

Depoe Bay City Council
Regular Meeting
Tuesday, December 3, 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 19, 2002 Regular Meeting

Motion 1: Alice Brown moved to approve the minutes of the November 19, 2002 Regular Meeting with the following clarifications and corrections: 1) On Page 4 in her rebuttal to Fran Recht's objection, when she said she wouldn't have used the word "currently", she meant that day on November 19, 2002. 2) Also in her rebuttal when she expressed concern about one Planning Commission workshop, she had expressed the concern at a City Council meeting. 3) She wanted the record to state that the historical information she received on the Stan Allyn house was from Stan Allyn himself on March 6, 1991. She has not had ex-parte contact with any of the 12 property owners over the definition of the word "lodge", Measure 7 and Ord. #234, non-compliance issues with Ord. #234, or Ords. #260 and #261. On October 4, Measure 7 was declared unconstitutional, and upon reading this document, she set aside her concerns about Ord. #234 and Measure 7, so those issues have not affected her thought processes at this hearing. Scorpio seconded the motion.

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

Vote: Motion 1 passed.

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

IV. PUBLIC HEARING

Appeal of City Recorder Decision to Grant City Business License

Steen outlined the criteria and procedures for the public hearing. He then asked if any Councilor had ex-parte contact, bias, or conflict of interest, and also requested those giving testimony limit it to five minutes. All Councilors declared ex-parte contact with Rick Davilla, who had hand delivered a letter regarding this hearing. Alice Brown also declared she also had ex-parte contact with Bud Romans, who had confronted her at the Depoe Bay Chamber of

Commerce. She told him to bring his concerns to the public hearing. She stated she had not made any decision on Larry Tyler's business license. Silver also declared that he lives in Tyler's neighborhood, and drives by his house daily. He stated he had worked with Tyler on the Planning Commission for several years and knows him better than other casual acquaintances. He said he had not made a decision, and had no bias or conflict of interest. He said he has avoided talking to Tyler since the appeal was filed. Laverty also declared that he worked with Tyler on the Planning Commission. He stated he had discussed issues with Tyler a year ago, but had not discussed this issue. He said he had no bias. There were no objections to any Councilor hearing this appeal.

Murray reviewed the Staff Report (copy attached to original of these minutes). She said that three additional items of written testimony were received after the Staff Report was prepared: A rebuttal to the appeal from Larry Tyler, a letter from Betty Langdon, and a letter from Florence Shepard (copies attached to original of these minutes). Steen asked the appellant to make her presentation.

Roma Powis 420 Pine Court, said she believed Tyler would endeavor to have a transparent business. She felt it was hypocritical for him to apply for a business license after being on the Planning Commission, where he's supposed to be upholding ordinances, for six years. She said she had seen his truck, with signage, since he was supposed to have painted it out. She questioned the nature of the business - the designing of homes and designing aquariums. She thought this was lumping together different types of business. She said construction business is not transparent. She appreciated the issue being looked into through this hearing. She spoke about struggling businesses in Depoe Bay, and said that all businesses should comply with the business license ordinance. She felt that granting his license application would lower property values in the neighborhood. She said in response to his written rebuttal, that although her delivery truck parks in her driveway and Brian Plechaty parks a business truck in front of his house, she said she and the Plechatys are not operating a transparent business from their home, and don't fall under those regulations.

Steen called for any testimony in support of the appeal, stating testimony was to be limited to land use issues only.

Rick Beasley P.O. Box 947, said his issue was whether the protocols and ordinances of the City are applied equally, regardless of influence or position. He wanted the City and applicants to work together to stay true to the intent of ordinances, rather than creating double standards with loopholes. He said if this application was approved it would create a new definition of transparent home occupation. He said Tyler did not provide a complete and accurate application. He discussed the history of Tyler's two applications which listed two different home addresses. He felt Tyler's second application contained factual misrepresentations and did not meet the standards or intent of Ord. #236. He said Tyler's business is not transparent, and displayed several pictures of Tyler's truck parked at his home to the Council, saying Tyler was in violation of the conditions of application during the appeal window. He said that Tyler's signage was visible from a variety of angles as Tyler comes and goes. He said State law requires commercial vehicles operating in residential areas be equipped with an audible backup warning device, the use of which would violate the nuisance section of Ord. #236. He

quoted statements made by Silver regarding transparent home occupations in 1996. He said Tyler's business is not invisible, and said he created eyesore conditions, referring to pictures of Tyler's Indian Trail property, which he displayed to the Council. He said the Council must deny the application on the technical grounds that Tyler be required to submit a complete and accurate application.

Steen asked if there was any other testimony in support of the appeal. There was none. He asked if there was testimony in opposition of the appeal.

Larry Tyler 935 Pine Avenue, said the Staff Report dated November 26, 2002 accurately described how he met criteria, and when an applicant meets all the criteria, the application must be approved. He emphasized he met all relevant standards set out in Item 4 on Page 2 of the Staff Report, and described what portions of his business he conducts at home. He said he painted over those signs on his truck which would be visible when he is parked on his property. He said he made a mistake when he parked in his driveway at lunch, and that he hadn't paid attention to the requirement in the ordinance regarding signs on his vehicle, since he never parks in his driveway for more than a short time, and didn't think about it because he has neighbors who park business vehicles at their residences, mentioning Roma and Ken Powis, and Brian Plechaty. He referred to photos of their vehicles, which he had included in his submitted packet. He said having the name on his truck was an oversight, not a willful violation, and he corrected it as soon as it was brought to his attention. He said he was in compliance with all the relevant codes and standards, and asked the Council to uphold Staff's decision to grant the business license. He submitted for the record, a verbal response to letters in the file from Roma Powis and Rick Beasley: Powis' letter appealing the Staff decision did not present facts or address standards of the transparent occupation ordinance. Powis objected to him conducting a home occupation, when he is conducting a transparent home occupation. Beasley's letter made accusations about a number of things, that are not only untrue, but are unrelated to the standards of this ordinance.

Steen asked if any Councilors had questions for the applicant. Tyler answered questions about parking posed by Alice Brown, who said that the issue of commercial storage in residential zones had been raised before. Murray said on that particular issue, the complaint was a nuisance complaint against an odor, and was not specifically regarding commercial use in a residential zone. Alice Brown clarified that this would currently be considered an unregulated use, and that a business license would not be required for commercial storage in a residential zone. Jack Brown asked Tyler to address Powis' concern of his having a business without a license, and Tyler responded that several years ago he specifically inquired about a business licence, and former City Recorder Kate Becker informed him that he did not need one. He was unaware that the requirement had changed, and when he learned of this, he submitted his application. Scorpio asked if all City officials are informed of new ordinances, and Murray responded that Councilors are provided copies of ordinances, and other officials are provided copies of those ordinances that would apply to their positions. She said Becker's information was correct at the time Tyler asked the question, and there was no license requirement at that time. Ord. #236 was not adopted until 1996. Alice Brown asked if Ord. #236 had originated in the Planning Commission and Murray said she was not sure. Tyler said he was never informed that a license was required after the ordinance was adopted, but that

he did have a license for his aquarium business in 1996, because he had a transparent home occupation of selling fish out of his home. Jack Brown asked Tyler for clarification of where he planned to park the truck, and Tyler responded that he parks it in a garage on Indian Trail, and very seldom parks it at home during lunch. Laverty asked about signage on the truck, and Tyler responded that in keeping with the requirements of the ordinance, he has painted out the signs that could be seen from the neighbors' or the road, and he backs the truck up to the garage. Alice Brown asked if his Indian Trail renter was happy with the arrangement of Tyler's truck being parked in the garage, and Tyler responded he currently has no renter, but past renters have not objected to this arrangement. Jack Brown asked if Tyler was in violation of ODOT in having no backup warning beeper on the truck. Tyler responded that the truck is purchased from a plumbing contractor, and that it was originally a UPS truck. Jack Brown asked if Tyler felt children were at risk when he backed up, and Tyler responded that all backing up is done on his property, not on the road. Scorpio asked why he wanted to design aquariums as well as do construction, and Tyler responded that it is all considered construction - aquariums, or ponds, or wallboard. Scorpio asked where supplies are stored, referring to the pictures of his Indian Trail property, and Tyler responded that the pictures did not show any storage, but did show a burn pile, which was no longer there. He said he stores very few items at his home, as he either picks up materials for the job, or they are delivered directly to the work site and leftover materials belong to the client.

Steen asked if there was any further testimony in opposition of the appeal.

Betty Langdon 1635 Tintinnabulary, said the grounds of the appeal was that the approval of Tyler's application to operate a contracting business was inappropriate in a residential area, and that Tyler's Indian Trail property had nothing to do with the application. She said it's not against the law for anyone to park their truck in a garage, regardless of whether it's a commercial truck. She said at least five other contractors have business licenses for a transparent home occupation in Depoe Bay: Wayne Bauer Construction, Hammer and Nail Construction, Michael Norris Construction, Villa Construction, and Partain Drywall and Painting. She said Chinook Landing, owned by Whitlock, is directly across the street from Powis, and while his business license lists the business location as Siletz, and that it's common knowledge that he operates out of his home. She stated there are other contractors operating without business licenses in residential areas, and that she personally has observed Gleneden Painting, and Brian Plechaty operating Halvorson-Mason's construction business. Halvorson-Mason's business license lists Lake Oswego as the location of the business, but Plechaty is operating the business out of his home. She said there are other people operating businesses in residential areas without a license, and her understanding was that this is such a problem that the Chamber of Commerce plans to advise people they need a business license, because many are not aware of this requirement. She said contractors like Tyler are particularly suited to operate a transparent home business, and that while she has walked past Tyler's, Whitlock's, and Davilla's several times a week for years, she has noted nothing that was obviously indicative of a business being operated out of the houses. She said there were many other allegations against Tyler by Beasley in his October 2002 letter to the City Recorder. She said Beasley is not a resident of Depoe Bay, does not own property in Depoe Bay, and does not have a business in Depoe Bay and isn't required to have a Depoe Bay business license, and she wondered why he was allowed to provide testimony. She said

Beasley alleged Tyler is not registered with the Secretary of State or Contractor's Board, but she submitted evidence in writing yesterday that Tyler has been registered with the Contractor's Board since 1977, and with the Secretary of State since 1991. Beasley also alleged that Tyler is operating two businesses under one license, and that this is not allowed. She said Beasley had used the example of allowing a bakery, hair salon, and bed & breakfast to operate under one roof and one license, and that she had verified that Lincoln Beach Bagel and Feather Bed Inn operate two businesses under one roof and one license. She had objections to two grounds for the appeal: 1) That Tyler had been doing business in his home in violation of the law and should be denied a transparent home business license. She said Tyler had a transparent home business for 20 years before Ord. #236 was passed. She asked if the punishment for failure to obtain a business license should be the denial of ever being able to obtain one. 2) That Tyler is on the Planning Commission, and the Commission has a duty to enforce the licensing law. As a Planning Commissioner, she stated that the Commission has nothing to do with business licenses. She said if the Council decided that it was inappropriate for Tyler to conduct a transparent home contracting business in a residential area, equal protection would require the Council to find it inappropriate for all contractors to conduct transparent home businesses, and to rescind all such licenses.

Chris Nowark 425 Pine Court, said she lives across the street from Tyler. She said his business has been sight unseen since she has lived there. She has not been affected in any way. She said she has seen his truck parked there for short durations, but never all day or overnight. She disagreed with Powis' opinion of lowered property values, saying she'd just paid her property taxes, and they had increased.

Fran Recht 66 NE Williams, said she has known Tyler for years. She resented the number of articles about Tyler, the targeting, and misinformation coming from the *Beacon*. She said it and had tilted the opinion of the City unfairly and inaccurately. She hoped the testimony in the record has presented all the facts, and noted how important it is to get the facts and to demand people provide proof of what they're saying. She said repeated inaccuracies have hurt people in the town, has hurt the reputation of the town, and hurts everyone. She said when bullies are not put in their place, misinformation flourishes.

Steen asked if there was testimony from a representative of any other government body. There was none. He asked if the appellant wished to rebut. She did not.

Jack Brown indicated he would prefer having time to think about the somewhat confusing testimony received tonight, and that there were issues raised about other activities going on in town that present a complex mixture. He wanted the opportunity to learn more about this before making a decision.

Motion 2: Jack Brown moved to hold the record open for two weeks. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Gordon said the appellant had the right to submit an argument in writing within seven days of today's date. She could waive the right if she so chose, but she needed to be asked before the Council took any

action. Scorpio did not want to delay making a decision. She said she would like to see him working legally, and suggested granting the license and having him pay fees. Jack Brown withdrew his motion and Silver withdrew his second.

Alice Brown asked Murray what the process has been in determining late fees in the past. Murray said the ordinance contradicts itself in some places: Any license not renewed by January 1 of the following year is in violation of the ordinance, but it grants a one-month grace period, by not charging a 20% late fee until after January 31. New applications/applicants pay an application fee; there is no late fee applicable to new applications. Some time ago the then-City Attorney said that a business cannot be retroactively licensed. Jack Brown asked Gordon if a conditional license could be granted, and Gordon responded that a decision needed to be made whether or not to grant the license. He said the Council needed to decide how to devote its resources for enforcement - whether or not to undertake punitive action. He said sometimes there are fines associated with operating a business without a license, and that these fines are generally charged at so much per day. Murray said the enforcement ordinance requires the issuance of a citation, followed by going to court. Gordon said an injunction action would be another option. Scorpio asked if fines could be retroactive, and Gordon said no, not retroactive prior to the date of the issuance of the citation. Scorpio said Recht made a statement about treating everyone equally, and asked if Rick Davilla was owed a refund because his paperwork was mailed to the wrong address and he was charged a late fee. Murray said the way the ordinance is written, a late fee cannot be applied to a new application, and that any fine or late fee for not having filed previously would have to go through the enforcement process. Gordon said if it was determined that there was an on-going problem of non-compliance, a citation should be issued, and penalties would begin to accrue as of the time the citation was written. Scorpio said some people could skirt around problems and other people could not - some people get punishment or fines, and other don't. Alice Brown said someone who has a license *knows* they need to renew it, and if they fail to do so they are in violation of the ordinance; but someone who doesn't know they need to have a license and is notified they need one and submits an application is complying with the ordinance. She said due process demanded the Council decide whether or not to approve the application, unless the appellant requested to make a written response.

Gordon asked Powis if she wanted to exercise her right to have seven days to provide a response to tonight's testimony. She waived the right on condition that Tyler comply with the things she was unsure of in her appeal. She stated she objected to one person having to pay a penalty when another does not. Jack Brown asked Scorpio to expand upon her previous suggestion to charge Tyler a fee. Scorpio said it was about treating everyone fairly. She said everyone complains about double standards, bullying, fairness across the board, or equality. She said Davilla was quickly charged a late fee when his application had been mailed to the wrong address. She did not perceive this as equal treatment. She clearly stated she did not object to granting Tyler a business license, but she questioned how fair it was to grant the license with no fees, when compared to the circumstances under which Davilla was charged a fee.

Rick Davilla 325 Coast Avenue, said he's the owner of Villa Construction, the business that was charged the late fee. He said he was at City Hall at the end of February, when Murray

informed him his business license renewal had not been received. He renewed it at that time, and paid a late fee. He said the renewal had been sent to the wrong address, but it wasn't the City's fault because his business location had been in Tigard, and he had closed out the Tigard location but didn't notify the City. It was not forwarded to him due to the length of time that had elapsed. He didn't object to paying the late fee. He said he wasn't looking for a refund, but he concurred with Scorpio that it appeared everyone is not treated equally. Scorpio said this proved her point exactly. Silver said the two situations are different - Tyler's was a new application with an associated new application fee, and Davilla's was a late renewal with an associated late renewal fee. Scorpio said Tyler's business had been going on for a long time, and if that fact were ignored, Tyler would be given a special break, which would create resentment.

Fran Recht said the standards of the ordinance should dictate whether the appeal is upheld or denied, which is the subject on the table. If the subject was unevenness of business licenses, then questions should be asked. She said as far as she could determine, every contractor working for Davilla across the street from her house, did not have a Depoe Bay business license. She said to stick to the standards, or she would start addressing other things. She said she would not sit quietly while Powis, Beasley, Scorpio, and others said Tyler "should have known" and "we should treat everybody equally, so we should fine Tyler". She said she was prepared to submit names into the record.

Alice Brown said the City has limited enforcement capacity, especially for transparent home occupations (since they are invisible), and that the goal was to encourage voluntary compliance by appealing to people's sense of honor to do the right thing by coming forward to get their business license. She said this wouldn't happen if every time someone needs to come into compliance they are faced with a punitive claim against them. She encouraged the Council to support voluntary compliance. Addressing Scorpio's concern, Gordon suggested the ordinance could be amended so that when someone who has been conducting business without a license for a known extended period of time comes into compliance, there is an initial additional fee for a new application.

Motion 3: Alice Brown moved to deny the appeal and approve granting a business license to Larry Tyler. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Silver asked that the record to reflect that the appellant failed to demonstrate that Tyler was out of compliance on the criteria required for a transparent home occupation business license.

Vote: Motion 3 passed.

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

V. PUBLIC INPUT

Rick Davilla said regarding the people who worked for him on the job next door to Recht's house, the State requires him to have paperwork on everyone who works for him: license, bonding, and insurance. He doesn't check for city business licenses, and said that's not part of his job. He said not everyone on that job needs a City business license; not everyone lives in

Depoe Bay. He said Partain Drywall, who was working on this job, met all the State requirements. He talked to Mr. Partain about Tyler's situation. Mr. Partain said he didn't have a City business license, and on Davilla's suggestion applied for one the following business day, to avoid getting in trouble. His application was granted. Davilla said everyone knows there are many businesses without licenses in Depoe Bay, and the City needed to set an example. Scorpio said she was unhappy with the way the ordinance was written, and had felt compelled to grant the business license. Davilla said Tyler was entitled to the business license and it should be given, but he asked what parameters were being set as an example for others. He also asked why Tyler didn't renew his 1996 business license for his aquarium business, and asked if he should get penalties because it wasn't renewed.

Peggy Leoni, Chamber of Commerce, said thank you to everyone who helped with the tree lighting, which went off beautifully. She reminded everyone about the toy drive, so every child can get a present this year. Toys will be delivered on December 21. The Community pot luck is on December 18 at the Community Hall. A wonderful Christmas tree is already there. Reverend Scott is collecting food and money for Christmas baskets. She invited all to come to the party and bring toys for the kids.

Rick Beasley said congratulations to Tyler on getting his business license. He said things were said in the heat of debate about accusations and inaccuracies. He said that results of the *Beacon's* investigations into this issue would be available at the end of the meeting. He said they had conducted a search, and learned that Tyler's license with the State had expired, and the new name was not reflected in the Secretary of State's records. He said that technically by not supplying information such as his CCB number, he did not meet the standards of the application. He noted that his objections were purely technical, and were not of a personal nature.

VI. NEW BUSINESS

A. Proposed Resolution #313 - Land Use Action Fees & Deposits, Replaces Resolution #192

Murray provided background information on the resolution, and summarized the resolution on the table (copy attached to original of these minutes).

Motion 4: Silver moved to adopt Resolution #313 - Land Use Action Fees & Deposits, Replacing Resolution #192. Alice Brown 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

VII. UNFINISHED BUSINESS

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

Murray read the Depoe Bay Canvass of Votes (copy attached to original of these minutes) into the record.

Motion 5: Scorpio moved to accept the report as the official canvass of votes. Laverty 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, Laverty

B. Intergovernmental Agreement - ODOT - Hwy 101 Sidewalk Projects

Owings said the projects referred were Bradford to Austin Streets, and Pirate's Cove to Harney Street. He said Murray is working with ODOT and the City Attorney to correct language in the agreement (copy attached to original of these minutes). There is \$120,000 in Quick Fix money from ODOT, about \$40,000 of which has already been spent in the Bradford to Austin section of the project.

Motion 6: Laverty moved to authorize the mayor to sign the final agreement. Alice Brown 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

Meeting was recessed at 8:54. Meeting reconvened at 9:03.

C. 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

Murray summarized the action from the previous meeting, and read the proposed ordinance (copy attached to original of these minutes) by title only, second reading. She asked for comments or questions from the audience.

Dick Johnson Planning Commission Chairman, questioned putting a sunset clause on this ordinance, saying it didn't make sense to him to put it on a planning tool. Jack Brown said his philosophy was that the ordinance was a new tool developed to respond to Leoni's request, and that it may or may not be a tool that the City really wants. He said that many people in town are very concerned about it, and this action was in response to those concerns. He wanted to ensure the tool was used in the way it was intended, and it seemed reasonable to review it in three years. Alice Brown said limited land use overlay zones can be used for many different purposes, and the review would be simple. Scorpio agreed with Johnson, saying she didn't think it made sense to have a sunset clause on something to be used here and there. Alice Brown asked what would happen to a person (and their investment) in the middle of the application process when the ordinance comes up for review.

G.K. “Bud” Romans 405 Coast, clarified that if proposed Ord. #260 passed and was revoked at the time of the three-year review, proposed Ord. #261, if passed, would remain in place. Jack Brown commented that the Council represents all the people, including those who are concerned about this issue. Silver read the sunset clause portion of the proposed ordinance into the record.

Motion 7: Jack Brown moved to adopt proposed Ord. #260 at the second reading, as amended by the previous motion. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion. Gordon noted a grammatical error in Section 3: “...after the date of adoption of this ordinance, *this ordinance* shall be reviewed...”

Vote: Motion 7 passed.

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

- D. 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

Motion 8: Alice Brown moved to read proposed Ord. #261 by title only. Silver 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

Murray read proposed Ord. #261 by title only. She noted each of the revisions made at the previous meeting. She said Leoni submitted the missing number under Item 3.b. today, having obtained 71% approval from the property owners within 250’ of the boundaries of the NCA. She noted this number should be added to the proposed ordinance, and the note of incompleteness should be deleted before adoption of the proposed ordinance. She asked if there were questions or comments on the proposed ordinance from the audience.

Ron Nowark 425 Pine Court, asked if parking requirements included signage within the 250’ radius of the LLUOZ, and Murray responded that no signage would be required, just spaces. Nowark asked how this would work, and Murray responded anyone wanting to do overnight rentals would need to acquire a City business license, and that proof of parking would have to be provided at the time the business license application was made. Nowark said his concern was a statement made in a previous meeting about using the fire department’s parking lot for

overflow parking, and that the fire chief had, upon request, given approval to use their parking lot. He wondered how the procedure for this would work. He reiterated his opposition to this ordinance, and stated he did not feel these twelve lots were unique, but that a truly unique portion of Coast Avenue is the one-way segment between Ellingson and Evans Streets (including the old Stan Allyn house). He said he was glad to hear Jack Brown acknowledge that a number of residents were concerned about this proposed ordinance, and stated he felt the sunset clause was weak because whether or not it was revoked, it wouldn't affect the passing of proposed Ord. #261. Lavery said the fire chief had not given approval for the fire department's parking lot to be used as overflow parking; he has allowed one or two people to park there on a limited basis.

G.K. "Bud" Romans reminded the Council that no one in the immediate area affected by proposed Ord. #261 objected to it.

Alice Brown made a statement of clarification that proposed Ord. #261 would not affect Ord. #234, because proposed Ord. #261 was a zone change from residential to commercial. Additionally, Ord. #234 did not repeal vacation rentals city-wide, but only in residential areas. She said the real question was whether the 12 properties affected by proposed Ord. #261 should have originally been zoned commercial. She referred to a memo dated 12/3/02 from Lewis that stated that proposed Ord. #261 would not create spot zoning or adverse spot zoning, and that existing residential areas would not be adversely impacted by the rezoning because overnight vacation renters would not be driving through residential neighborhoods between the highway and an NCA dwelling, and there are no NCA dwellings across the street or adjacent to residential dwellings. She said this proposed ordinance would not set a precedent that could go further south than Troller's Lodge on Coast Avenue.

Jim King SW Coast Avenue, said a rental house at 625 Coast Avenue is owned by Rodney Anderson and his wife, who live in Seattle. Anderson's tenant moved out in August and Anderson approached Boiler Bay Property Management to manage nightly rentals of the house. They were unable to accommodate him, and referred him to Peggy Leoni, telling him that if he rented it, she would provide maintenance and cleaning personnel. He expressed his concern that nightly rentals would spread. He said he lives only two houses away.

Peggy Leoni 355 SW 101, said Anderson asked her if she would be interested in taking care of his property because his renters would be leaving soon and he wanted to bring in some money but still be able to use the property from time to time. She told him she could not take on a nightly rental in a residential zone, but did offer to quote him a price for cleaning and maintenance if he should ever need it. She employs people who clean and do maintenance, and she didn't think it was illegal to find more work for her housekeepers.

Gina Porto 850 SW Coast, wanted to see a guarantee in writing that the nightly rentals wouldn't spread down her street. Alice Brown said it's already in the Findings of Fact provided by Lewis. Porto said she's been told by people in her neighborhood who have been there for 30-40 years, that it has historically been rentals. She said she's the only full time resident within a 500' radius, and expressed concern that someone could come in and say the area has historically been nightly rentals, and attempt to allow them in her neighborhood. Scorio

referred to Lewis' memo dated 12/3/02, saying that contiguous oceanfront properties are unique, and that there are only a limited number that are located near the commercial core and the highway, and are adjacent to commercial zoning.

Peggy Leoni said she was certain there are neighbors who would complain if they noticed the ordinance was being violated. She said there were nightly rentals in Porto's neighborhood, and she has heard there were nightly rentals in Little Whale Cove, and that everyone would need to deal with those situations as they occur.

Fran Recht said that as a Planning Commissioner, she could state that the regulations don't restrict it from spreading. The Findings of Fact were just for the approval of this application and would not carry any precedent or weight in the future. She said to ensure there are no more LLUOZs that apply to nightly rentals, this would have to be stated in regulations establishing the general requirements of LLUOZs in the ordinance.

Ron Nowark said he had specifically asked Lewis at a Planning Commission meeting: if the overlay became the new commercial zone, could it be built onto, and he had been told that it could. He asked if something had changed since he originally asked the question - once the new commercial zone is in place, couldn't another step north or south be taken.

Dick Johnson said Lewis' response to Nowark at that meeting had been that a person could apply to change a residential zone to a commercial zone, but there were key requirements for changing the zoning: either the zone was originally zoned in error, or the character of the area would have to have changed. The Planner also said he did not see any other areas in the City where those requirements could be met.

Motion 9: Scorpio moved to adopt proposed Ord. #261 at the first reading, with amendments as presented. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Silver said he was deeply concerned about citizen response to this proposed zone change and the potential impact to other residential areas. He felt it was very important to state specifically what criteria was applied to this proposed zone change, and Lewis had provided a first draft of such a statement with his memo dated 12/3/02. He read the memo into the record, and said he did not see why the proposed ordinance couldn't be amended to include a statement such as "only an area that is a concentration of historic overnight rentals". He said safeguards such as this would go a long way to help citizens realize that the proposed ordinance is not a loophole to create commercial areas with a LLUOZ for overnight rentals. He encouraged the Council to include specific criteria in the ordinance so the intent of the proposed ordinance would be evident in the future. Jack Brown said he agreed that additional requirements should be added to the proposed ordinance. He said that an amendment would rest on Ord. #260, which would come into effect should any movement down Coast Avenue be attempted.

Amendment: Silver moved to amend the motion to adopt proposed Ord. #261 as follows: to have Staff draft an amendment to close loopholes that might allow nightly rentals in a residential zone. Alice Brown seconded the amendment.

Steen said it was moved and seconded, and called for discussion. Gordon said the intent was to strengthen the Findings of Fact justifying the overlay zone. Scorpio asked why Lewis did not present the information in the memo dated 12/3/02 sooner, and Silver responded that he had asked Lewis how the Planning Commission arrived at the basis for the proposed ordinance, and then asked him to put his response in writing. Scorpio suggested adopting the proposed ordinance with Lewis' remarks amended into it. Silver said he would like to see the comments refined and put in the appropriate places in the proposed ordinance before voting on it. Fran Recht requested to ask a question for clarification, and expressed her appreciation at being allowed to do so. She said she understood the intent, but didn't understand why an amendment was being applied to proposed Ord. #261, which was specific to the NCA - that criteria limiting nightly rentals should be in Ord. #260 if it's to be applied to anything other than NCA. Gordon said his understanding was that the amendment would clarify why the parcel of 12 NCA properties was unique and could not be duplicated anywhere else in the city.

Scorpio withdrew the original motion, and Alice Brown withdrew her second. Silver withdrew the motion to amend the original motion, and Alice Brown withdrew her second.

Motion 10: Silver moved to direct staff to include specific criteria into proposed Ord. #261 pursuant to Lewis' memo of 12/3/02, also to include relevant facts and findings of what criteria the Planning Commission applied to proposed Ord. #261. Alice Brown seconded the motion.

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

Vote: Motion 10 passed.

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

Motion 11: Silver moved to table this item to the next regular Council meeting. Laverty seconded the motion.

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

Vote: Motion 11 passed.

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

VIII. CORRESPONDENCE

Murray said there was one item of correspondence, a petition from John Dempsey (copy attached to original of these minutes). The petition requested the City Council stop aggressive solicitation by employees of the Nautical Nook. Murray read the petition into the record.

Motion 12: Scorpio moved to put this item on the agenda for the next regular Council meeting. Silver seconded the motion.

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

Vote: Motion 12 passed.

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

IX. LIAISON OFFICERS' REPORTS

Jack Brown reported that the Harbor Commission meets tomorrow. Crab season starts on December 10.

Lavery reported that Parks Commission meets on December 11.

Scorpio reported that she had no report from the Planning Commission meeting of November 19, and the Economic Business Development Committee meets on December 12.

Silver reported the Traffic Safety Commission was unable to meet this afternoon, due to a lack of quorum.

X. CITY STAFF REPORT

Owings reported 1) The City acquired a slide from the fire department some years ago, and the Parks Commission has decided it is not suited for the park for safety reasons and the cost involved to construct a ladder and railing. He requested permission to put the slide out to bid.

Motion 13: Silver moved to direct Staff to put the donated circular slide out to bid. Lavery seconded the motion.

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

Vote: Motion 13 passed.

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

Owings continued his report: 2) He, Murray, and Gordon researched City ordinances, and discovered that there is no ordinance prohibiting solicitation within city limits. 3) He has received one quote on paving the area south of the Painter Building. A second company is expected to provide a quote this week. He will update the Council at the next meeting. 4) He has received pre-construction drawings from Hightower Engineering on the Pirate's Cove sidewalk project. The 24' culvert has started to break down and a 15' piece has already fallen off. The engineer has two ways this can be fixed, but the cost is beyond the scope of the project. He has sent copies of the drawings to ODOT for their review and comments, and will keep the Council informed. 5) A new alarm system is being installed at the water plant. It will have motion detectors and fire alarms. 6) He has spoken with Gordon regarding the rest areas on Bay Street. The rest area on City property will not be a problem, but the property owner of the one on private property will need to be contacted to find out if he wants to provide a lease, or if the City should get a license for that portion of the property. He asked the Council's permission to contact the property owner in writing. There was no objection to his request. 7) Lavery asked if the broken granite bench would be repaired, and Owings responded that he had contacted two masons who have indicated that it cannot be repaired, but he plans to contact granite workers in Salem in hopes that it can still be salvaged. Scorpio asked if it was a liability in its current condition, and Owings responded that it was, but it is taped off.

Murray reported 1) December 7 is Pearl Harbor Remembrance Day. The City has purchased a wreath for a ceremony that begins at 10 AM at the VFW Memorial at City Park. One of the keynote speakers is a Pearl Harbor survivor. Everyone is encouraged to attend. 2) There was a revision to the Accounts Payable report. The City County Insurance worker's comp premium dropped from \$6,717.74 to \$2,537.57, due to credit back from the insurance company. 3) There is a scheduling conflict on the day of the first regular Council meeting in January 2003. She asked the Council what date they would like to reschedule the meeting to.

Motion 14: Lavery moved to reschedule the first regular City Council meeting in January 2003 to January 6. Alice Brown seconded the motion.

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

Vote: Motion 14 passed.

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

XI. ACCOUNTS PAYABLE

Motion 15: Alice Brown moved to approve Accounts Payable, with the correction as noted by Murray. Silver seconded the motion.

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

Vote: Motion 15 passed.

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

Abstain: Lavery, Silver

Lavery said he went to a conference on Standards and Practices for the State of Oregon, where he learned that people such as councilors and board members should not vote on anything that affects them. In the case of the City's Accounts Payable, sometimes there is a reimbursement to Councilors included in the report, and on these occasions, abstention is the appropriate action.

XII. COUNCIL COMMENTS

Scorpio requested the agenda for the December 17 Council meeting include Larry Tyler's second hearing, as moved in a previous meeting. The second hearing is to address complaints that have been received regarding his performance on the Planning Commission. Lavery said the complaints were outside of Tyler's role as a Planning Commissioner, and he felt that if a hearing was to be held, it should be regarding his job performance on the Planning Commission. Gordon said some of the complaints were regarding his failure to obtain a business license, which reflected badly on his position as a Planning Commissioner. He said the Council could consider complaints against Tyler without holding a public hearing; however if proceedings to remove him from office were initiated, that would need to go through a judicial process. Murray said at the November 5 regular Council meeting a motion was made to hold two public hearings, with the appeal of his business license coming before a hearing on his Planning Commission performance.

Motion 16: Scorpio moved to have the next regular Council meeting agenda include an item for a public hearing on Larry Tyler's Planning Commission performance. Alice Brown seconded the motion.

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

Vote: Motion 16 passed.

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

Noes: Lavery

Alice Brown apologized for speaking out of turn prior to deliberations. She said she wished for peace in Depoe Bay this Christmas. She encouraged the Council to focus on communication and trust, and to avoid context abuse in the future, which can be devastating and destroy trust and good will. She encouraged the courtesy asking people for clarification if you don't understand what they've said.

XII. ADJOURN

There being no further business, the meeting was adjourned at 10:28 PM.

Mayor John Steen

Silver Fox, Recording Secretary