

Depoe Bay City Council
Regular Meeting with Executive Session
Tuesday, August 6, 2002 - 7:00 PM
Depoe Bay City Hall

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

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

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: July 2, 2002 Regular Meeting and Executive Session, and July 16, 2002 Executive Session

Motion 1: Alice Brown moved to approve the July 2, 2002 Regular Meeting and Executive
Session minutes, and the July 16, 2002 Executive Session minutes as written. Silver
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, Steen, Alice Brown, Jack Brown, Lavery

IV. NEW BUSINESS

A. Community Survey Results Presentation - Sharron Kelley

Sharron Kelley noted that Lincoln County has the highest risk factors of all counties in the State of Oregon. She then reported the results of the Community Survey which was mailed with the April water bills (copy attached to original of these minutes). She suggested forwarding the survey to the Parks Commission to give them direction, and offered to help them seek funds. Jack Brown asked if Kelley needed ideas for grants, and she said yes she would appreciate ideas. She said there are two ways to proceed: 1) apply as a 501(c)(3) non-profit, and 2) seek money through the school districts, which they have already been doing. Alice Brown suggested working with Title One for after school tutoring programs. Kelley responded that they have done some work with Title One, and they are currently trying to get computers at the KidZone, so the children can be connected to the libraries and schools. Once the computers are in place, there are qualified volunteers available who were and are professional tutors. Lack of money isn't always the issue - it's often lack of opportunity.

B. Bid Award: Wastewater Treatment Facility Landscaping

Owings reported that he asked for four landscaping bids. Criteria included plants that grow well here and require as little maintenance as possible. Two written bids were received (copies attached to original of these minutes) and reviewed by the engineer. Owings recommended accepting White's Landscaping bid.

Motion 2: Lavery moved to accept White's Landscaping bid of \$11,256, for landscaping at the wastewater treatment plant. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Scorpio said some things should be cut back to contain the cost. Silver said the price was reasonable for the size of the job. Owings said the plant has 2½ acres to be landscaped; also the three lift stations were included in the bid. Owings said most of the landscaping will be done in rock. He also noted that the two bids that were received were close to each other.

Vote: Motion 2 passed.

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

Noes: Scorpio

C. Ratify Poll Vote - Revision to Legal Services Agreement

A telephone poll (copy attached to the original of these minutes) regarding revision of the legal services contract with Dave Gordon. The question asked was: *Regarding the Legal Services Agreement currently used by the City, should Section 7.b. 'Professional Liability Insurance not less than \$500,000' be revised to 'Professional liability insurance in the amount required for a licensed attorney by the Professional Liability Fund of the Oregon State Bar Association'?* Results: revision approved.

Motion 3: Silver moved to ratify the poll vote on revision to the legal services agreement. Alice Brown seconded the motion.

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

Vote: Motion 3 passed.

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

D. Ratify Poll Vote - Approve July 16, 2002 Accounts Payable Listing

A telephone poll (copy attached to the original of these minutes) regarding Accounts Payable. Copies of the Accounts Payable report had been prepared and distributed. Alice Brown reviewed the report prior to the poll. She recommended approval, with two comments. The question asked was: *Should the Accounts Payable be approved as presented?* Results: Approved as presented.

Motion 4: Alice Brown moved to ratify the poll vote to approve the July 16, 2002 Accounts Payable Listing. Silver 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, Lavery

E. Ratify Poll Vote - City Worker's Comp Coverage for Volunteers for Parking Lot Survey Project

A telephone poll (copy attached to original of these minutes) regarding approval of Worker's Comp coverage for volunteers (including youth) doing the Parking Lot Survey. The question asked was: *Should this activity be sanctioned for the purpose of providing worker's compensation coverage for the volunteers involved (particularly youths)?* Results: Project sanctioned for worker's comp coverage, with special conditions for involvement by youths.

Motion 5: Silver moved to ratify the poll vote for City Worker's Comp Coverage for Volunteers for Parking Lot Survey Project. Lavery seconded the motion.

Steen said it was moved and seconded, and called for discussion. Alice Brown said she would like to change her poll vote, since at the time she'd voted, the special conditions had not been introduced, and said she would have voted in favor of the question with the special conditions in place. City Attorney Gordon confirmed that a poll vote can't be changed in the ratification process.

Vote: Motion 5 passed.

Ayes: Scorpio, Steen, Jack Brown, Lavery

Noes: Taunton, Silver, Alice Brown

F. OECD - Contract/Funding - City Hall ADA Improvements

Murray said the City was offered a grant to replace the handicap access ramp to this building and to provide handicap accessible restrooms. Funding comes through the Oregon Economic and Community Development Department. Murray said at least two people (the mayor is the certifying officer and is not eligible) must sign every cash request; usually it is two Councilors and two Staff members. She asked who would be on the signature card. Lavery and Silver volunteered. She said that a motion was needed to authorize entering into the contract, upon legal review. She said there are many things that the City is obligated to do, and that (among other things) the City's Fair Housing Resolution may need updating, since it was last updated in the early 90s.

Motion 6: Silver moved to approve the grant and authorize the mayor to sign the contract, upon legal review. Alice Brown seconded the motion.

Vote: Motion 6 passed

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

G. Parking - Hwy 101 in City Limits

Lavery said that, because of safety issues, some time ago an Oregon Department of Transportation (ODOT) Traffic Safety representative was asked to look into the legality of parking in the "deceleration lane" located in front of WorldMark. He has contacted several people while following up on this issue, and has received conflicting answers from those he

has spoken with. He has been able to determine that although there is a right turn arrow in the lane, it is not a deceleration lane, and that the lane was required during construction to alleviate traffic congestion. Lavery felt that while the Council is a responsible group, the City doesn't have enforcement and has informed those agencies that are able to provide enforcement, so it will be up to the Oregon State Police (OSP), ODOT, and WorldMark to decide how to best address this issue. OSP Sergeant Scott Lorimar from Newport was present. He asked the City to abide by whatever ODOT's decision is. ODOT's property runs from curb to curb, and Lorimar's feeling was that ODOT would assign this lane as a no parking zone. His interest was in ensuring the lane is safe for occupants and residents. Bill Williams from WorldMark said the arrow was painted on the street about a year ago. He also stated that there have been no incidents during the four years people have been parking in the lane. He said the policy needs to be consistent - if there is no parking in the side lane by WorldMark, then there should be no parking in the side lane all the way through town. Owings said he met with Lamar Threet and Richard Burns from ODOT, a law officer, and Williams earlier today. They arrived at a potential solution: take the arrow away, and paint the curb yellow for 25' on both sides of every driveway, with the option of increasing the length of the painted curb as necessary to create a safe viewing zone. He said the lane cannot be zoned "no parking" without a request from the City. If this were done, there would be the additional cost of changing all the lines from Boiler Bay to downtown. He felt the worst safety issue is people backing into highway traffic downtown, not parallel parking in front of WorldMark. Also, once it has been changed to a "no parking" zone, it would be hard to get it changed back. Fran Recht of 66 NE Williams said she did not have a personal opinion, but suggested looking over WorldMark's original application for conditions of approval. Lavery said his main concern was that large RVs block the view of oncoming traffic. Williams said WorldMark asks their owners not to bring RVs because of the limited parking. Owings suggested he meet with Williams and get the painting done. The Council's consensus was that this was acceptable.

V. UNFINISHED BUSINESS

A. Report on Concern Regarding Excavation/Development in Residential Zone

Murray said the report Staff was requested to prepare was distributed two weeks ago (copy attached to original of these minutes). She noted that the City does not regulate excavation, only development, and to date the City has received no application for development of the property.

B. Public Accesses

After the July 2, 2002 Council meeting, Murray prepared an informational report (copy attached to original of these minutes) regarding local ocean/shoreline access areas, and distributed the report to the Council. Silver said Murray's report was succinct and concise, and he hoped the information it contained answered Scorpio's questions from the previous meeting. Scorpio wondered if anyone had obtained any information on trespassers making notes of access dates. Alice Brown had a question concerning public access prior to property development. Planning Commission Chairman Dick Johnson said the Comprehensive Plan includes wording that new developments will provide public access. Scorpio made a presentation expressing a serious concern about City liability due to a number of unnamed Councilors and Planning Commissioners (and/or their spouses) being involved with an outside committee with a focus on coastal shorelands acquisition. She felt her material was evidence

of a clear intent to achieve an objective that would be detrimental to some property owners, and she wanted to notify those people she felt would be affected by this. She said people were engaging in activities they were not qualified to pursue (e.g. cartography).

Motion 7: Scorpio moved to discuss this issue further in Executive Session. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Gordon asked the basis for the request; Scorpio responded there was a possibility of litigation and violation of property rights. Gordon said that *potential* liability or litigation was not an appropriate parameter for calling an executive session.

Vote: Motion 7 failed.

Noes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown, Laverty

Motion 8: Scorpio moved to direct Staff to draft a letter to be sent to everyone on "this group's list" informing them that there are activities that they are unaware of that may or may not affect their properties. Silver seconded the motion for the sake of discussion.

Steen said it was moved and seconded, and called for discussion. Jack Brown wanted more information before deciding what to communicate to whom. Alice Brown suggested bringing this to another meeting with all the background information. Scorpio said she had presented all the information, with the exception of names. She said she felt the activities of this group were covert, and expressed her concern over their listing of properties for sale, what's attainable, and what's grantable. Alice Brown questioned if this was City business, noting that there are many outside groups. Scorpio said we don't regulate those groups, but we should be regulating the activities of City officials with bias and intent who are voting on items involving ocean view and ocean front properties. Recht concurred that this was not City business. She said she's involved with the group Scorpio was talking about - the Community Response Team (CRT) - and they had worked with the City, the Chamber of Commerce, and other groups in town. She said the information presented by Scorpio was from 1996-97, and she didn't think there was any activity since then. They were dealing with quality of life issues, including aesthetics, ocean resources, healthcare, and daycare. She said the meetings were public and everyone was invited to attend. There were no nefarious, underhanded, or criminal activities. Alice Brown returned to the original topic of public accesses, saying she has heard a lot of people express concern about commercial usages in residential zones (bringing in visitors to residential areas), but there are also streets in private residential areas where the general public can view the ocean. She questioned what the City really wants - public access throughout the town, or separation of public areas from private areas. Scorpio, responding to Recht, said the issue wasn't about anything being nefarious, and that the information she presented was from 1998. Her concern included non-expert non-cartographers making maps, and people without a college education deciding on definitions. Brian Plechaty asked if the City adopted anything Scorpio was talking about. Scorpio responded that all those issues were tabled. Plechaty did not understand what the problem was. Scorpio said it was about a group wanting to *expand* ocean views. G.K. "Bud" Romans of 305 Coast expressed his view of Scorpio's concern - that people are trespassing and taking notes about when they do so,

hoping to create a prescriptive easement. Gordon said establishing a prescriptive easement is difficult to do, even with 10 years of access. These easements are not favored because they take property rights away from private property owners in favor of the public. Roma Powis of 410 Pine Ct. responded to Plechaty's question about what has come into law by stating that the Comprehensive Plan includes a requirement for all new developments to provide public access points. She has always had a concern that dead end streets that are platted to the ocean are designated as city parks, because she's afraid of someone getting hurt, which could result in a lawsuit against the City. Alice Brown suggested separating visual from physical accesses, based on safety concerns. Silver expressed concern that Scorpio's allegations were overstated. He questioned her issue with personal agendas and her belief that these people were acting out of a desire for personal gain. Scorpio asked if she was permitted to name names without getting sued. Gordon said there is an immunity for public officials for acts and things they say in their public capacity within the chamber where they are engaged in their participation as public officials, but this does not protect her from being sued. Scorpio had the names of five people on the *Views of the Ocean Coastline Committee* which she did not reveal. Ken Powis of 410 Pine Ct. said there are a number of ocean front properties that the public feels they have the right to walk across, including Scorpio's property. He also felt it's offensive to have uninvited people on your property and looking in your windows. He felt property owners should take responsibility for telling trespassers they're on private property and need to leave. He was more concerned about empty lots owned by people living out of town. Alice Brown suggested informing all oceanfront property owners that they can put up a no trespassing sign. Austin Scorpio of 147 NE Hwy 101 was astounded that Gordon had no comment regarding the City's liability. He suggested the Council get a letter to those people on the list drafted and mailed quickly.

Motion 9: Scorpio moved to withdraw her last motion and take this discussion to the next Council meeting. There was a consensus of the Council to do this.

C. Review Rental Agreement: Community Hall

Murray distributed a memo to Councilors (copy attached to original of these minutes) which summarized prior City Attorney Jeanette Launer's comments and suggestions for adding language regarding liquor to the Community Hall rental application. Ken Powis suggested adding "server's permit" as well as "service permit".

Motion 10: Jack Brown moved to accept Launer's modification suggestions for the Community Hall Rental Agreement, with the additional requirement to provide a "server's permit" for all servers of alcohol. Laverty seconded the motion.

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

Vote: Motion passed.

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

VI. Public Input

Dick Johnson said the parking study had been completed by himself, Silver, Jack and Maggie Brown, and Bob Ward. ODOT suggested that the City ask the Oregon Downtown Development Association to do a study. This would put the City in a good position for ODOT or another agency to come up with money to proceed with the creation of more parking. A letter has been prepared to the Oregon Downtown Development Association. He asked the mayor to sign the letter.

G.K. "Bud" Romans asked if grants for scenic land acquisition are matching or all inclusive. Murray responded that matching funds are required for scenic land acquisition. Romans said the City needs to look at what's more important - acquiring land is costly and the City is short of money. He also had a concern about charging downtown businesses to assist with funding the maintenance of the downtown restrooms, saying it was an unfair burden to those businesses who willingly allow the public to use their restrooms, and that those businesses that don't allow the public to use them should be the ones that are asked to assist with maintenance costs.

Austin Scorpio said a comment he made earlier about Depoe Bay's reputation did not include people he knows here. He said his statement in no way reflected on the good people of Depoe Bay, that it was strictly a governmental statement.

VII. CORRESPONDENCE

There were two items of correspondence received. 1) A petition (copy attached to original of these minutes) requested the City adopt a weed ordinance. Murray read the petition. Alice Brown said she had brought up the issue of tansy ragwort to the Council several times in the past, saying she would like to see this as an agenda item for further discussion. Fire Chief Ron Smith had reviewed Ordinance 164, which includes a section that addresses "dead organic material". He said the fire district has the 1998 Oregon Uniform Fire Code, but does not have an adopted fire code. Without an adopted code, he would have to go to the State Fire Board and ask them to enforce the fire code. The process of having the code adopted by the fire district takes at least three months and includes approval by City Council. He suggested looking at what other cities are doing. He reminded the Council that the City will have to enforce the weed ordinance, if it's adopted. He said the weeds aren't a fire hazard until they're dead. Owings said the problem is with enforcement. It takes 4-5 hours to process the letters phone calls, etc. for just one non-compliant property. He said legitimate fire hazards need to be taken care of, but the City can't police people who just don't take care of their yards. He enforces Ordinance 164 when he finds a health or safety hazard, but he isn't an expert on fire hazards. Smith suggested going with Owings to look at the area currently in question, and having Gordon research the definition of "dead organic material". Murray said there was a file compiled when this issue arose in the past. This item will appear on the next agenda. 2) A letter of resignation was received from Bert Wells (copy attached to original of these minutes). He has moved out of the area, and notice should be posted to advertise his position.

Motion 11: Silver moved to accept Bert Wells resignation from the Harbor Commission, and direct Staff to advertise the position. Alice Brown 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, Lavery

VIII. LIAISON OFFICERS' REPORTS

Scorpio reported 1) The Economic Business Development Committee met July 11, 2002. Dick Johnson reported on the long-term parking project. He and Bob Ward met with representatives from the Oregon Economic Community Development Department and the Oregon Downtown Development Association. Vicki Dugger is interested in doing a parking study for the City. A subcommittee met to discuss incentives for pedestrians to use walkways south of the bridge and around the harbor. There was discussion about the role and jurisdiction of the committee - they encourage events but don't stage them. They also discussed appropriate signage to keep RVs from getting hung up on Collins. She had a list of nine near-term improvements, some of which involved City Staff: Ask City Staff to look over current public parking to determine if a few spaces can be added; ask City Staff to help with mapping sidewalks from north to south, for upgrading pedestrian accesses; ask City Staff to look into the possibility of 3-hour parking signs on Hwy 101, which also involves the cost of signage and random enforcement. The Committee will talk with Dick Welton about the lot behind the Grey Whale regarding the possibility of grading and graveling it to provide 10-15 parking spaces. 2) The Planning Commission met June 19, 2002. Discussion continued on Jack Karnes' variance application, and a revised Final Order will be drafted for Johnson's signature. An application for a deck was submitted by John Woodmark and approved by the Commission. Discussion continued on Peggy Leoni's limited land use overlay zone application. A special meeting was scheduled for August 13, 2002 at 7:30 PM to discuss this item. 3) Because of events observed at the last Planning Commission meeting, she would like to see a reminder in writing to the Commission that they are strictly an advisory board.

Taunton had no report.

Silver reported 1) The Safety Committee met on July 16, 2002. No accidents were reported. 2) The Traffic Safety Committee met on July 9, 2002. A request to use the county radar reader unit is being looked into. 3) The Solid Waste Consortium met on July 16, 2002. Landfill status was discussed, and ongoing monitoring and reporting requirements are still being delineated. 4) The Solid Waste Advisory Committee met and discussed the uniform rate reporting format for trash haulers. The City has received a copy of the County's draft ordinance proposal that will unify this process. Each municipality will continue to do their own contract negotiations. It was advised that the City Attorney review the draft ordinance, and return with a report.

Jack Brown had no report.

Lavery reported 1) The Parks Commission met and discussed Whale Park. A suggestion was made to install electricity there, so when the whale returns it will pump and flow water. The park is about 95% complete. It's being used much more now than before it was renovated. 2) He attended a Council of Governments meeting on July 18, 2002. They have completed the labor contract they have been working on for over a year and a half. The cost of insurance and who would bear the cost had been an issue in the contract.

IX. CITY STAFF REPORT

Murray reported 1) A hearing was to be scheduled on an appeal of a Planning Commission decision on a land use application. The application was withdrawn, so there will be no hearing. 2) She reminded everyone that there are Council positions expiring, and anyone who wants to run (including incumbents) must have their paperwork filed by August 27, 2002 at 5:00 PM.

Owings reported 1) He asked four companies for quotes on painting the wastewater treatment plant main building. Three of the four companies responded. The low bid was A&T Painting, who bid \$4,710.

Motion 12: Silver moved to award the painting contract to A&T Painting for \$4,710. Laverty seconded the motion.

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

Vote: Motion 12 passed.

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

2) Bids for the grit unit will be opened on August 29, 2002. He will report the results at the following Council meeting. 3) The engineer for the Sidewalk Project between Bradford and Austin Streets will send contract documents this week for review by legal counsel. Bids will be opened on August 26, 2002, and he will report the results at the following Council meeting.

X. ACCOUNTS PAYABLE

Alice Brown reviewed the Accounts Payable report. She was concerned about the second bill for James Drayton Trucking and Excavation. The bill was for \$32,250, with one item at \$5,155 for a wheelchair-accessible picnic table and a park bench. She felt these items were made of cheap plastic, and if she was a visitor, she wouldn't want to sit on them. She thought the City should have used Chamber benches, and that those kinds of materials create an eyesore.

Motion 13: Alice Brown moved to approve Accounts Payable excluding the \$5,155 item. Scorpio seconded the motion.

Steen said it was moved and seconded, and called for discussion. Silver was concerned that the Council gave Staff direction to go forward with the Whale Park Improvements Project to the best of their ability, with budget outlined through outside funding. Part of the grant money received was for certain items to be environmentally conscious; the tables are recycled plastics. He did not feel the invoice should be altered. Owings said the bill was not negotiable. The tables have appeared in the contract documents since October 17, 2001. He and the engineer decided on using the recycled plastic tables because: 1) Recycled products are more environmentally conscious. 2) They are much more durable than wood. 3) They are more sanitary than wood. 4) They contain UV inhibitors for long life. 5) They can withstand rain. 6) They are resistant to knives. 7) Many Oregon counties are using tables made of this material. The tables were discussed numerous times at Parks Commission meetings.

Amendment to Motion 13: Alice Brown withdrew the exclusion on paying the bill, but thought the City should think about this before making future purchases, because plastic tables and benches don't look aesthetic. Scorpio seconded the amendment.

Vote: Motion 13, as amended, passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown, Lavery (with one exception)

XI. COUNCIL COMMENTS

Scorpio is having a problem with people curbing their dogs on her property since the concrete was laid at Whale Park. When the park was a natural resource, it was a biodegradable surface for fecal matter, but now that it's concrete, there's no place for their dogs to go. She was unhappy with the gravel and chain link fence that now border her property, and said people used to stop to look at Whale Park, but not since the changes have been made.

Alice Brown had a copy of the August 12, 2002 US News & World Report magazine. She referred to an article about water as a resource and water treatment. She has spoken to the Council in the past about trihalomethanes (a chlorine by-product), being concerned about the vulcanization of rubber. Now she's concerned about our citizens suffering from bladder cancer and miscarriages. She said there are new EPA standards that will be coming out.

XII. RECESS TO EXECUTIVE SESSION

The meeting was recessed to an Executive Session at 10:05 PM. Executive Session was called to order at 10:18.

XIII. ADJOURN EXECUTIVE SESSION

The Executive Session adjourned at 10:51 PM.

XIV. ADJOURN

There being no further business, the meeting was adjourned at 10:52 PM.

Mayor John Steen

Silver Fox, Recording Secretary