

Depoe Bay City Council
Regular Meeting
Tuesday, July 2, 2002 - 7:00 PM
Depoe Bay City Hall

PRESENT: Mayor J. Steen, S. Scorpio, P. Taunton, B. Silver, A. Brown, J. Brown,

ABSENT: M. Lavery

STAFF: City Field Superintendent T. Owings, City Recorder P. Murray, Recording Secretary S. Fox

I. PLEDGE OF ALLEGIANCE

Mayor Steen called for all to stand for the Pledge of Allegiance.

II. CALL TO ORDER

Mayor Steen called the meeting to order and established a quorum at 7:00 PM.

III. APPROVE MINUTES: May 30, 2002 City Council/Planning Commission Joint Meeting, June 13, 2002 Special Executive Session, June 18, 2002 Regular Meeting and Special Executive Session, June 25, 2002 Special Executive Session and Workshop Meeting, June 26, 2002 Special Executive Session

Motion 1: Alice Brown moved to approve the minutes of the May 30, 2002 City Council/Planning Commission Joint Meeting, with one clarification on Page 2, Line 7: "A. Brown entered a protest, saying it was agreed to not discuss the size of the Planning Commission or the text amendments at this meeting *because the final vote on the Planning Commission size issue would not take place until the June 4 Council meeting.*" Scorpio seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 1 passed.

Ayes: Scorpio, Taunton, Silver, Alice Brown, Jack Brown

Abstain: Steen

Motion 2: Alice Brown moved to approve the minutes of the June 13, 2002 Special Executive Session and the June 18, 2002 Special Executive Session as written; and the June 18, 2002 Regular Meeting with one clarification under Council Comments, Alice Brown: 2) She extended an apology from the May 21 meeting, to everyone whose name was mentioned in the correspondence *between herself and Rick Beasley, resulting in a letter to the editor of the Depoe Bay Beacon attributed to her.*" Scorpio seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 2 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

Motion 3: Alice Brown moved to approve the minutes of the June 25, 2002 Special Executive Session and Workshop Meeting, and the June 26, 2002 Special Executive Session, as written. Scorpio seconded the motion.

Vote: Motion 3 passed.

Ayes: Scorpio, Taunton (June 25 meeting only), Silver, Alice Brown, Jack Brown

Abstain: Taunton (June 26 meeting only), Steen

IV. NEW BUSINESS

A. Tsunami Warning Alert System

Owings reviewed the memo regarding siren systems he submitted to the Council (copy attached to original of these minutes).

Motion 4: Silver moved to direct Staff to invite Jim Hawley of Lincoln County Emergency Services to a future Council meeting to provide an overview of circumstances surrounding tsunamis. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 4 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

B. Authorization - Employee C.O.L.A. for Fiscal Year 2002-03

Murray said that included in the adopted 2002-2003 Budget was a 2.7% cost of living increase, which the Council needs to authorize before it can go into effect.

Motion 5: Silver moved to authorize the distribution of the C.O.L.A. to employees. Jack Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 5 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

C. Street Chip Sealing Prioritize/List for 2002-03

Owings reviewed a memo he provided to the Council (copy attached to original of these minutes) regarding street priorities for chip sealing. Bay View Avenue was added to the list as a new request, which brought the total for all this year's projects slightly over the budgeted amount of \$15,000. Silver asked how the priority list was determined (excluding Bay View). Owings responded that he met with the Streets Crew to discuss which streets are in greatest need of repair. Steen asked about fixing potholes. Owings said the City has a contract with an asphalt company, and is on a waiting list to have potholes fixed. City Crew used to do this job, but there was a problem keeping the asphalt hot, and it doesn't stick well if it isn't hot enough.

Silver said through streets should have priority over dead end streets. Alice Brown felt strongly about sealing Bay View because there is commercial usage. Owings commented that Oceana gets more traffic than McDonald.

Motion 6: Alice Brown moved to chip seal Briscoe, Cliff, Oceana, Ludson, and Bay View Streets. Silver seconded the motion.

Vote: Motion 6 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

Murray noted there was a statement to the Council submitted by Bernie Lynam and Barbara Leff on behalf of Grace Strom (copy attached to original of these minutes) that was distributed before the meeting.

D. Harbor Commission Member Representative - Economic Business Development Committee (EBDBC)

Murray said the EBDBC currently has full membership. The Harbor Commission Member was Lars Robison, who has been unable to attend meetings, and doesn't see this changing in the near future. Rick Davilla is a Harbor Commissioner and also a Resident Member of the EBDBC. He has agreed to be assigned to the EBDBC as Harbor Commission Member in Robison's place. If this change is made, notice must be posted for a vacancy on the EBDBC, along with an advertisement for applications to fill the vacancy. She noted there was no need to interview Davilla for the position, since he was already a representative.

Motion 7: Silver moved to accept the reassignment of Davilla as Harbor Commission Member Representative, and to direct Staff to post advertisement for a Resident Member opening on the EBDBC. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 7 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

E. Legal Services Contract

Motion 8: Silver moved to direct Staff to prepare a legal services agreement with MacPherson, Gintner, Gordon, and Diaz, named legal counsel David Gordon, and to authorize the Mayor to sign the agreement subject to review of actual and potential conflict of interest. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 8 passed.

Ayes: Silver, Steen, Alice Brown, Jack Brown

Abstain: Scorpio, Taunton

F. Temporary OLCC Permit for Special Event, Nautical Nook

Steen said the application had been withdrawn. Alice Brown had a concern because their advertisement says beer will be available and the event was supposed to be a fundraiser for the Chamber of Commerce. Murray said an application for use of the Community Hall has been filed and the fees paid for this event. Since they won't be selling alcohol, they don't need a liquor license. When the application was first filed, it was under the business name, but they modified the application to be a personal rental. Taunton said it's not a Chamber event. Peggy Leoni said any proceeds will be given to the Rowing Club, KidZone, and the Chamber.

G. Discussion - Public Accesses to the Ocean

Alice Brown's concerns were the differentiation between private and public access, liability issues, avoiding public access in private areas, and rumors that public officials are engaging in an attempted adverse possession by trespassing on private property to obtain public access. She asked for clarification of where public accesses are, and the process for obtaining public accesses in the future. Silver shared information he obtained from the InfoRain website, a flagship site for the EcoTrust BioRegional Information System. He was able to obtain a listing of public access sites along the coast. Lincoln County has 205 points of public access to the ocean. Alice Brown said she was more concerned about Depoe Bay in particular. Silver said including Boiler Bay and Rocky Creek there are 20 identified locations, both publicly and privately-owned. Alice Brown asked Silver if there's a process whereby private access is converted to public access through monitored trespass, and whether anything like that has happened in the past or currently. Silver responded that he was not aware of any such activity. Scorpio asked if any of the identified accesses were prescriptive easements, and said we should find out. Alice Brown asked to have this information provided and brought to the attention of the City Attorney.

V. UNFINISHED BUSINESS

There was no Unfinished Business.

VI. PUBLIC INPUT

Bud Romans of 405 Coast, said 1) Chris Nowark and Silver's wife are on the Ocean Views Committee, which has been researching and actively mapping access for the past five years. He suggested Alice Brown contact them for further information. 2) A couple of years ago he asked why the City has an Oath of Office when there's no penalty for violating it. He noted a recent court decision published in the newspaper, that previous Council members had violated the U.S. Constitution, stating that they also violated their Oath of Office, and rhetorically asked if they should be rewarded by making them mayor. He suggested asking the new City Attorney. Scorpio said in her two years in office she's seen a lot of accusations go back and forth against Councilors and Planning Commissioners. She said there are various methods of recourse, including requesting resignations, recall elections, and ethics committees. She said because there is nothing regarding this issue in the City's Charter, that it is up to each individual to decide when to step down or recuse themselves from certain situations. She agreed that the Oath of Office seems meaningless. Alice Brown reminded Romans that Resolution 297 (upholding the U.S. Constitution) was recently passed, and the Council is becoming more aware of people's rights. She said these issues are very complex - that none

of the Councilors are lawyers, and they do the best with what they've got. She said the real issue is intent.

Peggy Leoni, Chamber of Commerce, reminded everyone that fireworks are tomorrow night. There will be a shuttle bus running from 5-11 PM because there's limited parking at Boiler Bay. Everyone should be made to feel welcome. Visitors spend money, and we want them to have a good time. See Phil Taunton if you would like to help with clean up on Friday.

Gloria Reeves of 45 Collins, submitted pictures she took of Woodmark's excavation in her neighborhood (zoned R-4). She has done some research, and said she was told by the Division of State Lands that he can't pave over the area near the creek. She was upset that he took down a 30 year-old tree on the property she rents, leaving only its stump in her driveway. She also submitted a petition signed by neighbors on all four sides of Woodmark's property; there were about 40 signatures of all neighbors except Planning Commissioner Fran Recht. To date, no development application has been submitted by Woodmark. Reeves is a tenant who moved there because of the park like setting - there were trees and shrubs everywhere. They blocked noise and headlights. Her objections to Woodmark developing the property were: too much noise (four feet from her kitchen and living room wall, and three feet from her son's bedroom), vandalism, safety, eliminated scenery, possible damage to a close freshwater spring, and erosion and flooding due to lack of vegetation. She was present for the EBDBC meeting, which was canceled due to lack of quorum. Committee members present had a casual discussion, in which Woodmark said there was a budget for parking lots, and estimated how much it would cost him to gravel and pave his property. She thinks he's using his position for his own business and personal gain. She's mad and doesn't want this to happen.

Glen Gahring of 55 Collins, has lived there for 31 years. His property is next door to the parking lot, which will be 13 feet from his living room window. He was concerned about the fence and how much of his view it will block. He would like it to be limited on the south end so it doesn't block his view of the ocean, and on the bottom part, to prevent trash from blowing onto his lawn. He felt the zoning for the entire block should be Commercial instead of R-4, as this would increase its value.

Comments from Councilors included Jack Brown clarifying that the property belonged to Woodmark; Reeves said yes, except for the tree, which Woodmark claims to have had surveyed. She said she contacted the Lincoln County Surveyor's Office, who told her there was no record of a survey in over four years. Jack Brown noted that no permits are required for excavation. Alice Brown noted there are side setback requirements in an R-4 zone. Silver suggested Staff (including the City Planner) research this situation and report to the Council.

Motion 9: Silver moved to direct Staff to further investigate this concern and bring a report back to the Council as an agenda item. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Jack Brown questioned whether this information would be available before the next Council meeting. Planning Commission Chairman Dick Johnson said Woodmark must apply for a conditional use for a parking lot, and that this process takes some time, so nothing would happen in the very near

future. Taunton asked Reeves to clarify what money the EBDBC members were talking about spending. Reeves said they kept assuring Woodmark there was around \$100,000 set aside in the budget for parking lots, and asked how much did he need. She said Woodmark indicated he wanted to be reimbursed his expenses for gravel and paving. Johnson clarified there is \$20,000 set aside to begin resolving parking problems, and that Woodmark put together several ideas on how to spend that money. He said the area in question was included in the generalized concept being worked from, and noted that an application for a conditional use permit must be submitted and a public hearing (where neighbors will have an opportunity to speak) must be held before any development can take place. Alice Brown said it was stated at a Budget Committee meeting that the money was earmarked for signage and pedestrian walkways.

Roma Powis of 410 Pine Ct. 1) Thanked everyone who helped make the awards banquet a success. It was a fun evening, but there weren't quite as many people as expected. The food was excellent. 2) Gleneden Beach will have a community parade on July 4th, starting at 1 PM. 3) She questioned why the discussion of public access to the ocean was on the agenda. Alice Brown said she was responding to rumors and didn't want people to get the wrong idea about public access.

Murray reviewed Motion 9. Steen asked if there was further discussion. There was none.

Vote: Motion 9 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

VII. CORRESPONDENCE

Murray had one item of correspondence from the League of Oregon Cities (copy attached to original of these minutes). It was in reference to the Qwest franchise fee lawsuit, the decision of which has been appealed. The League is asking for additional funding from cities, to handle the appeal. The level of funding for Depoe Bay based on what they suggest (1% of franchise receipts) is \$72.68.

Motion 10: Silver moved to authorize the participation in the League of Oregon Cities appeal, in the amount of \$72.68. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 10 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

VIII. LIAISON OFFICERS' REPORTS

Scorpio 1) Distributed copies of a questionnaire (copy attached to original of these minutes) the EBDBC will be handing out to all business owners. Each committee member will be responsible for distributing the questionnaire to a certain number of businesses. 2) She will no longer be the Accounts Payable liaison; Alice Brown will be the new liaison for this agenda item.

Taunton had no report.

Silver had no report.

Alice Brown reported that at the last Planning Commission meeting: 1) A final order for a building permit in the Coastal Shorelands Overlay Zone to replace and relocate a retaining wall was approved with corrections. 2) A building permit application in the Coastal Shorelands Overlay Zone for construction of the Memorial Wall in Whale Park was approved subject to clarification from the geotechnical engineer on drainage, and conditions provided by the City Planner. 3) There was a public meeting on a building permit for a single family dwelling in the Coastal Shorelands Overlay Zone, which was approved subject to conclusions by the City Planner. 4) A public hearing on a variance request for a side yard setback to construct an addition to an existing single family dwelling, which was given tentative approval subject to conditions being approved by the property owner and legal review. 5) Future planning goals were discussed.

Jack Brown reported 1) The Harbor Commission met June 26. The gates have been installed on ramps. There was a question as to whether or not they should be locked, and it was decided that keeping them closed with proper signage should be sufficient. 2) Crab season is winding down and Coho salmon season is winding up. There are lots of boats in the harbor; slips are full. 3) Frank Button would like to do a fundraiser for the Harbor, and suggested a mini-crab feed on Labor Day. He offered to supply the crab. Jack Brown asked about using the park and gazebo on Labor Day for this activity. Silver said the Parks Commission has recognized annual events currently in place as the Salmon Bake and the Fleet of Flowers, and the Parks Commission would like to review other items on case-by-case basis. He suggested Jack Brown get in touch with Bill Spores to get on the Parks Commission agenda. Jack Brown said they are not asking to close the park. The Chamber of Commerce Board has agreed to endorse this event. 4) There was a nice article in a recent issue of the *Beacon* about Man of the Year Fred Robison. He's a strong advocate of the Harbor and works behind the scenes to promote it.

X. ACCOUNTS PAYABLE

Alice Brown provided background information on a few line items in the Cash Requirements Report.

Motion 11: Alice Brown moved to approve Accounts Payable as presented. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 11 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

IX. CITY STAFF REPORT

Murray said that when the City began selling memorial plaques, the charge was established at twice the purchase price of the plaques with the excess to go toward maintaining the wall and

the area. Our costs have recently increased to from \$75 to \$90 per plaque, and she asked if the Council wanted the charge to remain at double the purchase price.

Motion 12: Silver moved that any memorial plaque applications on the books be charged at the current price; and because of inflation both in plaque purchase and care of the Memorial Wall, that we continue with double the plaque cost for future inquiries. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Alice Brown asked if existing plaques will be moved, and Owings responded that all plaques will be moved. Alice Brown asked how much this will cost and Owings said it will come out of the money that's already been charged - that there is a special line item for this transfer.

Vote: Motion 12 passed.

Ayes: Taunton, Silver, Steen, Alice Brown, Jack Brown

Abstain: Scorpio

Murray continued with her report: 2) She advised Councilors to be aware that an appeal of a Planning Commission decision was filed on Friday. The appeal was regarding the approval of an application submitted by Carl Schmitt for a new single family dwelling in the Coastal Shorelands Overlay Zone. A hearing will be scheduled before the City Council.

Owings had no report.

XI. COUNCIL COMMENTS

Alice Brown 1) Thanked the *Beacon* for the article on the front page about new citizen Ken Powis. 2) There was an article on page 7 of *Local Focus* that addressed the cost of public safety, and wondered if this could benefit Depoe Bay, since we are interested in obtaining police protection in the future. They are conducting a survey on how to go about this, and urging all cities to participate by completing the survey. She would like Depoe Bay to complete the survey, and wants this item to appear on the agenda.

Jack Brown spoke about a chart he had on countries with nuclear weapons and to what degree they have representative government. This made him think of Depoe Bay, where we have a representative government. He appreciated Reeves & Gahring for their participation. He was glad they voiced their concerns.

Scorpio 1) Said she thinks everyone alive is guilty of talking out of both sides of their mouths at one time or another, and because she doesn't want to be guilty of this is the reason she abstained from voting on the Memorial Wall plaques. She regrets ever voting yes on anything concerned with Whale Park, saying the reason she did so was to not be ugly because she was the only one on the Council who was not for it. She said she will never again vote to go along with a group if she feels something is not the right thing to do. She said Owings has been wonderful and patient with her and her family, and their objections. 2) She said Romans and Powis had mentioned the agenda item Public Access to the Ocean, and that rumor works in small towns, creating a lot of mistrust. Divisiveness is coming out from this public access

issue. She didn't know if anybody's been wandering around trespassing and documenting this sort of thing. She sees this as a not so innocent way of creating more prescriptive easements. She was concerned about liability to property owners, endangerment to visitors and neighbors, and especially liability to the City. She thought this should be thoroughly investigated to prevent liability to the City. She was anxious to see Silver's delineation of properties that are/are not prescriptive easements. She wanted much more specific information, and to know who's involved.

Taunton asked Alice Brown about the fundraising Pig Roast scheduled for July 5 that the Nautical Nook is putting on. He was concerned about serving free alcohol, saying that this type of activity needs to be closely monitored. Although the application to use the Community Hall releases the City from some liability, when alcohol is involved, a lot of things can happen, and unsuspecting people such as bartenders can end up being sued. He wanted to know who would be monitoring this event. He wondered if the question should be put to the City Attorney to find out how liable the City would be for having knowledge that this was going on, should something occur. Murray said that was a good idea, but it would come back to policy questions, which are determined by the Council, and asked if the Council wanted to modify the Community Hall Rental Application. Taunton asked to have this item on the next agenda.

Steen said there have been positive comments about having police in Depoe Bay, and concerns about not having police in Depoe Bay. He asked if the Council wanted to move forward with this. Silver said it was looked at in the past, and it might be appropriate to do so again if the Mayor wanted to appoint a subcommittee. Alice Brown volunteered for the subcommittee, and Lavery was appointed to assist.

Roma Powis was concerned about free beer being served at Community Center. She said that they could give away soda and ice water, and still have a great time. If it were a private party (public not invited), it would be different. Leoni said if it made people more comfortable, to ask them not to serve beer, and it wouldn't be a problem. Scorpio found it questionable that their application appeared on the agenda three times, then not follow through but serve beer for free while asking for donations. She also was uncomfortable that the advertisement made the event look like a Chamber of Commerce event. Silver suggested obtaining legal counsel regarding possible modification of the Community Hall Rental Agreement.

Motion 14: Silver moved to direct staff to contact the organizers of the First Annual Pig Roast and ask them to please not serve alcohol. Jack Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 14 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown

XII. ADJOURN

There being no further business, the meeting was adjourned at 8:49 PM.

Mayor John Steen

Silver Fox, Recording Secretary