

Depoe Bay City Council  
Regular Meeting  
Tuesday, August 20, 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

#### 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 7:05 PM. Scorpio briefly left the Council Chambers at 7:06.

#### III. APPROVE MINUTES: August 6, 2002 Regular Meeting and Executive Session

Motion 1: Silver moved to approve the August 6, 2002 Regular Meeting and Executive Session minutes as written. Alice Brown seconded the motion with one amendment:

Amendment to Motion 1: Alice Brown moved to make the following change under Accounts Payable on Page 9: "The bill was for \$32,250, with one item at \$5,155 for ~~a wheelchair-accessible picnic table and a park bench~~ *all picnic tables and park benches*." Silver seconded the amendment.

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

Vote: Motion 1 as amended passed.

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

Absent: Scorpio

#### IV. NEW BUSINESS

##### A. Ratify Poll Vote

A telephone poll (copy attached to original of these minutes) regarding an increase in the A&T Painting proposal, originally approved at the August 6, 2002 meeting. The question asked was: *Should the change order to increase A&T Painting Company contract amount by \$600 (to \$5,310) be approved for the wastewater treatment facility painting work?* Results: Change order was approved.

Motion 2: Silver moved to accept the poll vote results regarding the change order with A&T Painting. Lavery 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, Lavery

#### B. Spencer Creek Bridge Alternatives

Steen said he has received an invitation (copy attached to original of these minutes) to attend a summit meeting on September 5 regarding finding a solution for maintaining the Spencer Creek Bridge at Beverly Beach through replacement or rehabilitation. He said he had distributed a Conceptual Alternatives Report which presented detailed options for consideration, and asked Councilors if they had suggestions he could share at the meeting. He has spoken with Newport and Lincoln City mayors, who are supportive of alternatives which will either build a new wider bridge on the same centerline location as the existing bridge (Alternative B) or shift the centerline west and widen the beach side (Alternative C). Alice Brown said she felt the alternative of rehabilitating the bridge built in 1947 (Alternative A) was a better option because it would have less impact on the surrounding area, and would still have a reasonably long life (25-50 years). Fran Recht 66 NE Williams, said there is an extensive amount of information behind each of the alternatives. Many of the alternatives would have an extreme impact on the public beach. Some of the alternatives involve rip rapping the beach, and geologists say rip rap won't stop the landslides which are moving the highway eastward. She urged Councilors not to make a recommendation at this meeting because of the amount of information available which should be studied. She offered to provide orientation to the larger issues. Jack Brown said he'd like further information.

### V. UNFINISHED BUSINESS

#### A. Public Access

Scorpio asked Murray to review the City Attorney's response to her memo and attachments (copy attached to original of these minutes). Murray said the City Attorney found no liability issues for the City in any of the material that was provided. Scorpio said she's heard the words "class action" too many times to ignore, and she thinks this issue should at least be public knowledge. She read excerpts from her memo into the record. She stressed it was not a personal, professional, or emotional attack against anybody. Her stated concern was people serving on City government who are very deeply involved in activities that may be directly affected by what they are voting on. She said it may not be illegal, but she saw it as immoral and unethical. Alice Brown wondered if it is required for people to declare their involvement in private groups in a quasi-judicial hearing, as declarations of conflict of interest are made. Referring to a \$12,000 grant the City received in 1996 connected with the Community Response Team (CRT), she asked who set up the steering committee that spent the grant money and whether they were accountable to the Council. She also expressed concern that non-residents responded to a survey connected with the grant, although their responses were not included in the final report. She then referred to the passage of Resolution 297, which would allow survey participation of non-resident property owners.

Scorpio read into the record a letter addressed to "Portland Environmental Group" from *Hipfish* magazine. The letter was a call for [monetary] help from groups such as the Sierra

Club, Audubon Society, Thousand Friends of Oregon, Oregon Trout, Oregon Sheriff's Coalition Council, and other environmental groups in locating a full-time professional activist to "pull together local environmental groups and considerably raise their profiles and help create a force for conservation and shake private property rights zealots and the public stewards of natural resources down to their waterproof boots." She found it disturbing to have that element in city government. She was surprised that the City Attorney was not more pro-active by suggesting further discussion or investigation. Silver asked specifically what property rights were being infringed upon. When Scorpio responded that she couldn't say, Silver clarified that Scorpio *suspected* property rights are being infringed upon or that there is a potential for this. Scorpio cited as an example a Planning Commission meeting she attended where the Commission found limitations to the application, and the Commission suggested the applicant build a trapezoid-shaped house. Her concern was that when something is changed that negates or lowers the value of a person's property without compensation, this interferes with property rights. Silver asked what had changed in this situation and Scorpio said she was unprepared for these questions.

Silver asked Scorpio what suggested amendments to the Comprehensive Plan came from this group. Scorpio said many of their ideas were brought to the table and/or were in the text amendments - everything from dictating tree size to deciding color schemes for painting homes. Silver said Scorpio was mixing Planning Commission activity with CRT activity. Scorpio said the CRT and the Ocean Views group used Recht, a member of a larger environmental group, as a consultant, and she did not think private citizens should work on things that could possibly interfere with property rights (like a Planning Commissioner working on the text amendments). Silver asked if Scorpio was familiar with the CRT's purpose and intent, and Goal 5 (which addresses aesthetic values) of the Comprehensive Plan, and said he didn't understand how one was connected to the other. Scorpio responded that there are people who are more than qualified, and there were people who were not officially appointed by the City, who were not educationally qualified to make decisions and discuss everything from re-defining wetlands to deciding what's appropriate for a setback. Silver said he was concerned about Scorpio's categorization of "not qualified to make decisions" because a lot of what the Oregon Coast Commission does is just monitor, and anybody can look to see what changes have taken place.

Referring to discussion at the last Council meeting, Silver said that no one made maps - they used county maps, surveyor maps, and maps from the tax assessor's office. Scorpio said that at a recent Council meeting Dick Johnson and Terry Owings mentioned a map that they had to re-draw or re-adjust. Silver asked again if this group had proposed specific amendments to the Comprehensive Plan. Scorpio said that at the first text amendment hearing she attended at the Community Center, one certain section of the proposed text amendments could have been written by an attorney who works for a larger group that has attorneys and education - that it was totally professional, articulate, and technical, and likely not written by any of our Planning Commissioners. Silver asked how this would change the Comprehensive Plan and Scorpio did not know. Alice Brown said the question was: is the protection of a view of greater importance than protecting the private property rights of the person that owns the property? She said she mentioned at the last meeting that public access should be through public areas, and general public access should not be allowed in residential areas. She felt that if this was done as City

business, the property owners should have been notified that there were people collecting information about accesses and who owns property. Silver said in response to an earlier question that the CRT was a City-sanctioned committee, and there have been over 140 people with a broad set of interests involved in the group over the years. These people were interested in the preservation of views and aesthetic resources. There followed some discussion on what makes a person "qualified". Regarding the maps, Silver said volunteers found discrepancies (e.g., erroneous tax lot numbers and duplications in street numbers) in the maps which they pointed out to City Staff for follow up.

Silver's final concern was understanding Scorpio's "red flag" regarding bias and prejudice when an elected/appointed official and/or their spouse is engaged in outside activities. Scorpio responded that it is the perception that we give, but that her top concern was the possibility of a class action suit and possible property rights infringements. She said she was very much for preservation but thinks the way it's being pursued is risky. She said at the very least, people have a right to know what's going on, and that the City Attorney agreed that people should seek out the advice of their attorneys. Silver was upset that Scorpio accused him of not considering everyone's rights - that one person's rights are more important than another. He said the City Attorney did not advise sending a letter to property owners. Scorpio apologized, saying she did not intend to insult him; she was just trying to protect everybody's rights and ensure people who live out of town know how many people's fingers are in the cookie jar and who's really running the town. Alice Brown said that subjective judgments have to be made, and if someone's "wearing two hats", will they be able to leave behind the interests of their private group, and be totally objective when taking a stance in the Planning Commission. She questioned whether people should declare their participation in private groups and the groups' agendas, before public hearings. Silver said such declarations should be made when ex parte contact and conflict of interest questions are asked at the beginning of public hearings. Alice Brown said that bias is very subjective, and questioned if a person takes a public stance as a member of a private group and does not declare this, does it invalidate the hearing. Scorpio said it would invalidate the hearing if someone has a bias that everyone perceives as a bias, and they never recuse themselves or reveal their affiliation. Alice Brown said City government is non-partisan, and each person makes a commitment when they take the Oath of Office to represent the City as a whole, and if everyone could keep that in mind, there would be no bias. Scorpio said she has bluntly stated facts and given her opinion, and if the Council does not wish to address this issue, she won't bring it up again. She apologized for being aggressive about it.

Alice Brown brought up the subject of separating public access from private access, and said that she'd like to add another category: dedicated open space. She suggested that maybe some undeveloped properties that are presently considered right-of-ways should not be developed for access. She said that planned developments have dedicated open spaces, so why not have them for the town or for limited areas as appropriate. Scorpio said that public access needs to be separated from private access, but her main issue was that people are turning their heads when we have environmental activism in our back yard, and if Measure 7 materializes, it will get worse. She said it's who we have on our public bodies, and what their interests are.

Betty Langdon 1635 Tintinnabulary, said she felt catapulted back to the McCarthy era - all of a sudden, people are suspect if they belong to the Sierra Club or do any kind of environmental work, and she found it incredible. She was on the committee, and is proud that she was. They did a lot of work. Their goal was to inventory public accesses in Depoe Bay. They got their maps from Lincoln County cartographer Larry Parsons. As they walked around looking at these recorded easements, they found that the people living next door to the easements had often taken them over and were treating them as their own property. The committee was concerned that because these people were using the property as their own, they could get adverse possession rights to these easements. Because she has been a member of the California State Bar for 37 years, the committee felt she was qualified to research this, and she arrived at the same conclusion as the City Attorney - that it is not possible for the property owners to gain adverse possession rights. She said the group never trespassed on private property. The committee was interested in oceanfront properties that were for sale because the City was interested in buying oceanfront property then, just as it is now. She was concerned for someone to say that because she cares about the environment she's not fit to serve on the Planning Commission and that she must therefore have a bias against anyone who wants to build on their property. She asked if people had to be ultra-conservative to be on the Planning Commission and stated that she has the right to believe anything she wants to believe in. She said she's been on the Planning Commission for seven years, and thinks that she's done a very good job. If she's to be thrown off because she likes "birdies and fishies", then go ahead. Scorpio said that since the rose bushes were taken down next door to her (in the park), her birdies are gone and she likes birdies, too. Just because she has an issue about activism in their back yard, dictating what color she can paint her house and what kind of flowers she can plant, doesn't mean she's anti-environment. She said no one implied Langdon was not qualified, and that she didn't question whether the cartographer was qualified - she'd questioned whether Johnson and Owings were qualified.

Dick Johnson said there are charts in our inventory with broad stripes of where streams are. A particular chart ended at a certain spot, and he and Owings simply indicated there were a couple of streams nearby, by drawing a broad stripe across a chart, not a surveyed map.

GK Romans 305 Coast said he'd been on the committee for some time, and although he had concerns about some of their issues, he didn't resign, he just wasn't informed of meetings.

Bette Silver 420 SW Cardinal, said she drew on a City map with a green pencil to indicate United States, County, and Depoe Bay park land, and five identified locations of park land access on public streets that had "fallen off" the map, and brought this to the City's attention. She apologized to Romans, saying the committee never met again after the last meeting at Romans' house. She was sorry that four-five years after their last meeting they are a threat. Scorpio said she'd like to know where she accused anyone of Communism or Satanism - she was not trying to accuse anyone of anything criminal or horrible. She apologized for inviting so much sarcasm and defensiveness.

Florence Shepard 350 South Point, said she was a part of the visioning process and participated in many lively and interesting discussions. She never felt anyone tried to push anything, but that they were trying to preserve the things people love about Depoe Bay. She

said that 15 years ago Depoe Bay was a charming place. At that time, Yachats provided comic reading with their recalls and their City Council troubles; now Depoe Bay is the laughingstock of the county, and she was sorry about that.

#### B. Weed Control in City - Petition

Steen said there had been some complaints about possible fire hazard from overgrown weeds. The Council spoke with the Fire Chief at the last meeting, who indicated he needed City Council approval before approaching the District Fire Board for control. Lavery added that approval must come from the entire district - from Otter Rock to Siletz Bridge. Depoe Bay can do its part, but the other unincorporated communities within the district must approve also. Jim White 380 Anchor Court, said the petition wasn't just for fire, but the signers were requesting an ordinance like Lincoln City's and Newport's (copies attached to original of these minutes) to require property owners to keep their property clear. This will reduce the fire hazard, will help people with allergies, and will improve the visual impact of Depoe Bay neighborhoods. Steen said there was an issue of enforcement. Alice Brown said Lincoln City has identified the following noxious vegetation: poison oak, poison ivy, tansy ragwort, St. John's Wort, Canadian thistle, Scotch broom, and gorseberry and blackberry bushes. She was specifically concerned about the tansy ragwort, poison oak, and poison ivy because there are a lot of children that walk along private and public accesses that can reach out and touch one of these weeds. She thanked Owings for the internet article he provided on tansy ragwort, and said for agreeing to remove the tansy ragwort from public access ways, saying it's a good example to private property owners. Owings said City Crew will get as much of it as they can - that it's all over town. He wanted the Council to know that every complaint takes about four hours of his time. Most of the information he's found suggests giving this duty to a sheriff, which Depoe Bay doesn't have. If the complaint is a health hazard, Owings handles it immediately; but for weeds, he's not a fireman and doesn't have the expertise to know if the weeds are a fire hazard. Depoe Bay Ordinance 164 is the same as Newport's Ordinance 1358 (we got ours from Newport), and Section D talks about brush, limbs, and tree branches. The ordinance is not real specific, and could be expanded upon if the Council wants to do that. Alice Brown suggested adding a clause on noxious vegetation. White passed around photos to Councilors.

#### VI. PUBLIC INPUT

Peggy Leoni Chamber of Commerce, said the Salmon Bake is scheduled for September 21 from 10 AM - 4 PM. She had Salmon Bake tickets available for sale. If you buy your tickets before September 1, they are \$1 off (\$12 adults, \$6 children). She invited everyone to please come. If you will be working on September 21, the Chamber is offering free deliveries (ticket required), so call them to request having a meal delivered to you (no ice cream).

Dick Johnson said the Depoe Bay Economic Business Development Committee (DBEBDC) did a parking usage study and sent it to the Oregon Downtown Development Association (ODDA). He had previously provided Councilors with copies of a draft scope of work study of what the ODDA proposes doing. They have outlined a good study, and have offered \$10,000 for a consultant to do a study. Because the City isn't required to spend money on the study, we will need to provide Staff time for making copies, etc., which needs approval by the Council.

Motion 3: Lavery moved to accept the DBEBDC downtown parking study proposal and accept the ODDA donation of \$10,000 for this study. Jack 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

Jim White 380 Anchor Court, addressed a statement made by Scorpio at the last meeting, that he had taken offense to. The comment was about Whale Park: "We've got a concrete jungle next door. It looks like a bad neighborhood in the Bronx. All we need is a basketball hoop and a couple of crack dealers." He said he is from New York, and the Bronx is predominately black, and her comment was stereotyping and racist. Scorpio said she came into City Hall just after White called with a complaint, and immediately offered to call him. White said he had received a voicemail from her saying she'd call back the next day, but she never did. She apologized for not calling back, saying she works seven days a week, and it had been a choice of eating dinner with her family or calling him, and she had been selfish. She said she understood his feelings on racism, because she's Jewish, and six million of her people were cooked in ovens. She's also an ex-New Yorker, and gets defensive when someone says something against New York because it's her favorite place. She apologized for offending him. White said she should be very careful about statements that she makes, and accepted her apology.

## VII. CORRESPONDENCE

Murray said there were two items of correspondence: 1) A letter addressed to the mayor was received from attorney Douglas Holbrook. The letter questioned the legality of the Planning Commission's land use procedures, and requested that the August 21, 2002 Planning Commission meeting be cancelled and rescheduled as a quasi-judicial land use hearing. The City Attorney reviewed the letter, and said our procedures are fine, so the Planning Commission Agenda remains unchanged. 2) A letter was received from Fran Recht regarding a request she made on May 9, 2002 for a copy of a memo regarding her. Jack Brown asked if Recht's request was responded to. Alice Brown said this particular memo wasn't under the Public Meeting Law as it was determined to not be City business, and therefore inappropriate to release.

## VIII. LIAISON OFFICERS' REPORTS

Lavery reported that 1) The Parks Commission approved an afternoon of music in the park on Sunday, September 15 starting at 1 PM. There will be three or four bands and two or more solo performers. 2) The Parks Commission discussed skateboard ramps. Owings was given plans or pictures of skateboard ramps. If and when we get to that point, we will need volunteer help. 3) Whale Park funds spent thus far total \$77,912, with about \$8,000 remaining. Planter box landscaping has not yet been determined, but they want something low-growing that won't obscure the ocean view. 4) The Oregon Transportation Safety Conference is October 23-25 in Tigard. It's something ODOT and the Alliance for Community Traffic Safety put on. They are expecting 250-300 people to attend this year. It involves engineers, law enforcement, and education. 5) DUI prevention mini-grants are due in by September 9. 6) Owings has the

county radar trailer. Lavery left a message for David Dunne at the message center for him to contact Owings to set up the trailer.

Scorpio reported that 1) The Planning Commission will meet tomorrow. 2) The DBEBDC met last week. They discussed goals as a group, and where they felt their areas of jurisdiction are. They got assignments for handing out the business survey, which should be coming back in about a week. They also discussed parking. They came up with ideas to increase business in the off season. They want to have joint town hall/business owners meeting in October. This would be an opportunity for business owners to get involved as a group to create better business environment in winter.

Taunton said the Salmon Enhancement Commission has not met.

Silver reported that 1) The Traffic Safety Committee met on August 13. They would like to receive copies of all minutes, memos, etc. which reference activities relevant to the committee. They also requested a traffic plan (in the form of a short memo) for moving people in and out of the park during this year's renaissance faire. They suggested to the Council that when the City has special activities, a "post-activity action report" be generated, with pros and cons on how it went, and any problems that need to be worked on if it's an annual event. Of concern was a trash can located in a diagonal parking space on the west side of the highway, and the committee requested this space be designated "no parking" by striping. Their next meeting will be September 10 at 4 PM at City Hall. 2) The Solid Waste Consortium met today in Newport. Silver requested an agenda item for the September 3 Council meeting: pollution insurance. The consortium is looking at insuring against catastrophic failure of the landfill at Agate Beach. The engineer's report doesn't make a recommendation, but area residents know that the soil is unstable and there are 20 properties downstream of the landfill that we are all responsible for. He needed a recommendation from City Council as to what we feel our exposure is, and whether we recommend going ahead with the insurance or not.

Jack Brown reported that the Harbor Commission meets next Wednesday. The harbor is enjoying a good summer. He noted what a gem the harbor is, and said we have fishermen come here from all over the country.

## IX. CITY STAFF

Murray had no report

Owings: reported that 1) The water loss for May and June was 567,442 gallons (equals 4% of water treated), an average of 6.5 gallons per minute. Water sold was 10,363,760 gallons, which was 654,890 less than the same two months last year. Water treated was 13,203,482 gallons, which was 3,540,000 gallons less than the same two months last year. City Crew is finding and fixing leaks, and people are conserving water. If anyone sees anything suspicious regarding water, please call City Hall and we will check it out. 2) The Sidewalk Project (from Bradford Street to Austin Street) has gone out to bid, and bids will be opened at 4 PM on August 26. 3) He's getting a lot of calls and concerns from the Traffic Safety Committee and the Parks Commission about obtaining a general idea of how this year's renaissance faire is going to work. He offered to be liaison between the City and Cheryl Preston. He invited



Councilors accompany him and Preston on a tour. Alice Brown asked about trihalomethanes in the water. Owings said we are required to test for them in 2004, but we've already got the bottles and we're going to volunteer to test now.

#### X. ACCOUNTS PAYABLE

Motion 4: Alice Brown moved to approve Accounts Payable with one change: Terry Owings check should be for \$11.74 instead of \$62.72 as listed. Lavery 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

#### XI. COUNCIL COMMENTS

Alice Brown commented on the number of events in the fall, saying that we're forming the equivalent of a fall festival, which encourages people to come and stay for the better part of a month. "William Shakespeare" was at the Performing Arts Center in Newport last week, and gave a wonderful performance.

Jack Brown said that the rowing club member that won the race at the boat show will be rowing "Queen Elizabeth" at the renaissance faire. He asked Murray how much time remains for candidates to file papers for running for office, and Murray responded that there is only a week left. Jack Brown said that not many people have filed, and the town would be healthier with more competition.

#### XII. ADJOURN

There being no further business, the meeting was adjourned at 8:56 PM.

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Mayor John Steen

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Silver Fox, Recording Secretary