

Depoe Bay City Council
Special Meeting
Wednesday, November 13, 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, 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 MEETING TO ORDER AND ESTABLISH A QUORUM

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

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

- Council Deliberations

- 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
- 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

Steen stated this meeting was a continuation of the public hearing begun last week. He asked if any additional written information relevant to the hearing had been received. Lewis said on November 7, a letter from Larry Steidle was received, and also the packet of information Peggy Leoni referred to at the November 6 meeting. Steen asked Councilors to state any bias, conflict of interest, or ex-parte contact. Alice Brown said she had no actual conflict of interest nor potential conflict of interest. She had no pecuniary interest in any LLUOZ or tourist accommodation usage. She had ex-parte contact with Leoni and Bud Romans, but only for clarification purposes while acting as liaison for City Council to the Planning Commission. She received a phone call questioning the proposed ordinances, and invited the caller to attend the public hearing to express their concern. She provided background information to the City Planner in a memo dated December 20, 2001, which addressed the purposes of a LLUOZ. She made a statement at a Planning Commission meeting that a LLUOZ is a fundamental building block of smart growth. She had not decided whether LLUOZs were appropriate for

Depoe Bay, and felt she could participate in deliberations without bias. Laverty declared ex-parte contact with Leoni and Dick Johnson, for the collection of information. He had not made any decisions. Scorpio declared ex-parte contact with Leoni and Johnson, without discussion of the subject. Taunton declared ex-parte contact with Leoni through the Chamber of Commerce and the Chamber's Board of Directors, who reviewed the original idea. He said that what was presented to the Council was not the original idea. Silver stated he had no conflict of interest nor potential conflict of interest. His ex-parte contact consisted of hearing people's opinions, but he did not engage in any discussion of the matter. Steen stated he had conversations with people but had no pre-conceived notions. Jack Brown stated he had ex-parte contact with Betty Taunton, Bud Romans, the Kings, Gina and Tom, and Dick Johnson.

Chris Nowark asked if she could make an objection. Gordon said Councilors only needed to disclose bias, ex-parte contact, a potential financial pecuniary interest, or a site inspection only if these things led them to conclude they could not be fair and impartial in deliberations. The law does not require that others have the right to raise official objections; however, if someone believes a Councilor has failed to make a disclosure, it is not inappropriate for the Council to allow them to speak. Nowark, 425 Pine Court, said she had objections to Alice Brown and Taunton deliberating these issues. She said Alice Brown had publicly sent letters and memos and had made statements proving she had a pre-determined judgment before hearing testimony at this public hearing. She quoted from the City Council Regular Meeting of March 19, 2002: She "...said her concern is that the application for a Tourist Accommodation Overlay Zone receive a fair hearing, since several members of the Planning Commission have made prejudicial statements against any amendment to Ord. #234." At the same Council meeting, she submitted a memo dated February 19, 2002 (copy attached to original of these minutes) that clearly stated her feelings and position on Ord. #234. She said Alice Brown had also stated that Ord. #234 should be repealed. Regarding Taunton, Nowark said that he is a member and the Vice President of the Chamber of Commerce Board of Directors, and they have publicly given testimony to the Planning Commission in support of the proposal. Therefore, he had formed an opinion before hearing testimony at this public hearing. She did not feel that Alice Brown or Taunton could give a fair and unbiased vote, so should step down.

In rebuttal, Alice Brown said she never said anything about wanting to repeal Ord. #234, but had expressed concerns about its implementation, and Measure 7 (in her February 19, 2002 memo), and the Council had discussed these concerns. She stated for the record that she voted to uphold Ord. #234, thinking at the time that it was preferential to having unregulated usage. She said she declared the memo of December 20, 2001 to bring out that she had background in "smart growth", and the memo contained five reasons to use a LLUOZ. As liaison for the Planning Commission, she would state that anybody making an application should have a fair and just hearing. Taunton said that Leoni first brought the idea up several years ago and the Chamber Board looks at all ideas, but as he stated in his declaration, the idea before the Council isn't the original idea. Nowark referred to a statement Evelyne English made at a Planning Commission meeting that the Board of Directors had voted in support of the two items being discussed at this meeting. Taunton did not recall a vote, and asked Leoni, who said she had asked the Board to reiterate their support for the concept of having nightly rentals on that portion of Coast Avenue.

Larry Tyler 935 Pine Avenue, said he also felt Alice Brown could not make an impartial decision, and that he remembered Alice Brown saying in a meeting that she had friends who were out of compliance and that the rules needed to be changed. Alice Brown said she never said that, and read into the record her memo of December 20, 2001 (copy attached to original of these minutes). Nowark said that was not the memo she was referring to. Gordon said the Council should determine whether or not to act on the objections. Tyler asked if a Councilor was lying and did not step down, would an appeal be possible. Gordon responded that if there is information that is not before the Council that would lead the Department of Land Conservation and Development, the Land Use Board of Appeals, or a court of appeals to determine that something was not appropriately disclosed, then it could be appealed.

Deliberations began on proposed Ord. #260 (copy attached to original of these minutes). Silver acknowledged there is a general understanding for the term "tourist accommodation", but asked for clarification for the purposes of this ordinance. Steen said it would be anything under 30 days, because rentals over 30 days have no room tax and are considered long term. Silver identified six areas of concern in proposed Ord. #260: 1) Goal 2 on Page 2. He questioned the intent and meaning of "limited land use". His concern was the general activities allowed in the underlying zone. 2) Clarification of the Purpose of the LLUOZ as listed in Item 1 on Page 2. 3) Item 2.F. on Page 2. His concern was that the land was to be used only for the specific use of the overlay. 4) Item 3.B. on Page 3. His concern was that if there was only an 80% approval required, the remaining property owners might have their property "taken". He suggested either changing the 80% to 100%, or making adjustments to allow existing property owners to maintain their use. 5) Item 2.C. on Page 2. His concern was that with an 80% approval requirement, non-approving property owners might end up out of compliance when continuing an existing use. 6) Item 3.A. on Page 2. His concern was that the meaning of "unique" was nebulous. Steen said it meant not applicable to any other area in Depoe Bay.

Alice Brown asked if it would be appropriate to approve the minutes from the November 6 meeting before further deliberation.

Motion 1: Alice Brown moved to approve the minutes of November 6, 2002 Special Meeting with one change to her statement on Page 3: "She said there are only two areas with a juxtaposition of residential *R1* and commercial zoning - *including* the 12 properties...". Scorpio seconded the motion.

Steen said it was moved and seconded, and called for discussion. Alice Brown clarified her referral to conflict between R1 and a commercial zone: when R1, with no uses, is next to commercial, with many uses, conflict is expected as build-out occurs.

Vote: Motion 1 passed.

Ayes: Scorpio, Taunton, Silver, Steen, Alice Brown, Jack Brown, Laverty
Jack Brown asked Silver to clarify that he was not speaking of the 12 properties applying for the LLUOZ, and that he would rather have a 100% approval rate because he's concerned about somebody in the contiguous piece of land may object and have their land "taken". Alice Brown said that in that case the person with the single family dwelling (SFD) would have a non-conforming use, but agreed with Silver that it would create the potential for a taking, and

that there should be 100% approval required. Silver added an additional concern: Item 3.C. on Page 3. He asked if the intent of the overlay zone was to create pockets of two properties (“leapfrogging”). Scorpio said the “unique” requirement establishes the necessity for having something special to qualify for an overlay zone. Alice Brown suggested setting up a minimum size for a planned development - either a block, or five-plus properties, rather than “multiple contiguous properties”. Lewis reminded the Council that proposed Ord. #260 limits land uses allowed in the underlying zone, and can make standards more restrictive than allowed in the underlying zone. He also said that there may be circumstances where it may be appropriate to allow two properties, and provided an example. He said to remember that LLUOZs could be used for several purposes, not just vacation rentals. Jack Brown verified that proposed Ord. #260 would amend Ord. #24, Ord. #234 amended Ord. #24, and if proposed Ord. #260 was approved, it would not affect Ord. #234.

Silver returned to his concern about “leapfrogging” overlay zones, and asked Lewis how to define proposed Ord. #260 so Staff has clear direction when an application is submitted so that a property “in the middle” isn’t ignored. Lewis responded that the Planning Commission had considered an 100% approval requirement. Silver maintained his concern over the rights of non-approving property owners. Alice Brown said restrictions are put in place after the zoning change. She understood Leoni’s desire to have all R1 and R2 uses incorporated into the overlay, but said that is a lot of uses and parking requirements would need to be addressed. She questioned the appropriateness of adding R2 uses when the Planning Commission hadn’t discussed this. Because there are already duplexes present, she asked if duplexes should be added as a use. Silver sought the advice of the Planning Commission on his concerns, and deferred to Lewis to speak for the Planning Commission.

Jack Brown said he’s done research on zoning conflicts, and has found that in situations where the city is divided and emotions run high, cities incorporate a Modified Sunset Clause. This is where an ordinance is passed, but it’s only good for two years, at which time the Council reviews it to determine whether to abandon it or keep it. He questioned whether this clause would be appropriate for proposed Ord. #260. He said that any applications approved during the two years would continue, regardless of the final status of the ordinance. Gordon said that approved applications would become grandfathered unique uses if the sunsetted ordinance was abandoned. He said that at the time of review the Council can either approve it, abandon it, or continue it to another review point. Alice Brown questioned whether this would create a renewable conditional use overlay, and was worried about the investment aspect. Scorpio suggested either accepting or rejecting the proposed ordinance, rather than reviewing it every two years. Steen said a scheduled review would allow an opportunity to address concerns which might arise during the evaluation period. Alice Brown referred to the second half of Item 3.B. on Page 3, saying that Leoni had requested a reduction in the 60% approval area from 500’ to 250’, because 500’ was excessive. Discussion followed.

Motion 2: Alice Brown moved to change Item 3.B. on Page 3 to make the minimum approval requirement 100% instead of 80%, and to change the distance from 500’ to 250’. 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, Lavery

Jack Brown asked if the City could set 10 contiguous properties of normal residential size as a minimum area for LLUOZ applications. Lewis responded that many cities utilize a minimum area requirement for planned developments, but advised against using typical sizes. Alice Brown returned to her idea of five contiguous properties, and suggested setting a minimum area of 25,000 square feet - the equivalent of five 50' x 100' lots. Planning Commission Chairman Dick Johnson said he had an official role to clarify things for the Council, rather than asking the City Planner to clarify on behalf of the Planning Commission. He said he didn't think a minimum size was prudent, and that one of the duties of a citizen-run Planning Commission is to ensure development occurs in a reasonable way while maintaining the wishes of the residents. He said that proposed Ord. #260 is a generalized tool the City can use for better planning, and it is not tied to tourist accommodations. Jack Brown questioned whether it was necessary to specify it should be more than two properties. Lewis responded that in keeping with the General Requirements, it would be very difficult for two areas separated by one property to demonstrate that they were unique.

Motion 3: Alice Brown moved to direct Staff to redraft Ord. #260 with the approved changes of: 1) minimum approval requirement to 100% instead of 80%, and 2) approval distance from 500' to 250', and present the draft at the next Council meeting. Scorpio 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

Silver questioned whether deliberations on proposed Ord. #261 should take place before proposed Ord. #260 is voted on. Gordon said the Council could deliberate on proposed Ord. #261 with the understanding that proposed Ord. #260 may fail. Scorpio asked if proposed Ord. #260 could be voted on tonight. Gordon said the ordinance could be adopted tonight because it's a public meeting, and that is in keeping with the City Charter. The practice of this Council has been to adopt ordinances at regular meetings. He noted that the 10-day period for submitting written materials on proposed Ord. #261 has not expired.

Motion: Scorpio moved to adopt Ord. #260 as written with one change to Page 3 as stated in the record. Motion died for lack of second.

Deliberations began on proposed Ord. #261 (copy attached to original of these minutes). Silver expressed serious concern regarding Item 3.e. on Page 3, saying the Council heard testimony that current property owners in the area under consideration have active overnight rentals. Scorpio said Newark addressed this at the previous meeting and Scorpio had responded that proof would need to be submitted, and Alice Brown had said "innocent until proven guilty". Silver said that while providing oral testimony last week, Jim Gardner said he needed to and does rent his property. Scorpio asked whether fining someone in violation of

the ordinance was a separate issue. Alice Brown provided details about her declared ex-parte contact with Leoni. She said her contact was for clarification purposes only. The issue had come up about whether or not Leoni was breaking the law. She asked Leoni about a sign on her property, and whether she was renting these properties on a nightly basis. Leoni told her they were rented on a monthly basis. She asked if Leoni could clarify this. Steen said no one claimed Leoni was renting Gardner's property; that Gardner just said he was renting it. Silver quoted from Jim Gardner's testimony on Page 4 of the November 6, 2002 Special Meeting minutes: "...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..."

Silver said he had a legal concern about the basis for the application, because of General Requirement 3.e. Scorpio said she thought the reason these property owners were coming forward was because they wanted their right to rent restored, not because they felt guilty. Alice Brown asked if it would be possible to get a transcript of Jim Gardner's testimony, because she wanted to be sure the minutes accurately reflected his testimony. Gordon said although he was unfamiliar with the history of the properties in question, his understanding was that the area has a long history of renting residential houses as vacation rentals, and the Council may deem it appropriate to re-establish the use that was abolished with the passage of Ord. #234, despite the fact that in this window of time when vacation rentals have not been an allowed use and some of the properties have been used for this purpose. He said often in land use issues, a use that is not allowed comes to light. Then there is a policy consideration of whether the use is good or bad in that particular area, and the zoning is adjusted based upon the policy decision of the Planning Commission or the City Council. If the Council decided to allow the units to be designated in accordance with proposed Ord. #261, language could be inserted into Item 3.e. to re-establish a previously-allowed use in a unique contiguous area, eliminating any violation by this particular application. Johnson said the Planning Commission addressed this issue, and its determination was that possible violations were not the basis of their recommendation. The reasons used as a basis were that there was a historical concentration of short-term rentals in the area, and the area was unique in several ways, one of which was that it that didn't create a short-term rental area within a residential zone. Silver provided Gordon with historical information on the area. He said that there was a four-year amortization period, and questioned why property owners did not act to recoup capital investment before the amortization period had expired. Leoni said she began the re-zoning process two months before the amortization period ended. There was discussion initiated by Jack Brown regarding whether the general citizenry should have a voice in this decision. Alice Brown clarified that there was a lot more in Ord. #234 than one statement about vacation rentals, and the vote was whether or not to repeal the entire ordinance, not just vacation rentals.

Silver referred to Item 3.b. on Page 3, saying the second part (notification and acceptance of surrounding property owners) ties in with parking in Item 5.e. on Page 4, and the final notification and acceptance parameters need to be the same for both Items. Alice Brown said to comply with proposed Ord. #260, the notification area would need to be changed from 500' to 250' as well as the requirements for parking to be within 250'.

Alice Brown said Leoni noted there are duplexes in the area, and asked if duplexes should be added to the list of uses permitted outright. Lewis commented this would allow existing single family dwellings to be converted to duplexes, and grandfathering in the existing two-family dwellings might be more appropriate. Silver said the Planning Commission was specific as to their intent for this area, and R2 uses were not included in their recommendation.

Scorpio referred to Item 5.c. on Page 4, saying she wanted to ensure Leoni's requested language was added: "in excess of the amounts normally associated with residential uses". There was a consensus of the Council that this was an appropriate request.

Scorpio said because there is so much animosity associated with this issue and others, she was concerned about unreasonable complaints being filed out of anger or on a whim, and asked how this could be controlled. Steen said responding to complaints was the duty of the Local Responsible Party. Silver said complaints filed with the City are held against a standard. Alice Brown asked if the City has a record of complaints filed during the four-year amortization period. Silver said this was a question for Staff.

Motion 4: Silver moved to direct Staff to change Item 3.b. on Page 3 to 250' from 500', and Item 5.e. on Page 4 to 250' from 500'. Lavery seconded the motion.

Steen said it was moved and seconded, and called for discussion. Gordon clarified that these changes would be incorporated into the draft ordinance, with a separate motion to bring the draft to the next Council meeting.

Vote: Motion 4 passed.

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

Motion 5: Scorpio moved to direct Staff to add "in excess of the amounts normally associated with residential uses" to Item 5.c. on Page 4. Alice 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, Lavery

Motion 6: Alice Brown moved to add a fifth usage, for a duplex, to Item 4 (Uses Permitted Outright) on Page 3. Scorpio seconded the motion.

Steen said it was moved and seconded, and called for discussion. Silver said he thought grandfathering in the existing duplexes was a better idea. It was clarified that each half of the existing duplexes could be rented out separately. Scorpio withdrew her second, and Alice Brown withdrew her motion.

Motion 7: Jack Brown moved to incorporate a Modified Sunset Clause to evaluate proposed Ord. #261 in two years. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Silver thought the issue should be decided one way or the other. He said property owners might not invest in capital improvements if there was a possibility their right to rent would be withdrawn in two years. There was discussion about financial impacts, amortization, and mortgages.

Vote: Motion 7 failed.

Ayes: Jack Brown

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

Gordon said the public hearing record would remain open for another three days.

Motion 8: Silver moved to direct Staff to bring proposed Ord. #261, with suggested approved changes, to the next Council meeting for Council consideration. Alice Brown seconded the motion.

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

Vote: Motion 8 passed.

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

IV. ADJOURN

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

Mayor John Steen

Silver Fox, Recording Secretary