



# **COUNCIL PUBLIC HEARING**

Wednesday, June 02, 2021

## **MINUTES**

### **MEMBERS PRESENT**

Mayor Rick Scholl  
Council President Doug Morten  
Councilor Patrick Birkle  
Councilor Stephen R. Topaz  
Councilor Jessica Chilton

### **STAFF PRESENT**

John Walsh, City Administrator  
Matt Brown, Assistant City Administrator  
Kathy Payne, City Recorder  
Jacob Graichen, City Planner

Mouhamad Zaher, Public Works Director  
Jenny Dimsho, Associate Planner  
Joe Hogue, Police Lieutenant  
Bill Monahan, City Attorney

### **OTHERS**

Damien Hall	Andrew Schlumpberger	Daniel Kearns
James Hill	Tracey Hill	Kathleen Ward
Radhika Shah	Robin Nunn	Jerry Belcher
Holly Nunn	Laurie Brownlow	Hunter Blashill
Jeanne Sorenson	Lynn	

### **OPEN PUBLIC HEARING VIA ZOOM – 5:20 p.m.**

#### **TOPIC**

#### **1. Appeal of the Planning Commission's Denial of a Proposal to Divide Property into Two Parcels at 160 Belton Road (Schlumpberger)**

City Planner Graichen presented preliminary matters. He asked if any member of the Council need to declare ex-parte contact, conflict of interest, or bias in this matter.

Mayor Scholl declared that he was informed by Ron Schlumpberger that the application was denied. He had no further discussion but went to Graichen to find out what happened at the meeting.

City Attorney Monahan talked about the importance of disclosures. He requested to take the time to review each individually. First, does anybody have a conflict of interest in regard to the application?

Daniel Kearns requested the opportunity to ask Mayor Scholl about his ex-parte contact and potential bias. Mayor Scholl was overheard at City Hall loudly and strongly questioning the nature of the decision and asking what can be done to change it. That raised questions for Kearns, so he inquired further and found out that Scholl and Schlumpberger were related. Kearns asked who Scholl spoke with at City Hall. Scholl confirmed that he spoke with Graichen and City Administrator Walsh. He agreed that he is loud. Scholl was told by Graichen that there were no Municipal Code references in the denial process. He did go speak with Walsh after that and was very upset with the Planning Commission for not handling it appropriately. Scholl said the City's attorney is here today to make sure everything is done

correctly. Kearns asked Scholl to elaborate on his conversation with Walsh. Scholl talked to Walsh to be sure they are following the law and not opening themselves up for lawsuits. He confirmed he is familiar with the record.

Kearns asked Mayor Scholl what his relationship is with the applicants? Mayor Scholl responded that his mother is his cousin. Kearns confirmed that Andrew Schlumpberger's father, Ron Schlumpberger, spoke with him. What did R. Schlumpberger say? Monahan interrupted to say there does not appear to be a conflict of interest and they need to move on. He questioned if Mayor Scholl has already made up his mind and is bias, or does he have an open mind and willing to hear the criteria and evidence in the record. Mayor Scholl explained that there are three sides to the story: the applicant, opponent, and the truth. This Council needs to listen to the facts and find the truth. He is prepared to have an open mind.

Monahan asked if any Council members need to declare bias. There were none.

Monahan asked if any Council members need to declare ex-parte contact.

Council President Morten declared that he was on a walk with his wife near the subject property and was approached by a woman who was opposed to the proposal. She was venting, he listened, and then they excused themselves and went to their residence. He assumed it would be a Planning Commission issue.

Councilor Birkle declared that he has had ex-parte contacts with individuals on both sides of the issue. It has been nearly a year since he was made aware of this by someone who knew of his interest in Dalton Lake Nature Preserve. Robin Nunn, one of the neighbors and someone he has known for almost three decades, informed him about the hearing. He agreed to attend the hearing because he was interested. This was prior to his election but a few days after he filed for Council. He spoke with Nunn and Tracey Hill. Hill and Nunn both seemed to hope that he would speak in opposition. He made no commitment to that, based on the knowledge that if he were elected the matter could come before him. He also attended the second meeting. He had a brief conversation with Hill where she expressed concerns about statements made about her on this issue. He expressed empathy, as he would with anyone. He also knows that Hill has made comments with regards to the Schlumpberger's. He made no public statement, private statement, or commitment to anyone. During the first hearing, a reason he chose not to speak was because the issues raised were not pertinent to the preservation of Dalton Lake. Steps were in place to preserve its integrity. He has known the Schlumpberger's for almost three decades as well. He had a conversation with Andrew and Lindsey after one of the meetings. He listened to their concerns and their desire to build a home and maintain the integrity of the land around Dalton Lake. He made no comments for or against. After that, he had two conversations with Andrew's mother, Tammy. Those occurred when she was walking on Rutherford Parkway near Dalton Lake. He does not recall the timing, but one was prior to the election. The second encounter may have been after the election, but before he was sworn in. Their kids were similar age, so they caught up on each other's families and did have some discussion about the dispute, in which she simply expressed her concern for what her family was going through and hoping for a good resolution. He expressed to her the same thinking, wanting it to be resolved in the best way possible for all concerned. He was careful not to get into specifics. He does not recall having any conversations with Nunn or Hill within the last year about this. He did attend a work party at Columbia Botanical Gardens, where Nunn and the Schlumpberger's were also there working. There was no discussion about the hearing. He does not believe he has bias against either party. As the Planning Commission liaison, he attended previous hearings for this matter. He refrained from contributing to the discussions knowing that this could come before him as a council member. He believes he is able to fulfill his duty as a Council member.

Monahan asked if anyone has done a site visit.

Councilor Birkle declared that he has driven through the neighborhood within the last month for the purpose of checking out a possible road connection between Belton and Grey Cliffs.

Damien Hall reassured the Council that the applicant takes them at their word, and they have no challenges for the Council to make a fair decision.

Monahan asked if anyone in the audience wants to object at this time. There was no response.

Council President Morten pointed out that he lives in the neighborhood. When he walks around, he sees the area.

Monahan asked if anyone in the audience wants to object to Council President Morten's statement. There was no response.

Graichen continued preliminary matters. He reminded the Council that deliberations will be part of the regular session later this evening. He then presented the staff report, a copy of which is included in the archive packet for this meeting. Nine items were received since the Council staff report was done, all of which are included in the Planning file. The applicant has received copies.

- Letter from Kathleen Ward received today
- Email from Tracey Hill, dated June 1
- Letter from Damien Hall, dated May 28
- Pre-hearing statement from Damien Hall, dated June 1
- Letter from Matt Lokken, received May 28
- Letter from Ron and Tammy Schlumpberger, received May 28
- He entered into the record a pre-application form from the beginning of the application
- Letter on an unrelated matter and email follow-up

Graichen talked about the options Council has. He reviewed the applicant's 10 arguments to the denial by the Planning Commission. A copy is included in the archive meeting packet title, "STATEMENT OF GROUNDS FOR APPEAL – PARTITION PT.1.21."

### **APPLICANT PRESENTATION**

- ◆ Damien Hall, attorney for the applicant. He reviewed a PowerPoint presentation, of which a copy is on file in the archive packet for this meeting. The proposed partition is to partition a 2-acre lot into two 1-acre lots.
  - Proposed conditions
    - Improvements to Belton Road
    - Development of single-family home on vacant lot
    - Execute a street improvement guarantee

Two proposed options for improvements to Belton Road at the 90-degree angle:

- Turnout at 90-degree bend
- Widen paved surface to 20' for length of site frontage (165')

Hall reviewed the partition approval criteria.

- The lots meet the requirements for R-10.
- Adequate public facilities.
- Belton Road can serve the property adequately. Many trips on Belton Road terminate before the subject site. The applicant is willing to upgrade their fair share, but they are not going to improve the entire road.
- Oregon Housing Protections, ORS 197.522 Local government to approve subdivision, partition or construction; conditions. Requires applying conditions of approval to make the proposal consistent with the standard, if possible.

- U.S. Constitution 5<sup>th</sup> Amendment Takings Clause requires rough proportionality. Improvements must be roughly proportional to the impact of proposal. There are limitations on what the City or any public agency can apply. Just denying this for unspecified reasons is not an option. Whether approved or denied, the burden is on the City to show rough proportionality. The records need to demonstrate evidence that the conditions of approval are roughly proportional to those 10 daily trips. It is unconstitutional to improve all of Belton Road for 10 daily trips. In order to move forward, the applicant is offering to do more. The City can partially apply or waive unconstitutional standards.

Hall requests the Council approve the partition with:

- Proposed conditions, or
  - Alternative conditions (burden on City to demonstrate rough proportionality)
- ◆ Andrew Schlumpberger. He and his wife, Lindsey, own the property at 160 Belton Road. He grew up in St. Helens and now works at Columbia River Fire & Rescue. He has been involved with St. Helens Boosters and coaching youth sports. They bought their home nearly two years ago. Their goal has always been to raise their family here and enjoy the beautiful property. Their lot is over two acres. They have always planned and have been open to neighbors about dividing the lot into two pieces. This should have been an easy decision. The decision of one individual has turned this process into a game and has harassed and slandered him and his family. He talked about the misinformation about road safety. It is false that fire trucks and ambulances have a hard time accessing Belton Road. It is one of the safest streets to navigate with turnouts the entire way. If the partition is approved, they will be improving the safety as presented by the attorney. Testimony was submitted that the narrowness of Belton Road makes it dangerous and creates a safety hazard for pedestrians, pets, and bicyclists. No actual proof was provided. Two separate Fire Marshall's have submitted testimony that they would have no problem accessing Belton Road with their vehicles. Several medical and fire calls have been dispatched to that area and they have had no problem. Columbia 911 has reported no accidents on Belton Road or Grey Cliffs Road in that area. St. Helens Police has no record of calls in that area. People would not be walking on Belton Road as often as they do if it were not safe. People drive slow on it. The fire suppression has been brought up during testimony. A fire sprinkler system has nothing today with road safety. It has to do with the availability of water supply. There is a hydrant within 320 feet of the site. You cannot require a person to put in a sprinkler system unless the house is more than 3,500 square feet. From the beginning, they were informed about City Codes and laws. They have met or exceeded every condition, only to have the Planning Commission dismiss the same Codes and deny them the opportunity. They are just wanting the same opportunity that others have been given.
- ◆ Lindsey Schlumpberger. This has been a long process. When they first began the process almost 18 months ago, they never imagined it would turn into the mental, emotional, and financial disaster that it is today. Although intimidated by the process, they were encouraged by City staff to continue moving forward. She talked about the obstacles they have ran into. The City is supposed to guide these legal processes along, but they are referring to it as a game. She and her family have endured harassment and slander. They have refrained from reacting to each outrageous accusation made by one individual. They have tried to hold their heads high and stick to the legal facts, while communicating with their neighbors. They proposed solutions to improve privacy and make accommodations for others, despite the cost to them. Those conversations were manipulated by one individual, making them afraid to talk to some neighbors. They love their home and this community. They are only asking to do what is legally

allowed. Throughout this process, it appears there is bias against them. The City has failed to remain neutral and has shared information with the opposing side. The City has also failed to correct false information on record. There are 10 homes served by Belton Road. Based on conflicts with lot size, wetland setbacks, and topographical constraints there is not a lot of potential growth. The only potential improvement for the road is their partition. It has been said at previous meetings that Belton Road is a private road. That is false. It is a public paved road. Belton Road is not unique in the fact that it is narrow. She talked about those other narrow roads. Their partition proposes to improve Belton Road at the 90-degree turn. It will give you the ability to see oncoming traffic and pass by other vehicles. Their partition proposes the same amount of growth to the road that they would get from an ADU, except they would provide improvement to the road. There appears to be some City interest and bias has been created from that interest. As mentioned by one of the Council members just prior to this meeting, there is a lot off of Grey Cliffs that has been discussed as forming a park. They are not trying to encroach on any protected wetlands. Their property is acres away from the property that is being implied to be given as a gift to protect Dalton Lake.

### TESTIMONY IN FAVOR

- ◆ Jerry Belcher. He lives at 105 Belton Road. He and his wife support the partition. He has lived in St. Helens since 1974 and is involved in the community. He bought the property in 1985, started clearing it in 1990, and moved into their home in 1992. He had two neighbors approach him while he was in the process of building his house, and they were very concerned about some issues. It is not unusual that people are concerned about their neighborhood, and he understands that. They have to follow the law. It is a wonderful, quiet place to live. It is near Columbia Botanical Gardens. He gets the impression that people do not want further development to disturb what they have. The area is zoned R10. One acre is about 4,300 square feet. These are some of the largest private lots in St. Helens. The Schlumpberger's property is well over 90,000 square feet. There is plenty of room for a house. Belton Road is a city road. He has never seen garbage trucks, fire trucks, or delivery trucks have problems accessing it. To his knowledge, there has not been an accident on the road in 29 years. At the last meeting, he stated that he rarely meets traffic on Belton Road. Since that meeting two months ago, he started counting. He met five vehicles on the road in 60 days. Three of them he met at the same time at the 90-degree corner. His wife also kept track and has only met one vehicle. The road is safe but at times it is inconvenient. He agrees with improving the blind corner as a condition. He talked about some of the conditions making the road safer for everyone. The property belongs to Andrew and Lindsey. They have two acres that they pay property taxes for, which is probably a lot since it is on the river. As a past member of the City's Planning Commission, if the application meets the requirements, it should be approved with conditions. It will be a better place than it is now.

### TESTIMONY IN NEUTRAL - None

### TESTIMONY IN OPPOSITION

- ◆ Daniel Kearns. He is a land use lawyer, representing Tracey Hill. Despite the complexity of the case that has been heard, this is a pretty simple case. He would like to point out some corrections to the applicant's legal counsel's testimony.
  - They are not suggesting that conditions be imposed to improve Belton Road. It is too expensive.
  - Hall mentioned the "takings" case law. The City's ability to impose such conditions is limited.
  - ORS 197.522 does not require the City to approve the application.

- There is no statute that allows you to ignore street standards and approve a partition when the minimum street standards are not met. LUBA is clear that they will sustain a denial even if one condition is not met, which is what the Planning Commission did.
- He suggests the Council not impose conditions that are not lawful.
- This application does not meet the approval standard of having adequate public facilities. The street does not meet the minimum pavement requirements. He suggests they not ignore that criteria.

Their only expectation is straight denial of the application. The 34-foot-wide street standard is in the Code. The proposal does not meet that basic minimum standard. The suggestion that the City could be sued if they denied this is ridiculous, based on LUBA's sustain of denial if even one criterion is not met. It is ultimately the City's responsibility to bring the city streets up to standard. It needs to be done before they approve any more dwellings. Denial is a very sustainable outcome. The Planning Commission was right. Waiving the street standards here, sets a precedent for future development. He hopes this is not approved, which would exacerbate an already over-the-top situation.

- ◆ Tracey Hill. She lives at 250 Belton Road. She bought her house in 2018. It is the most unbelievably beautiful place she has ever been. She wants to address the letters that she received last night. She apologized for her misrepresentation of the mayor's relationship to the applicant. It was an honest mistake. She did not invite Councilor Birkle to the Planning Commission meeting. The first time she ever saw him was the first Planning Commission meeting. Referring to the Schlumpberger letter, she is not a liar. She has been a paralegal for 30 years. She protects people from insurance companies. She does not have a reason to manipulate. She practices integrity in all her affairs. She has no idea how to photoshop. She has not harassed or slandered anybody. She is terrified to walk up her road because of past experiences of being intimidated. There are people in attendance tonight that have also been victims. She does not know the Schlumpberger's except through their actions. They do not know her either. Her actions have been clear and transparent. The Planning Commission denied the application the first time, based on the fact that she had a very large easement for her septic drain field. She is not able to connect to the city sewer and is on a step system. The drain field was there for a reason. If a pump were to fail, "she is up the river with zero paddle." Not even a week after the Planning Commission denied it due to her easement, she was served with a lawsuit from the Schlumpberger's in State Court with regards to her easement. It was appalling. It is very expensive to defend a lawsuit. Her mother then died suddenly and devastatingly. Through her attorney, they did offer to lift the easement if they wanted to pay it. It backfired. They came back with a settlement agreement and said they will not give her any money in exchange for her signing a letter supporting their easement, furthermore she is not allowed to talk to anyone about it, not oppose it, and must support it. She terminated her easement voluntarily. She has witnessed A. Schlumpberger doing some crummy things. He has sprayed things, mowed a trail from the beach down to the lakeside with a backhoe, and used a backhoe to dig up the beach. She went over and introduced herself for the first time to R. Schlumpberger. They said that a surveyor told them that they could take down all of the shrubs and trees, and there was a setback to the lake. That was the only time she ever spoke with them. What is being alleged about her is not true. The turnout referenced toward the end of the road is her driveway. She has no idea why there is such rancor and anger. She asked why the Schlumpberger's would push this long and hard to get something that no one here wants them to have. They have not made friends. They have bullied people, showing up at their doors, and saying if they stand up against them, they will build a duplex instead. That is not how things are done in St. Helens. It is important to maintain the integrity of the ecosystem, which they have shown zero respect for. They have a unique area. This is not

a housing development. There is an option for the future should it be denied. She believes the area should be held sacrosanct. It honors the integrity of the area.

8:00 pm – took a 5-minute break

- ◆ Kathleen Ward. She lives at 140 Belton Road. She owns land on both sides of the Schlumpberger property. She has lived here all of her life except for two years in Kentucky. Since she is a very peace-loving person, she wants to make it clear that she in no way means to be unfriendly to her neighbors. Her request is that their property not be divided. It is not personal against them. The area has been a friendly, peaceful, nearly isolated community for many years. If the Schlumpberger's would just be content to live in the beautiful home purchased from the Sorenson's, peace would again reign among all of them. Other neighbors are not immediately impacted like she is. She has river view of the beach property with no buildings in site. A house built on the beach will be in full view of her bedroom and windows. Her daughter, Robin Nunn, and her family will see the construction process and the clearing for building will open up Columbia City houses and lights, especially at night. The proposed building site, unless shifted, obliterates Tracey Hill's narrow view of the river. In 1952, her mother and business partner acquired this whole area. It included the quarry, which is now the Botanical Gardens that her mother donated to the City. Her mother built her house at 100 Belton Road, where the Nunn family now lives, no other development was anticipated. There was only a driveway to her house. Eventually, she began selling land for isolated houses and property to be able to pay her taxes. Later, her mother deeded property to her and her brother. There was an unwritten understanding that neither of them would build structures on the beach. They had found Native-American artifacts on the beach. It almost seemed sacred. After her brother's job required him to move in 1988, he sold his house at 160 Belton Road to the Sorenson's. Later, they asked to buy a strip of her beach land between her house and the river. They agreed nothing should be built on that land. The beach land had been considered nonbuildable property according to former City Planner Skip Baker. She referenced his findings included in the lot line adjustment file from 2004. A few years ago, the Sorenson's had to move due to health reasons. They sold their property to the Schlumpberger's. They later learned that they would not have purchased the property without the prospect of building their dream house on the beach. Had the Sorenson's known that intention, they would not have sold it to them or anyone else with that intention. The problems with the road have been researched and publicly discussed. The partition was denied twice. She talked about a head-on crash she was involved in on Belton Road, long before there was as much development as there is now. Her house is on a step system. It worked well until about two years ago. She believes something is going on further up the line. She is not sure where the Schlumpberger's propose their access road, but she presumes it will be alongside her road. The maps do not adequately show the impact of a close road to her home with traffic in full view of her front door. This not an objection to change. It is a sad loss of previously enjoyed peace and privacy. When do they say enough is enough? How much more development can this area sustain without losing the unique blend of nice homes and spacious lots with an open view of the river. The house that the Schlumpberger's bought has one of the nicest views of the river. She questions what will happen on the remaining lot. The Sorenson's were deceived in to thinking that their house would be enjoyed by a nice couple and their son. Someone needs to be a guardian of this special area along the Columbia River. Just because it can be done, does not mean it should be done. The area is a sanctuary for wildlife. She is no longer able to walk on the beach but watches it with her eyes.

- ◆ Robin Nunn. She lives at 100 Belton Road, which is the original house. Belton Road does not resemble other streets because it was a winding driveway to her grandma's house. Now, they are trying to make it into a road. So much of the testimony given is not true. The story keeps changing. Her frustration is when people misquote her, for instance, Jeffrey Seamore had written that Kathleen Ward and Robin Nunn were both in support of the partition and then they changed their mind. They were never in support due to the negative impact on four houses. It takes away all of her mom's shade, takes away Hill's view, and will make her view much different. Hall said there would be no new driveways. Nunn heard from L. Schlumpberger that they are going to build on the beach and share her mom's driveway. That beach has been six feet under water. It came all the way up to the tree that they are going to take down. Using her mom's driveway is a big deal for her. L. Schlumpberger did show her a drawing that would include a buffer between their driveways. She has trouble with what was not said. It has caused division and forced her to take a stand against a neighbor that she has no ill will. The Sorenson's would have never sold to them if they knew what they were going to do. That should have been said. The beach was always intended to be a joy, not developed. They were shocked. After the Planning Commission denied the partition due to the drainage easement, the Schlumpberger's served the Sorenson's an intent to sue for damages at \$250,000. They said if they had known about the easement, they would have never purchased the property. They were shocked. To this day, they are afraid to say anything on this Zoom meeting because of the repercussions. They have lived in fear for the past year. Part of the problem is that they are trying to force a house to be built where one was not implied or discussed. All the houses are built with a view of the river. To put a house there is wrong. Just because you can, does not mean you should. R. Schlumpberger told her that he, "did not spend \$900,000 on the property to not develop it." Two Saturdays ago, over 20 people met at the Botanical Gardens to clean it for everyone to enjoy. Afterwards, Belcher took them on a tour. She talked about the poor location to build the house and how it would affect the wildlife and lake. She does not want issues with the neighbors. She would like to be friends. It is going to hurt their property values. It is not a good plan. The neighbors met with the Fire Chief at the Elks Lodge in the past. He told them that if there was a fire down there, he was not going to risk his vehicles and staff. They would wait for it to burn, and they would take care of it when it got to the top of the canyon. Her mother was told that she could not have anyone on the beach because she would be liable for any fire that started. They have lived in fear that if anything happened, they would be liable. She was t-boned driving towards Hill's house. They would understand if they had the same things at stake.
- ◆ Holly Nunn. She has lived at 100 Belton Road for 33 years. For the last year and a half, she has remained quiet, observing how this would play out. This whole situation has gotten out of hand. What used to be a close-knit neighborhood, has become divided. She has no animosity towards the Schlumpberger's. While she may not agree with the partition request or the tactics used to bring them to this day, they all live in the neighborhood together. She will continue to be neighborly to people in her community even if they have disagreements. The Schlumpberger's moved into the home from a previous home in Columbia City. Supposedly, they started looking to move because someone built a home right in front of them, directly in their river view. Most families do not have expendable capital to just move when an outside force decides their wants and desires are more important than their neighbors. They have never been that type of neighborhood. It is not true that they are resistant to change. They feel that everyone ought to have and maintain a beautiful view of the natural landscape. Every home was built with consideration of the neighbor's privacy and views. She talked about the amenities of the neighborhood. Nobody is saying that the Schlumpberger's should not have a right to a

house on the property they purchased, but 160 Belton Road already has a beautiful house. What right do they have to drastically change the properties around them? The area suggested should not be buildable. She wants the Council to consider how this decision will affect the affordable housing laws that are already coming into fruition in the area. The other existing properties could build additional dwellings. The road cannot handle it. It can be scary to meet another vehicle on that road. She talked about the neighborhood having respect for the neighbors and surrounding area. She requested the Council deny the partition.

- ◆ Hunter Blashill. He is the son of Tracey Hill. He lives in Corvallis and is a student at OSU. He visits the neighborhood on holidays and occasionally on weekends.
  - The Schlumpberger's made statements about their friendly approaches to the neighborhood residents. Unfortunately, that was never made to his mom, even though they are direct neighbors. It was quite the opposite. It is generally the cold shower. Over the course of the winter, the Schlumpberger's installed beach furniture where they planned to build their house directly in front of his mom's view. The winds and rain deteriorated the furniture, which they intentionally left out the entire winter alongside various clutter. If they had made a friendly approach, as they claimed, they could have saved stress and bad feelings in the neighborhood.
  - He and his mother saw A. Schlumpberger spraying in the heavy foliage. They witnessed foliation consistent with spraying weed killer. They then brought out heavy machinery to clear the sticks.
  - The Sorenson's partition was not respected. They sold the land to the Schlumpberger's with the expectation that it would not be developed.
  - There is a lack of respect to the nature.
  - There will be an issue with construction traffic on a very narrow street.
  - Belcher said he only met a handful of vehicles on the street. The few times he comes home, he typically runs into two or three vehicles each time he takes the dog for a walk.
  - The Schlumpberger's showed a large lot, which will create a lot more pressure on the road.
  - There was discussion about building a turnout. The fact is it is too small to meet the small street standard.
  - They are not against development. They are only against the impact.
  - He requested the Council deny the partition.

#### **APPLICANT'S REBUTTAL**

- ◆ Damien Hall. A lot was said, and he is not going to try to rebut everything. He hopes the Council adheres to the rules, approval criteria, the established facts, and approves the application. The theory that they can deny any application that does not meet City street standards does not make sense. It was also mentioned that LUBA will back that decision. That is not true, and he referenced case law for an unconstitutional taking. Clearly, there are a lot of feelings and considerations going into what was said. He appreciates the people who spoke. They obviously care about the neighborhood and what happens. However, that care is extending to land that they do not own or control. It does not trump the City Code. The people in opposition did not address City Code. This is only one house and a road that has capacity for those trips. Belton Road is a public street and subject to public street standards. They should not apply private street standards. If they are concerned about the 90-degree bend in the road, there is an immediate path to improve the road there. He talked about previous owners dividing their property and building new homes. Now a new family comes in and wants to do the same thing. That is the reason there is a Code and standards. It is human nature to have feelings. He briefly reviewed his presentation again. Kearns stated that no conditions can be imposed

because they would be unconstitutional. However, according to Code, development pays for improvements of local facilities. The applicant is offering to do that. One house does not add liability to the City. There was talk about "no one has died yet." They are hearing there has been one T-bone and one fender-bender since 1968. That is a far cry from hazardous. They need to be accurate with the record. Referring to the staff report, there is a good deal of misstatements. "Future development is not speculative. It is real." That is problematic when they are applying a standard of whether or not there is adequate transportation facilities to serve a proposal. Who knows when the next house will come. The Council needs to be very discerning when making a decision. This is about applying the law and not what someone thinks. This has been a really long process. There is a reason for process and protection laws. He hopes the Council can find a way to see that it is a good policy to apply the law and facts. He encouraged the Council to ask questions of him, their attorney, and City Planner.

Graichen informed the Council that they are only gathering facts. This is not time for deliberation. He wants to make sure Council has an opportunity to get their questions answered.

Councilor Birkle asked if questions can be asked during deliberations as well. Graichen said yes. They will have an opportunity to ask questions of staff and legal counsel. Monahan added that this is their opportunity to talk to him, Graichen, and if they need to ask the applicant questions. If they receive new information from the applicant, they may need to reopen the hearing and provide additional opportunity for the opponents to address. The best opportunity to discuss options is during the open hearing rather than deliberations.

Council President Morten asked about options one and two at the 90-degree corner. Is it either/or? Or a combination of the two? Graichen explained that the applicant proposed two options.

- The turnout by itself.
- Widening the portion of Belton Road that abuts the property to 20 feet.

Although it was not in writing, Hall expressed a willingness from the applicant to have a hybrid in which both are combined. That would mean 20 feet along the Belton Road frontage, except the blind corner, which would be 24 feet.

Mayor Scholl clarified that the City's street standard minimum is 20 feet. Graichen confirmed that is correct. It would be the skinny street standard.

Councilor Topaz referred to the old road that went down there. The City acquired the road and put an easement on it. It looks like the City could widen the road to that easement. When was the easement put on the old road? Graichen believes it was 1971. He is basing that off some of the easement records that were attained with the original application that talked about the dedication of Belton Road in 1971. He assumes that the entire dedication was from that era. He does not believe the road was paved back then. The property owners likely wanted the road to become public for easier maintenance. Some old maps show it as private, which testimony confirmed. The dedication occurred and that is when it switched from private to public.

Councilor Birkle referred to SHMC Ch. 17.140.040 Approval Criteria. Is approval mandatory if all of the conditions can be met? Graichen responded that Hall's argument was based on City standards, Constitutional law, and State law. If all the criteria lean towards approval, they can approve it with reasonable conditions. Mayor Scholl added that Hall referenced ORS 197.155 and the Constitution.

Councilor Birkle talked about the statement made that the Planning Commission did not make specific reference to City Code. Is that a necessary condition? They based their decision on the size of the road and inadequate public facilities. Should the Code have been explicitly referred to? Mayor Scholl believes it should be. Councilor Birkle would like to hear from Monahan. Graichen reminded the Council that the Planning Commission's issue was the narrowness of the road. Mayor Scholl repeated that it is a city

street, and the minimum width is 20 feet. Graichen talked about the concerns from Planning Commission setting a precedent allowing development when it is that narrow. Discussion ensued.

Monahan referred back to Birkle's question. Council is required to apply their Code. Those standards are required to be clear and objective. Anyone in the community should be able to see the opportunity to make use of a piece of land in a particular zone. That allows property owners to know their rights and adjacent property owners and the community to understand what could happen on those properties. In this situation, there is a piece of land in excess of 90,000 square feet. You apply the standards based on what the applicant wants to do. The standards he has seen in the staff report are that there must a certain amount of land to allow up to two buildable lots that meet the size standards for the zoning. That is not in dispute. The only criterion in debate is whether or not adequate public facilities exist to serve this new development. They are hearing the existing transportation system is inadequate and has been long before the City took ownership. Their challenge is to determine whether or not they will allow any additional development before the road is up to full standards. Full standards would be a 20-foot-wide street in the existing right-of-way. Graichen presented an alternative to the planning Commission to look at whether or not the impact with a new lot being created and its associated conditions of approval would make it worse or potentially make it better. From a Constitutional standard, they cannot put the entire burden on one property owner to bring this street up to standards. But the property owner is proposing to make some improvements if the Council allows them to build. The Council needs to determine if that would make things better to the point that it meets adequate public facilities. It does not sound possible to meet all of the adequacy standards. Does it make it better and help the Council make a future plan for how they want the system to operate safely and efficiently? Council is in a tough place. Their standards say a property such as this has the ability to be divided under certain conditions. Council needs to interpret whether or not the conditions suggested make it approvable. If all criteria are met, the Code is structured that they would approve a land development. It cannot meet all the established criteria, but it does add something to the system to potentially make it a little better. Plus, each property contributes to capital improvements.

Councilor Topaz asked if there are time limits to widen the road. Monahan responded that it would be a decision for the Council to make as policy makers. Another element of the conditions of approval is that Graichen has required, and the applicant has agreed to, a non-remonstrance agreement. Should there be a project that the City chooses to put in place to improve that road, they are willing to sign a legal agreement that binds them to pay their fair share of improvements to that road. To his knowledge, they do not have agreements from the other properties along that road. The Council needs to determine if the system is adequate.

Graichen reminded the Council that there is a proposed list of conditions in the staff report to the Planning Commission, in case they approved it. Those include a couple different landmarks in time. If the Council approves it with conditions as written, that turnout/street widening would have to be developed before the final plat is finalized. The final plat is the final document that divides the property. It would make sure the improvements are in place. The Code does say if it is silent on a condition, the default is within one year. They do not want people to guess, so they usually add it as a condition. It is very common to make that a condition of the final plat.

**CLOSE PUBLIC HEARING – 9:46 p.m.**

Respectfully submitted by Lisa Scholl, Deputy City Recorder.

ATTEST:

/s/ Kathy Payne  
Kathy Payne, City Recorder

/s/ Rick Scholl  
Rick Scholl, Mayor