

Depoe Bay City Council  
Special Meeting  
Wednesday, November 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 Planner L. Lewis, City Recorder P. Murray, City Attorney D. Gordon

#### I. PLEDGE OF ALLEGIANCE

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

#### II. CALL MEETING TO ORDER AND ESTABLISH A QUORUM

Mayor Steen called the meeting to order at 7:00, with a quorum present.

#### III. PUBLIC HEARING - Planning Commission Recommendation for Text and Map Amendments - Comprehensive Plan and Zoning Code - Limited Land Use Overlay Zone (LLUOZ) Change, North Coast Avenue (NCA) LLUOZ

##### A. Proposed Ordinance #260 - An Ordinance Amending Ordinance #24 (Depoe Bay Zoning Ordinance), as amended, and Ordinance #69 (Depoe Bay Comprehensive Plan), as amended; Enacting Policy and Standards for Establishment of Limited Land Use Overlay Zones (LLUOZ); and Declaring an Emergency

Steen asked Lewis to review the Staff Report (copy attached to original of these minutes) summarizing the proposed ordinances. Lewis provided a detailed summary starting with the history of the application process and moving on to written testimony and consideration of the two proposed ordinances. He noted that approval of proposed Ord. #260 would be necessary before approval of proposed Ord. #261 could be considered. He quoted sections of the draft ordinances (copies attached to original of these minutes), explaining many ways in which LLUOZs could be used, and their limitations and compliance standards as well as specific requirements for the NCA LLUOZ.

Jack Brown asked 1) What the definition of multiple contiguous properties was, and Lewis said two. 2) Could these ordinances could be changed in the future, regardless of the results of this hearing, and Lewis responded that any property owner has the right to submit an application for a text amendment. Alice Brown referred to a memo she submitted to Lewis on December 20, 2001 listing five reasons why LLUOZs might be used, and asked if these issues had been considered, as she thought the general information in her memo might be helpful. Lewis did not know if the Planning Commission had considered her information. She expressed concern about the reduction of required approval percentage of surrounding property owners from 100% to 80%, asking for justification of this reduction. Lewis said the Planning Commission discussed this at length, deciding that allowing a single property owner to object would be unfair to the remaining property owners. Alice Brown was worried about

what would happen without 100% approval, if a group of R-4 property owners, except one, decided they didn't want single family residents any more. Lewis said existing property owners would not be forced to move, just as in the proposed LLUOZ all property owners would not be required to operate vacation rentals.

- B. Proposed Ordinance #261 - An Ordinance Amending Ordinance #69 (Depoe Bay Comprehensive Plan) Map, Changing the Designation of Twelve Properties from Residential to Commercial; Amending Ordinance #24 (Depoe Bay Zoning Ordinance) Map, Changing the Zoning on Twelve Properties from R-1 (Residential) to C-1 (Commercial); Amending Ordinance #24, as amended, Establishing the North Coast Avenue (NCA) Limited Land Use Overlay Zone (LLUOZ); and Amending Ordinance #24 (Depoe Bay Zoning Ordinance) Map, Identifying the Twelve Properties as C-1 NCA; and Declaring an Emergency

Lewis continued with his Staff Report by describing the actions involved with consideration of proposed Ord. #261. He noted that it was the Planning Commission's clear recommendation that the rezoning of the 12 properties to C-1 only be done if the NCA LLUOZ is also approved. He reviewed the criteria which allows rezoning to take place, stating that the Planning Commission had determined the 12 subject properties are eligible for rezoning. He reviewed Items 3 General Requirements for Establishing a Limited Land Use Overlay Zone and 4 Uses Permitted Outright from Page 3 and Item 5 Standards from Page 4 of proposed Ord. #261. He completed his report by stating proposed Ord. #260 is generic, and addresses no specific properties. This ordinance would allow people to apply for LLUOZs. Proposed Ord. #261 is a specific application for 12 particular properties, and this ordinance cannot be approved if proposed Ord. #260 is not approved.

Jack Brown asked 1) If the City would benefit from the rezoning by receiving room tax, and Lewis responded that it would. 2) If there was a way to enforce the room tax, and Silver responded that it was a condition of the business license. 3) How effective would proposed Ord #260 policy and standards be in stopping proposals for additional short term rental areas, and Lewis responded that there would be two key steps for any residential property owner to do this. The first step would be getting the property rezoned by convincing the Planning Commission that either there had been a substantial change to the character of the area, or that the property was zoned in error. The second step would be to satisfy the requirements of the LLUOZ; e.g. the property was unique and suited for tourist accommodation uses.

Alice Brown expressed a major concern about parking and Ord. #234, which states that parking has to be on the same lot or the adjacent lot. She said this was the only reason she could see why property owners up to 500' away would need to approve the LLUOZ, and she asked if it wouldn't be more appropriate to simply require the parking stay within the overlay, because that's what is required in a planned development, which is a type of LLUOZ. Lewis responded that the Planning Commission discussed parking and determined that the needs would be similar to those of a commercial zone, which requires parking be secured within 500' of the business. He further stated that he also believed the intent of proposed Ord. #261 was to get approval from the surrounding property owners to change the permitted land uses of the area.

Scorpio asked if a neighbor was against the nightly rentals and filed a complaint, would the interpretation of Item 6 Revocation on Page 5 of proposed Ord. #261 cause a business license to be revoked, and Lewis responded that the complaint would be dealt with by the City in the same way as other complaints are dealt with; i.e. investigation, request for compliance, and finally appearing before the Planning Commission or City Council for consideration of dismissal.

Silver questioned how the area's change in character was applicable under the five items listed under 3. General Requirements... on Page 3 of Ord. #261, and Lewis responded that the change in character was related to the rezoning from R-1 to C-1 rather than the LLUOZ. Gordon added that Ord. 234 eliminated tourist accommodation use in an R-1 zone, and that was the basis for the change in character that would warrant a change in zoning for these particular properties. Silver responded that Ord. 234 was enacted over a long period of time to resolve R-1 issues, and that this change in character would apply to any home that was used as a vacation rental prior to the passage of Ord. 234, and that he felt that was what makes so many people nervous about these proposed ordinances.

Dick Johnson Planning Commission Chairman, had three points: 1) The change in character relates only to the change from residential to commercial, not the LLUOZ. 2) The Planning Commission sees the LLUOZ as a valuable generic tool for future use. 3) In response to Jack Brown's question about short term rentals happening elsewhere in the city, he said there would first have to be a rezoning to commercial, and he felt it was very unlikely that there were other places in the city where a unique situation or change in character could be found to justify rezoning to commercial. Alice Brown added that the city inherited zoning from the county, and that zoning had been put in place when the population was much less dense. She said there are only two areas with a juxtaposition of residential and commercial zoning - the 12 properties in this application, and an undeveloped area at the north end of town; and the goal of the proposed ordinances is to resolve the conflict in these two areas. Silver said he did not believe the city "inherited" county zoning, and old City Council minutes reflect that maps came back from the Department of Land Conservation and Development (DLCD) with recommendations for more proportioned percentages of land use for the different zones, indicating that the City conducted work in zoning matters. Following discussion, Alice Brown stated that she questioned zoning R-1 next to C-1, and felt such zoning was inappropriate.

Steen opened the floor to public testimony.

Peggy Leoni 355 SW Hwy 101, appeared as the applicant, representing the 12 property owners involved with the zone change. She said in the application she had pointed out that she believed the area had always been zoned R-1 incorrectly, and there are two or three properties that are two-family dwellings. Also, the west side of the street is R-1, while the east side is C-1. She said there is a natural delineation for these 12 properties. She pointed out that not all 12 properties are suitable for nightly rentals, and they don't all want to do nightly rentals, but they all want the right to do so if they so choose. She submitted several revisions to the two draft ordinances (copies attached to original of these minutes), and reviewed these revisions with the Council, including: 1) To add all residential uses allowed in R-1 and R-2 in both proposed ordinances. 2) To reduce the approval area from 500' to 250' in proposed Ord.

#261, because nowhere else in City Ordinances is there a requirement for a 500' notification area. 3) To include "in excess of the amounts normally associated with residential uses" to the Nuisance Control standard, which will allow the use of fireplaces, woodstoves, and pellet stoves. 4) To "grandfather in" those properties with currently non-conforming parking. There was discussion regarding testimonial concern of use of the fire department's parking lot, and Leoni suggested that renting spaces from the fire department might be a possibility. 5) To determine occupancy based on limits set by the fire district. At the completion of her oral testimony she submitted written testimony she had received.

G.K. "Bud" Romans 405 SW Coast, spoke to the 500' notification requirement. He said this area was zoned by the County in the 60s but the records burned in a fire. He also said the first house built there was a duplex, and that original zoning was in error. He did not see how any property owners 500' away could have any interest in what happens on Coast Avenue. He said that changing existing single family dwellings to nightly rentals wouldn't alter parking or noise. He said Richard Allyn built a single family dwelling next door to his (Allyn's) father's house, which is now a bed & breakfast, and that he wouldn't have done that if there had been a problem with rentals in the past. He encouraged the Council to not deny any of the residential uses to any of the homes.

Jim Gardner 42-B Sunrise Road, Lopez Island, WA, said his large family has owned the duplex across from the Channel House for many years. They used to have family come from several states for holiday get-togethers, and they would rent the Channel House and Trollers Lodge. Although none of the family currently lives in the house, the family wishes to maintain ownership and uses it as a beach house. When not in use, they have a local property manager who rents it out as a vacation rental. He appreciated the comments regarding transitional zones, saying that Channel House parking has overflowed in front of their house for years, but they've never complained, and that when his family used to get together, their parking would temporarily overflow, but this did not cause a problem.

Chris Nowark 425 Pine Court, spoke directly to Scorpio, quoting from Scorpio's memo dated 8/15/02 to the Mayor and City Council: "Hypothetically, changing the laws to suit the agenda of one group would infringe on the legal rights of many others." Nowark said that approving the proposed ordinances would infringe upon the rights of all the people who voted to eliminate nightly rentals in residential zones, and would be suiting the agenda of one group - the 12 property owners. Speaking to the Mayor and all Councilors, she said she thought they were missing or ignoring an important issue: Leoni and several property owners in the proposed area have admitted to and are continuing to rent their properties on a nightly basis. They know they are in violation of Ord. #234. She did not understand how a request could be considered for people who are blatantly violating an ordinance. She reminded the Council that they've taken an oath of office to uphold City laws and ordinances, and asked why these people are allowed to maintain business licenses and continue violating the ordinance. She was against approving any of the proposed changes, because she thought it was an effort to break down Ord. #234, and she felt it would quickly expand to other areas of the city. She said she did not understand changing the law to accommodate people who are breaking the law. Scorpio responded that the issues needed to be separated. The publicly-advertised issue for this meeting was proposed zoning changes, not people who are interested in managing, owning,

renting, etc. If a complaint was filed or proof of violation provided, then that would have to be dealt with as a separate issue. Newark said it should be kept in mind because the one in violation is the one asking for the zoning change. Alice Brown added that people wear more than one hat, and Leoni is also the liaison from the Chamber to the Council. At this meeting she was representing the property owners, not specifically Trollers Lodge, which isn't one of the 12 properties. She said if Newark has concerns about what Leoni is doing as a business owner, that is a separate issue. Newark asked if it was permissible to look at a zoning change for someone in violation of current ordinance. Alice Brown responded that a person is innocent until proven guilty, and that like many others, she's heard hearsay, but has seen no physical evidence of Leoni specifically breaking any laws. Newark suggested Alice Brown ask Leoni if she is managing Gardner's property. Alice Brown said that should be a separate public hearing not connected with the proposed zoning change.

Motion: Silver moved to call a five-minute recess. Lavery 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, Lavery

The meeting was recessed at 8:23 PM. Public testimony resumed at 8:32 PM.

Harry Cummings 8021 NE 114<sup>th</sup>, Kirkland, WA, has been coming to Depoe Bay since the 50s, and has owned and heavily used the cottage next door to Romans for the past 13 years. The cottage is not suitable for full-time residence, as it is lacking a utility room, garage/carport, and bathtub. After having two break-ins, they decided to rent it several years ago, until Ord. #234 was passed. When it was rented, they had only 20%-30% occupancy, and he feels this topic has been overblown. He appreciates the efforts of the Planning Commission in getting these proposed ordinances to the Council, and hoped the Council would give the proposed ordinances consideration. He felt these issues have taken up too much time and effort on too many people's parts.

Kris Knudsen 7045 NW Glen, Gleneden Beach, has owned two lots across the street for 17 years, and lived there from 1986-1997. She spoke in favor of the proposed ordinances, and thought they were well thought out. She said the driving and parking problem on Coast has always existed and is no better now than it ever was. She is an on-site property manager for a small vacation rental business in Gleneden Beach, and said that having local excellent property management makes a big difference, and as long as those kind of conditions are in the ordinances, there won't be a problem. She felt the opposition was overblown, and thinks the change would be good for Depoe Bay.

Jim King SW Coast, said the proposed ordinances are designed to circumvent Ord. #234. He mentioned Ord. #234 several times because he said that's what this started out to be. The original proposal was an amendment to eliminate Ord. #234. He referred to Ord. #69 changes in Ord. #234: "The City finds that transient occupancy dwelling units constitute a visitor oriented commercial use of property that is injurious to the residential environment of the city's

residential area.” He mentioned past problems with parking, and said that neighboring communities are afraid this type of zoning will spread. He asked the Council to not approve either of the proposed ordinances. He was upset that one person could come to town and stir up such a controversy. He is a member of a neighborhood watch, and said the primary goal is to get to know your neighbors, but you can’t do that when you have nightly/weekend rentals next door or across the street.

Bill Sachs 1540 Walking Wood, said he listens to all he can and digests all he can stomach. He heard parking concerns, but as a member of the Traffic Safety Commission, was more worried about safety. Our streets are narrow, and fire engines need to be able to pass. He said the Council would be derelict in its duty if it did not put citizen safety first. He questioned liability issues associated with the passage of these proposed ordinances.

Rick Davilla 325 SW Coast, has lived on Coast Avenue for almost seven years and has not seen a parking problem. The Fire Chief watches for parking problems, and if there is a problem on this street, he should be made aware of it. He said unless people are double parked, fire engines can pass, and that he has seen people double parked in other areas of town. It seemed to him like those who would be most impacted by this change are in favor of it. He doesn’t plan to rent his house, but he doesn’t have a problem with others doing so. He said everyone has a right to their opinion, but he felt the Council should be sure to listen to those who would be most impacted. He has a three-car garage and three spaces, and utilizes them all when entertaining; sometimes needing permission from the Fire Chief to use one or two parking spaces in their lot, but he doesn’t park extra cars on the street. He said anyone making an effort can follow the rules.

Speaking in response to the public testimony, Peggy Leoni thanked everyone for their input and constructive criticism. To King she said she felt that the regulations in the proposed ordinances would handle most of his concerns, and that there are means to handle complaints. To Sachs she said she wasn’t trying to tear the proposed ordinances apart with her revisions, but was trying to clarify to ensure that what she was reading meant what it was intended to mean. She said the people on the west side of Coast Avenue should have the same rights and privileges as the people on the east side. She said nightly renters are happy to be here and spend a lot of money in town. She asked Councilors if they had any further questions. Alice Brown asked if “local responsible party” and “local contact person” were the same person. Leoni responded that they were, and Lewis read the Standard for Local Responsible Party from the proposed ordinance. Alice Brown asked what the occupancy rate would be, and wanted to be sure there was diversification to catch as many tourists as possible - so many hotels, so many bed & breakfasts, so many condos, etc. Leoni said she did not have that specific information, but said that the price range for lodging city-wide runs from \$39 to \$250 per night, and that industry-wide, you’re doing very well if you have over 50% occupancy per year. She anticipated a lower occupancy rate for the type of rentals in the proposed overlay zone. Scorpio said that not everyone cares about tourist business, and asked how to respond to those people. Leoni responded with a rhetorical question of how much poorer the community would be without tourists - from less businesses to

un-incorporation. Jack Brown asked Lewis what other coastal cities are doing along these lines. Lewis responded that Yachats has high vacation rental allowances, and Bandon has recently revised their ordinances to allow more rentals, within restricted zoning districts.

Chris Nowark asked if transient room tax has been paid on any of the 12 properties still renting, since Ord. #234 was passed, specifically the Gardner house. Murray responded that no room taxes were received on that property. Leoni said that the first quarter after Ord. #234 was passed, there were renters in that house who had reservations that could not be cancelled, and that she paid the room tax for that period, and received a letter from the City saying not to do that any more.

Steen closed the public hearing, and asked Councilors whether they preferred beginning deliberations tonight, or continuing to another meeting. Scorpio said she heard the same arguments for and against repeatedly, but two comments struck her the most: 1) A statement that Ord. #234 was a “taking”, and 2) Davilla’s statement that the people most impacted by the proposed ordinances have no problem with it. It was her feeling that the issues addressed tonight were well known to all parties and everyone already knew how they felt. She suggested voting tonight.

Gordon said proposed Ord. #260 is a legislative decision by the Council to implement a way in which to decide other questions, such as Ord. #261. He felt it would be appropriate for the Council to act on proposed Ord. #260 tonight. He said property owners of the affected parcels of proposed Ord. #261 would need to be notified, so the Council could discuss this proposed ordinance tonight, but should not make any decision. Lewis said notices had been sent out to the 12 property owners, property owners within 250’, and anyone who had provided written testimony. Gordon continued by stating the opportunity for requests to leave the record open for 10 days needed to be made, and said that any issue not raised in this hearing will not be able to be appealed with the DLC. He also advised the Council that anyone with bias or conflict of interest should not participate in deliberations.

Motion: Jack Brown moved to schedule deliberations on proposed Ord. #260 for the next regular Council meeting. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Lavery asked if proposed Ord. #261 would be voted on at a separate meeting. Silver withdrew his second.

Amendment: Jack Brown amended the motion to schedule deliberations on proposed Ords. #260 and #261 at the next regular Council meeting. Lavery seconded the motion.

Steen said it was moved and seconded, and called for discussion. Alice Brown expressed concern that deliberations can take considerable time, and should be done prior to voting and while testimony is still fresh in everyone’s mind, and that there is another public hearing scheduled for the next Council meeting. She did not want to delay, and Scorpio agreed. Lavery said there is one more meeting in November before the December 3<sup>rd</sup> meeting where the public hearing is scheduled. Murray restated the motion. Lewis said he was not available

November 19<sup>th</sup>, if the Council wanted him to be present during deliberations. Alice Brown said she would not feel comfortable without Lewis present. Murray restated the motion again.

Vote: Motion failed.

Ayes: Jack Brown

Noes: Scorpio, Taunton, Silver, Steen, Alice Brown, Lavery

Johnson clarified that what was being scheduled was the continuation of a public hearing, and it would need to be announced as a public hearing.

Motion: Silver moved to continue the hearing on Wednesday, November 13, 2002 at 7PM. Taunton 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, Lavery

Scorpio asked to review some of the revisions tonight. Lavery asked to be excused at 9:30, as he had to drive to Portland. Alice Brown asked Lewis if he would review the revisions Leoni provided before the next meeting, and he agreed to do so.

#### IV. ADJOURN

There being no further business, the meeting was adjourned at 9:30 PM.

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Mayor John Steen

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Silver Fox, Recording Secretary