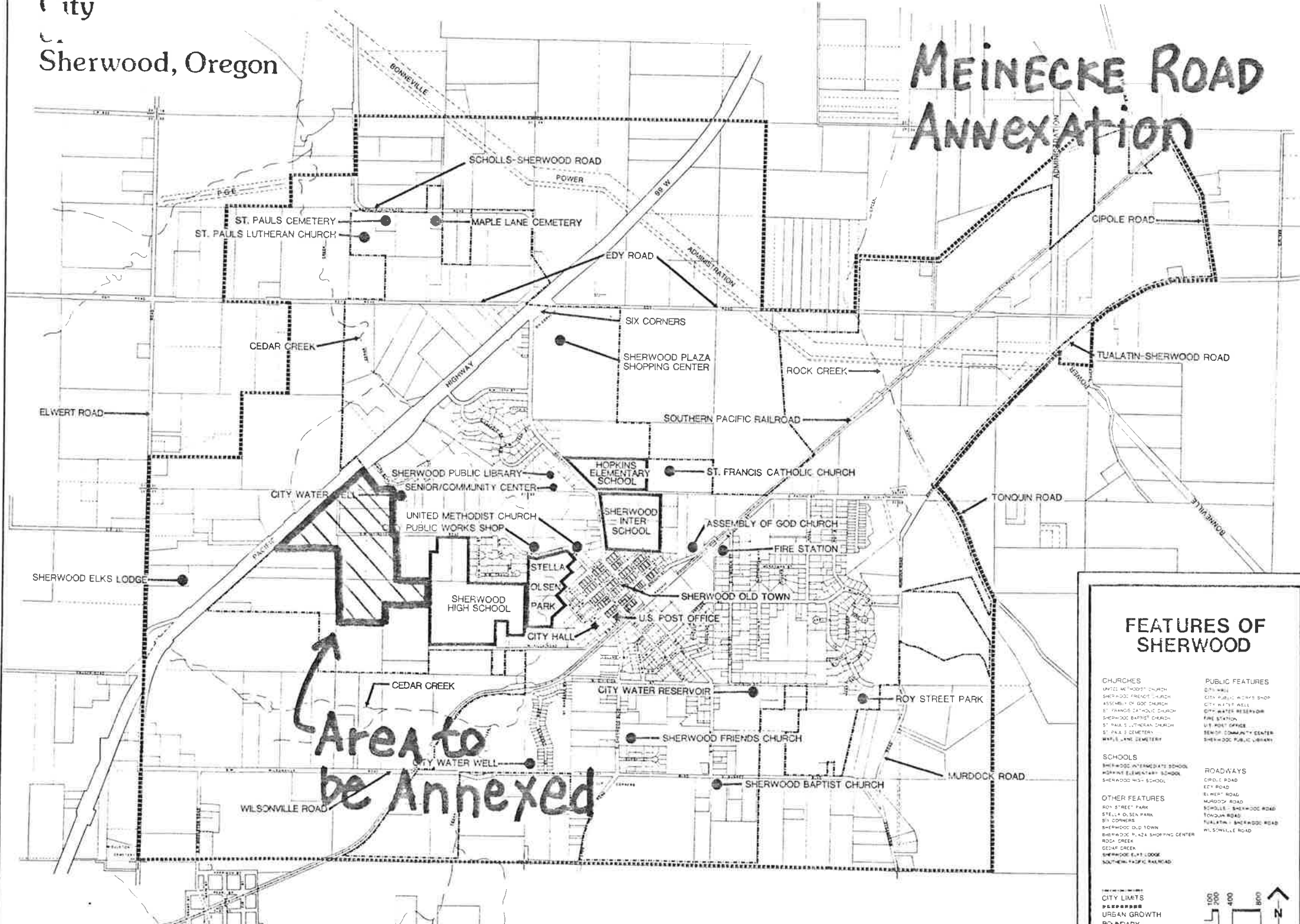
COUNTY OF _____

DATE _____



City
Sherwood, Oregon

MEINECKE ROAD ANNEXATION



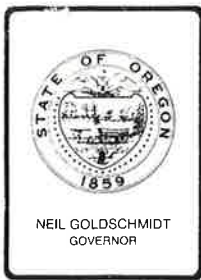
Area to be Annexed

FEATURES OF SHERWOOD

<p>CHURCHES</p> <ul style="list-style-type: none"> UNITED METHODIST CHURCH SHERWOOD FRIENDS CHURCH ASSEMBLY OF GOD CHURCH SHERWOOD BAPTIST CHURCH ST. PAULS LUTHERAN CHURCH ST. FRANCIS CATHOLIC CHURCH MAPLE LANE CEMETERY 	<p>PUBLIC FEATURES</p> <ul style="list-style-type: none"> CITY HALL CITY PUBLIC WORKS SHOP CITY WATER WELL CITY WATER RESERVOIR FIRE STATION U.S. POST OFFICE SENIOR COMMUNITY CENTER SHERWOOD PUBLIC LIBRARY
<p>SCHOOLS</p> <ul style="list-style-type: none"> SHERWOOD INTERMEDIATE SCHOOL HOPKINS ELEMENTARY SCHOOL SHERWOOD HIGH SCHOOL 	<p>ROADWAYS</p> <ul style="list-style-type: none"> CIPOLE ROAD EDY ROAD ELWERT ROAD MURDOCK ROAD SCHOLLS-SHERWOOD ROAD TONOJIN ROAD TUALATIN-SHERWOOD ROAD WILSONVILLE ROAD
<p>OTHER FEATURES</p> <ul style="list-style-type: none"> ROY STREET PARK STELLA OLSEN PARK SIX CORNERS SHERWOOD OLD TOWN SHERWOOD PLAZA SHOPPING CENTER ROCK CREEK CEDAR CREEK SHERWOOD ELKS LODGE SOUTHERN PACIFIC RAILROAD 	<p>CITY LIMITS</p> <p>URBAN GROWTH BOUNDARY</p>

100 200 400 800

N



Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 378-4926

*Carole - FBI - might FYI P.C.
in case anyone picked up on
this. The issue was raised
erroneously at our last
amputation hearing*

August 28, 1987

TO: Local Officials and Other Interested Persons
FROM: James F. Ross, Director
SUBJECT: THE "TAKINGS" ISSUE

On July 9, 1987, the U.S. Supreme Court issued its ruling in First English Evangelical Lutheran Church of Glendale v. Los Angeles County. The Washington bureau of the Associated Press immediately sent out a wire service article that opened with this sentence: "The Supreme Court, in a case of enormous importance to local zoning officials, ruled today that property owners must be compensated when new restrictions are placed, even temporarily, on the use of their land."

That sentence is simply wrong. Nowhere in First English does the Supreme Court declare that local zoning officials must compensate property owners whenever new restrictions are placed on land. That wire service's error and others like it have misled a lot of people. Such statements demonstrate a widespread confusion about takings and compensation.

We know that such confusion makes it difficult for you. It's hard to plan and zone effectively when your constituents are reading in the newspaper that any restriction on the use of land constitutes a taking. That is why we have sent the attached material to you. We hope that it will answer questions that you or local citizens may have.

Yes, the attached "summary" is long, and the topic it deals with is not light reading. But if you can't read it all, please at least take note of this important point. **The definition of "taking" remains unchanged. The powers--and the responsibilities--of local government to plan and zone the use of land have not been altered by the recent court decisions.**

JFR:MR/sp

Enclosure

In Fifth Avenue Corp. v. Washington County (1978), the same court said, "...even if planning or zoning designates land for a public use and thereby effects some diminution in the value of his land, the owner is not entitled to compensation for inverse condemnation unless: (1) he is precluded from all economically feasible private uses pending eventual taking for public use; or (2) the designation results in such governmental intrusion as to inflict virtually irreversible damage."

Have there been many cases in which planning or zoning were found to constitute regulatory taking?

No. Even in Oregon, which has such an extensive planning program, regulatory takings are rare. A 1985 report by the state's Joint Legislative Committee on Land Use concluded: "LCDC [the state's Land Conservation and Development Commission] has acknowledged 277 of the 282 counties and cities subject to its review, and to date there has never been a taking claim filed in the courts, much less decided against the commission, as a result of its acknowledgment decisions." In a 1987 decision, Dunn v. City of Redmond, the Oregon Supreme Court noted, "This court in fact has never invalidated a regulation of the private use of property under the Oregon Constitution for failure to pay compensation...."

Are recent U.S. Supreme Court decisions likely to change that?

No. The Supreme Court has not set any new standards for what constitutes a taking. Some people claim that a new standard can be found in the court's 1987 decision, First English Evangelical Lutheran Church of Glendale v. Los Angeles County. But in that case, the court did not even determine that a taking had occurred. Rather, the court said that if a taking had occurred, Los Angeles County must pay compensation. The Supreme Court then sent the case back to a lower court and directed that court to decide whether there had in fact been a taking.

What is a "temporary taking"?

This term derives from the First English case mentioned above. In it, the court decided that even if a government repeals a regulation that has been found to cause a taking, that government still must compensate property owners for the temporary loss of their lands during the time the regulation was in effect.

Is government required to pay compensation to the owners of property that gets downzoned?

No. Our Constitution calls for compensation only for takings. It does not call for compensation to those whose land is reduced in value as a result of a downzoning.

Many governmental actions affect land's value. They increase it in some cases and decrease it in others--sometimes dramatically. Re-routing a highway, for example, lowers the value of a restaurant site located along the old highway; it adds value to a supermarket site near the new route. Likewise, closing a school, building a fire station, extending a sewer line, opening a new parking structure, or changing a zone all affect land values.

Some people have argued for a system of compensation to deal with such "windfalls" and "wipeouts." Under such a system, people whose land grows in value as a result of governmental action would have that unearned gain (the windfall) taxed at 100 percent. The money then would be paid to those whose land had lost value (the wipeout) as a result of downzoning or some other action by government.

Such a system of compensation has been advocated by some planners and lawyers, but it has by no means come into law. Neither our Constitution nor our courts ask government to manage or guarantee the value of privately owned land.

What are "First English," "First Evangelical," "Lutherglen," "First Church," "Glendale," "the Los Angeles case," and "Lutheran Church"?

They are all nicknames that different writers have used to refer to the same Supreme Court case, First English Evangelical Church of Glendale v. Los Angeles County. The word "Lutherglen" comes from the name of a church camp involved in the case.

How have Oregon's courts responded to First English?

They haven't had much time to respond yet, but at least one Oregon case already has mentioned First English. In Dunn v. City of Redmond the presiding judge of the Court of Appeals, P.J. Richardson, said, "First English Evangelical states no new standards about when governmental regulations give rise to takings...."

How much authority does government have to regulate or restrict the use of private land?

The police powers give government very broad authority to regulate land. The courts have consistently held that land-use controls which serve a legitimate public purpose are constitutional. Only the most extreme forms of land regulation have been struck down by the courts.

This summary was prepared by Oregon's Department of Land Conservation and Development, 1175 Court Street NE, Salem, Oregon 97310. Telephone 503 373-0050. August, 1987

<info>

APPROVED MINUTES

City of Sherwood
PLANNING COMMISSION MEETING
September 21, 1987

1. **Call to Order:** Those present were Glen Blankenbaker, Ken Shannon, Walt Hitchcock, Glen Warmbier, Marion Hossler, Grant McClellan, and City Planner Carole Connell.
2. **Approval of Minutes, August 17, 1987:** Walt Hitchcock moved to approve the minutes of August 17 and Grant McClellan seconded. Motion carried unanimously.
3. **Comments from Public:** none
4. **The QT Tavern Minor Land Partition request:** Mrs. Connell read from the Staff report. She noted that part of the parcel is zoned MDRL and part is zoned NC. She also noted that there is a shared well. A letter received from ODOT requested that the tavern and the residence have a shared access to Hwy 99W.

Staff recommended approval subject to five conditions. Mrs. Connell advised that Condition #1 be deleted as State approval has been given for access to Hwy 99. She recommended the condition read "Parcel A and Parcel B shall utilize one shared access to Hwy 99 and this to be written into the deed."

Mr. Jim Allison, Rt. 3, Box M73, Sherwood of Allison & Allison, representing Mr. Bert addressed the Commission. He said that he agreed with the conditions except for the change in Condition 1. He noted that there is no actual driveway into the property, but a large open area of access. He recommended that the condition be that the deed read that there would be one access to be shared by both properties at a point recommended by the State Highway Department.

After much discussion, Mr. Blankenbaker asked the City Planner what her opinion was concerning the problem. Mrs. Connell felt that even though it was an open access at this time; for future planning, the State wants to limit the number of accesses by proposing a shared access.

After further discussion, Walt Hitchcock moved to approve the minor land partition with conditions 2 through 5, and that in addition there be a binding statement agreeing to a city initiated plan amendment which will zone Parcel "A" Neighborhood Commercial and Parcel "B" Medium Density Residential Low. Ken Shannon seconded and motion carried with Glenn Blankenbaker voting nay.

Those conditions required are as follows:

1. The deed which creates Parcel "B" shall have a provision therein which guarantees that the owner of Parcel "A" will have the right to establish a replacement drainfield on Parcel "B" in the event of the failure of the current drainfield now serving the tavern, if such replacement is required by the county Health Department prior to the time the subject parcels are served by the City sewer.
2. A binding agreement shall be drafted by the applicant's attorney and executed prior to or simultaneously with the execution of the deeds which create the two parcels. This agreement will guarantee the owner of Parcel "B" that the owner of Parcel "A" will supply water to Parcel "B" (subject to availability) until city water becomes available to Parcel "B".
3. The owner of the property shall enter into a non-remonstrance agreement with the City for future public improvements associated with the two parcels.
4. Prior to deed recording, a legal description prepared by a licensed surveyor shall be submitted and approved by the Washington County Surveyor. The lot division and legal description shall be reviewed and approved by the City Manager or his designee prior to recording.
5. The owner shall prepare a legally binding statement agreeing to a city initiated plan amendment which will zone Parcel "A" Neighborhood Commercial and Parcel "B" Medium Density residential Low.

5. **DEQ Discussion, Mr. Terry Obteshka:** Mr. Obteshka explained how standards are arrived at and what techniques and equipment are used in determining noise levels. Mr. Blankenbaker moved to adopt the DEQ standards by reference. Mr. Hitchcock seconded and the motion carried unanimously.

Mrs. Connell advised council that a public hearing for adopting DEQ noise standards would be necessary. The Commission agreed to hold a Public Hearing at their next meeting.

6. **Recommendation on the proposed Meinecke Road annexation:** Mrs. Connell reiterated the City's undertaking the annexation of "island" properties. Mr. Hitchcock moved to recommend to the City Council approval of the annexation of the Meinecke Road property. Ken Shannon seconded and the motion carried unanimously.
7. **Ryan O'Brien Land Development Consultants:** This presentation was not an agenda item. They proposed a subdivision development on Murdock Road and had questions regarding annexation and code requirements.

Commission members agreed that any questions regarding code ambiguity should be addressed to Staff prior to making formal application and that a formal application must be made before the Commission could give tentative approval or approval of any kind.

8. **Change of Meeting Schedule:** Due to a change in her working schedule, Mrs. Connell requested that the Planning Commission Meetings be held on the third Wednesday of the month rather than Monday. Commission members agreed to this and therefore the next meeting will be held on October 21, 1987.

There being no further discussion, Mr. Blankenbaker moved for adjournment, Mr. Shannon seconded and the motion carried. Meeting was adjourned at 8:30 p.m.

Rebecca Burns
Minutes Secretary