

Depoe Bay City Council
Regular Meeting
Tuesday, November 19, 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: November 5, 2002 Regular Meeting and November 13, 2002 Special Meeting

Motion 1: Alice Brown moved to approve the minutes of the November 5, 2002 Regular Meeting with one correction: delete a duplicate printing of Item F on Page 5. Lavery 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

Motion 2: Alice Brown moved to approve the minutes of the November 13, 2002 Special Meeting minutes with two corrections: 1) Page 3 "Alice Brown clarified her referral to conflict between R-1 and a commercial zone: when R-1, with ~~no~~ a few possible uses, is next to commercial, with very many possible uses, conflict is expected as build-out occurs". 2) Page 4 "Alice Brown suggested setting up a minimum size for a limited land use overlay zone like a planned development." Silver seconded the motion.

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

Vote: Motion 2 passed.

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

IV. PUBLIC INPUT

There was no public input.

VI. NEW BUSINESS

A. Canvass of Votes - November 5, 2002 General Election

Murray said the official certified ballot tally had not been received from the Lincoln County Clerk's office, and requested to table the canvass to the next meeting. There was no objection.

VI. UNFINISHED BUSINESS

A. Land Use Action Fees & Deposits - Subcommittee Review

Alice Brown reviewed a memo she and Silver prepared and distributed to the Council (copy attached to original of these minutes) of proposed fees based on a study of 10 years of applications.

Motion 3: Alice Brown moved to approve the memo as written and direct Staff to write it up as a resolution. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Silver clarified that deposits were average costs over the past 10 years, and that some applications ran over the deposit, while others ran under. The end number was not an actual cost, it was based on an average. Lavery said the applicant needs to know that if the deposit runs out, the process stops until additional money is received. Jack Brown asked how an applicant would know that Staff is spending their deposit efficiently. Murray said unless people ask, overhead costs are generally not reviewed. Expenses held out of the deposit are tracked and kept in the file, and a statement is provided to the applicant with a refund check at the end of the application process.

Vote: Motion 3 passed.

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

Murray clarified that the new resolution will appear on the next agenda.

B. Depoe Bay, ODOT Hwy 101 Right of Way

Lavery said he and Steen had not yet met to work on this. He said Murray will be notified when to put it back on the agenda.

C. Pedestrian Enhancement on Bay Street

Owings said he checked with the City's insurance carrier, who had no problem with this project and said the premium would not rise. The insurance representative suggested leaving the blackberry bushes and cutting them back instead of putting in a fence. Legally, the bushes are a natural barrier, while if a fence is installed it becomes a question of how tall should it be. Owings provided the information to the City Attorney, but he's very busy and hasn't gotten back to Owings yet. Murray said memo was sent to the Harbor and Parks Commissioners asking for their comments. Rick Davilla said the Harbor Commission had no problem with it.

D. 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; and Declaring an Emergency

Scorpio asked if the Council was supposed to keep listening to input after deliberations were closed. Murray said the public hearing was closed, but testimony was still accepted after the November 13 meeting for a period of 10 days. She questioned the exact closing date because the 10th day was a Saturday. There were people at the November 13 meeting who thought the last day to submit written testimony was yesterday. She has asked the City Attorney for clarification. She said a letter from Gina Porto (copy attached to original of these minutes) encouraging the Council to vote against adopting the ordinances was received on November 15. Yesterday four additional letters were received (copies attached to original of these minutes) from Jan Robison, Bev Poling, Krista Robison, and Lars Robison, all asking the Council not to adopt the two ordinances. Because there is a question as to the time frame for accepting testimony, these four letters might not become a part of the public hearing, but they could be presented as comments received during the ordinance adoption process. Murray explained that if the Council had no objections, she would request a motion to read the proposed ordinance (copy attached to original of these minutes) by title only for first and second readings. If the Council did not vote unanimously, it would be read in its entirety. It would then be open to comment from any member of the audience, prior to motion to adopt by first reading.

Motion 4: Alice Brown moved to read proposed Ord. #260 by title only for first and second readings. 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

Murray read proposed Ord. #260 by title only. She asked if anyone in the audience had comments on this proposed ordinance.

Chris Nowark reiterated statements she made at the public hearing, and said that although she didn't support the proposed ordinances, she felt that Jack Brown's idea of a Sunset Clause deserved another look.

Peggy Leoni said the notification list provided to her by the City wasn't correct, and asked if this was a City Council or Staff matter. Steen said Staff.

Fred Robison 765 Coast, said the history regarding use of property in violations of ordinances and licensing, the history regarding the vote of the people for no vacation rentals in Depoe Bay, the lack of strength by the City of Depoe Bay to enforce its ordinances, and the processes leading to the requested changes before the Council were all of record. He said proposed Ord. #261 would open City ordinance doors to uncertainty. He asked where protection for R1 owners whose dreams exist in a neighborhood protected by existing R1 provisions was. He asked what strength the Council would give the City and its citizens for zoning protection and ordinance enforcement. He said that Sunset Clauses work because those involved have a vested interest in following the guidelines and Council wishes, so they don't lose the privilege of operating under the plan. He used The American Fisheries Act,

monitored by the U.S. Congress as an example of a working Sunset Clause. He questioned as deliberations continued what message the Council would send to those people in violation of current ordinances, those who are law-abiding citizens asking to live under existing R1 policies, and about the value of a vote - both for elected officials and regarding this issue.

Fran Recht 66 NE Williams - said she protested Alice Brown voting on this issue. She said that during the January 2002 text amendment hearings, Alice Brown had tried to insert a definition of "lodge" into the code, so that people she knew who were currently renting the Stan Allyn house could continue to rent their rooms out. She said she felt Alice Brown was biased and unable to fully and fairly consider the views of those who did not want nightly rentals in their neighborhood. She submitted supporting documents for the record (copies attached to original of these minutes).

Bill Sachs 1450 Walking Wood, said 1) During testimony at the last meeting, the person who proposed this made several proposed corrections and interpretations. He questioned whether those changes asked for were made, or if there were other alterations. He objected to the reading of the proposed ordinance by title only, saying that the Council owed it to the public to ensure the public was fully aware. 2) He reiterated a point made by others - that there are people known to be in violation of Ord. #234. He said the City doesn't do anything unless there's a complaint, and he was complaining for the record. He expected action regarding violations of Ord. #234, regardless of the outcome of the proposed ordinances. Silver reviewed the written changes in the proposed ordinance which were approved verbally at the last meeting.

After reviewing the documentation provided by Recht, Alice Brown spoke in rebuttal to her objection. She said she wouldn't have used the word "currently". She said she knew that before Ord. #234 was approved, the Stan Allyn house was used as a lodge. Her concerns at the time had been specific to Measure 7, and possible lawsuits the City might face regarding Ord. #234. She said her February 19, 2002 memo dealt with that issue also. She said she had not made any decision as far as the path the Planning Commission has taken, but she had expressed concern at one Planning Commission workshop that they were pre-determining that a commercial zoning change would be required prior to a public hearing. She said she had not made any decisions on the proposed ordinances in front of her.

Motion 5: Scorpio moved to adopt Ord. #260 as presented. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Scorpio asked all councilors to comment on the proposed ordinance before voting for approval. She said she saw it as restoring property rights that were in place for many years. Taunton said the proposed ordinance would bring a useful tool to the Planning Commission to manage and control growth around town. Silver said proposed Ord. #260 wasn't a restoration of property rights, but was a useful and needed tool for the Planning Commission. He said the City currently has four definitions for residential zones, but only one for commercial, and he thought the ordinance would help the Planning Commission better manage land use. Steen said he looked at both proposed ordinances together, and he thought that having full-time management was a big point, and the City needs the increase in transient room tax. He also

said he was concerned about potential expansion, and that if this proposed ordinance were to be passed, that it would just be for these 12 properties. Alice Brown said that proposed Ord. #260 was generic and not specific to proposed Ord. #261, and that proposed Ord. #260 would be helpful. She thought it would be an affordable tool to help realize some of the goals brought forward in the Planning Commission's (now tabled) discussion of a zoning matrix. Jack Brown said that property owners who live out of town as well as those who live in Depoe Bay have rights, and he's struggled with this decision. He said the Council represents all Depoe Bay and needs to be sensitive to everyone. He also felt the Council (including him) showed an insensitivity to the public by not making the window of testimony clear. He said because of the tension and divergent feelings over this issue, he still felt a Sunset Clause was appropriate. He did not think anyone else would try to change zoning. He had a strong sense of responsibility toward the people who voted for him. Laverty agreed with Jack Brown, and added that his concern was Ord. #234, and what the City went through at that time. He was concerned that this issue was voted on twice, and said it was a real hard decision to make.

Amendment to Motion 5: Jack Brown moved to amend Motion 6 to add a Sunset Clause to proposed Ord. #260, and review it in three years. Laverty seconded the motion.

Steen said it was moved and seconded, and called for discussion. Alice Brown said to remember that the Council was addressing proposed Ord. #260, and the amendment would affect *all* limited land use overlay zone applications, not just proposed Ord. #261. She said that all applications approved during the three years would continue either as non-conforming uses or conforming uses, depending on what happened when the Sunset Clause was reviewed. Silver asked if the incorporation of the clause should be subject to legal review and Jack Brown said he thought it should. Silver clarified that this was to be understood in the motion.

Vote: Amendment to Motion 5 passed.

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

Noes: Scorpio, Taunton

Vote: Original Motion 5 passed.

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

Noes: Scorpio

Murray said that since the vote to adopt proposed Ord. #260 was not unanimous at the first reading, it will be automatically rescheduled to the next meeting for the second reading. Jack Brown asked Murray to get a clarification on the Sunset Clause addition to the proposed ordinance from the City Attorney before the next meeting.

Motion 6: Silver moved to table Agenda Item VI.E. Proposed Ord. #261 to the next City Council meeting. Laverty seconded the motion.

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

Vote: Motion 6 passed.

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

VII. CORRESPONDENCE

Murray said there were three items of correspondence. The first was a thank you letter from the KidZone (copy attached to original of these minutes). She read the letter into the record. The other two items were submitted by Chris Nowark regarding violations of Ord. #234. She asked the Council to consider her communication a formal complaint and direct Staff to investigate the violations she noted. Jack Brown said Nowark's letters were a serious accusation similar to a complaint currently being addressed by the Council. He said they should be treated the same, and asked Steen what should be done. Steen directed Staff to follow up. Silver suggested putting this item on a future agenda, with a Staff analysis, and have the agenda item advertised to the public.

Motion 7: Jack Brown moved to add Nowark's complaint to a future agenda, have Staff provide a report, and advertise the agenda item to the public. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Lavery asked Jack Brown to set a specific date.

Amendment to Motion 7: Jack Brown moved to amend Motion 8 to reflect December 17, 2002 as the scheduled date to address this item. Silver seconded the motion.

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

Vote: Amended Motion 7 passed.

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

VIII. LIAISON OFFICERS' REPORTS

Lavery reported 1) At Parks Commission: a) The whale has been returned to Whale Park and it looks very good. There is money for an electrical hookup for the pump, and possibly for the lighting of the spouting horn. b) There was discussion about two wooden poles - one was for an electrical hookup. It was suggested to cut the poles down and possibly cover them with something to keep them from standing out. Owings will look into this. c) There was discussion about kiosk-type information signs for the sea wall, explaining the area. c) There was discussion about enlarging the seating area north of the Memorial Wall by approximately 10', covering the sides with a cedar fence - possibly latticework. How much could be done will depend on how much money is left. e) They discussed the skateboard area. Ty Pedersen will get more information about the halfpipe. f) They discussed developing parks at the end of dead end streets. The listing included in proposed plan or Parks SDCs will be considered by the Council next year, because the hearing requires 120-day notice. Owings was going to look at this. g) They discussed Christmas tree lighting, and Whale Park will have some limited Christmas lights. h) They approved disposing of the fire department slide that was given to the City about three years ago for possible use as a park slide, as they felt it would not be useful because it didn't have a ladder. i) They were in favor of Bay Street rest areas. j) Discussion getting handrails for the second floor observation deck of the Painter Building, so tourists could go out there. k) They discussed paving a small area south of the Painter Building by the bridge. Owings will provide information on cost. l) They discussed

implementing a "park sheet" for usage information - people would sign up at City Hall. 2) He attended a Council of Governments meeting in Albany. 3) The fire department is collecting toys for tots to be distributed on December 20. Toys can be brought to City Hall or to the fire station. He asked Rick Beasley to air this on Channel 4.

Scorpio reported 1) The Planning Commission will meet tomorrow at 7:30 PM. There were three public meeting items, which she listed. 2) The Economic Business Development Committee met November 14: a) They scheduled a Town Hall meeting for February, 2003. b) They received a \$10,000 grant for Oregon Downtown Development Association to conduct a study of the current parking situation. There were three workshops scheduled for the new Stakeholders Committee to discuss the parking study. d) John Woodmark has consulted Bill Ellsworth on design and prices for two "quick fix" signs for parking off Hwy 101. e) Enhancement plans and ideas for south of the bridge were discussed. f) Survey results were reviewed and discussed. g) A flower planting program was discussed for March to beautify the area south of the bridge and to detract from eyesores.

Taunton reported that Salmon Enhancement met on November 7. They expect that people will begin seeing salmon return to the north and south creeks soon. They will be obtaining salmon eggs from the hatchery in December. Volunteer John Miller will soon be leaving for service in the Navy.

Silver reported 1) Traffic Safety met November 12: a) They deliberated on and approved some public safety announcements; Lt. Stallard offered to have police officers narrate radio spots. b) They requested installation of a mirror on Williams Avenue in the area where it narrows down, and would like Staff to let them know what this would take. c) They are reviewing six days worth of data collected from the radar trailer, and considering where to put it next. d) Next meeting is December 3. 2) Safety Committee met November 14: a) There were no accidents reported. b) He was honored to announce that he attended an awards presentation at the League of Oregon Cities Annual Conference in Portland, where Depoe Bay was awarded a Gold Medal Certificate for no lost time due to accidents for 2001-2002. c) Next meeting is December 17. 3) Solid Waste Consortium met today: a) The engineering company has completed their monitoring review. A final report will be available after Thanksgiving. b) A \$72 annual savings was possible for changing the \$1,000 deductible to \$10,000. The Consortium decided against this. c) Next meeting is December 17. 4) He went to the League of Oregon Cities Annual Conference in Portland November 8-10, at the Council's direction. He attended several workshops while there and discussed them briefly. He said there was a copy of the text of resolutions the League passed to State government available at City Hall. He spoke with several people about initiating law enforcement in Depoe Bay and different ways to fund this.

IX. CITY STAFF REPORT

There was no Staff report. Lavery offered congratulations to City Staff for being awarded the Gold Medal Certificate by the League of Oregon Cities.

X. ACCOUNTS PAYABLE

Motion 9: Alice Brown moved to accept Accounts Payable as presented. Scorpio seconded the motion.

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

Vote: Motion 9 passed.

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

XI. COUNCIL COMMENTS

Alice Brown brought up the subject of raising room tax 1% to provide funding for a police officer, since an article had appeared in the newspaper about this. Depoe Bay's room tax is currently at 7%, and Lincoln City recently raised theirs to 8%. She didn't think action should be taken until the program was set up, but suggested applying for grants or whatever it takes to move forward, or make a decision to contract with the County. She thought this could be considered as one funding option, and suggested either an agenda item or a workshop on funding a police department or officer. Silver said this would be a worthwhile project for the new Council to undertake.

XII. ADJOURN

There being no further business, the meeting was adjourned at 8:30 PM.

Mayor John Steen

Silver Fox, Recording Secretary