

Depoe Bay City Council
Regular Meeting
Tuesday, December 17, 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: December 3, 2002 Executive Session and Regular Meeting

Motion 1: Silver moved to accept the minutes of the Executive Session and Regular Meeting as written. 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

VI. NEW BUSINESS

A. Bid Award - Wastewater Treatment Plant Grit Removal System

Steen invited Curt McLeod to make his presentation out of agenda order, so he could move on to another meeting. Referring to his submitted letter (copy attached to original of these minutes), McLeod reported that eight bids were received on December 5 for grit work at the wastewater treatment plant. The low bid was from Mountain State Construction for \$118,484. Two bids were unopened and remain in the City's vault, because they did not include a first tier disclosure. He described the nature of the work to be done.

Motion 2: Silver moved to authorize the mayor to sign the agreement with Mountain State Construction for grit removal for \$118,484. Lavery seconded the motion.

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

Vote: Motion 2 passed.

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

Motion 3: Lavery moved that the two incomplete unopened bids be returned to their respective companies. Silver seconded the motion.

Vote: Motion 3 passed.

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

McLeod will return next month for a project update.

IV. PUBLIC HEARING

To Gather Information on Complaints Against Larry Tyler

Returning to the scheduled Agenda, Steen opened the hearing for testimony, with a request that speakers limit their testimony to five minutes and not repeat what others have said.

G.K. "Bud" Romans 405 Coast Avenue, submitted a complaint (copy attached to original of these minutes) to the Council regarding Tyler. He reviewed the complaint, highlighting several points.

Larry Tyler 935 Pine Avenue, wanted the record to reflect that he had in writing (copy attached to original of these minutes) asked Scorpio and Steen to step down due to bias. He said Romans' testimony was mostly untruthful, and much of it was hearsay. He said he had attended most meetings since his appointment as a Planning Commissioner, and he believed himself to be a good Commissioner, with his expertise as a builder and homeowner. He said he applies ordinance standards to every application to the best of his ability. He said he doesn't know all the laws of the City of Depoe Bay, the State, or the Federal government, and didn't believe it was possible for anyone to know them all. He researches applicable ordinances for each application, as identified by the City Planner, who provides guidance to the volunteer Commissioners in the same way as the City Attorney provides guidance to the Council. He distributed copies of his business license application, saying that no information was falsified. He asked if anyone would know they needed a transparent home occupation business license by looking at the license application, or if they would know that providing the applicant's home address was a requirement. He said he didn't renew his aquarium business license because he stopped selling fish out of his home. He said he didn't know of anyone willfully not getting a business license, but did know there were many not in compliance, and suggested it might be appropriate to send a letter describing the ordinance's provisions to all residences and businesses. He apologized for any mistakes he might have made in applying for his license. Referring to Tyler's submitted packet, Scorpio said some of the language was familiar, and wondered how Tyler's reputation was being ruined. Tyler declined to name the person out of fear they might be targeted by the *Beacon*, but described what had been said. Alice Brown expressed concern about a statement Tyler made in his letter to the Council dated December 6 regarding use of a hand signal: he had stated he "considered that action, while unfortunate, a non-violent one of self defense". Alice Brown stated that most people consider that action to be one of sexual aggression, especially between males, and that it incites further aggression. She said it is not an act of self defense, and that defensiveness is the need to defend oneself against blame or belittlement. To justify one's actions as expressed by his verbal request to "go see the business license at City Hall" had nothing to do with male sexual aggression against another male. She said Tyler was fortunate Dan Arb

didn't escalate the confrontation into a fist fight, which a lot of men would have done under those circumstances. She said this hand signal was a personal threat to assault or injure another person; and it was not an appropriate means of communication for a public official to use toward anyone, especially at a City meeting, whether serving as an official or as a member of the audience. She said the words associated with that hand signal are equally offensive, and suggested he get professional help to learn better ways to manage his anger. She said she had witnessed him engaged in this type of behavior at meetings, and she wanted him to stop. Tyler responded that at 9 AM on a Sunday morning with no one around, Dan Arb confronted him after Tyler said "nice guy" to Arb's friends. He said Arb got in his face, grabbed the hose he was using and squirted it at him. Tyler rushed into the building, at which time he exchanged the hand signals with Arb. Alice Brown stated she was at the meeting Romans had referred to, where Brian Plechaty and Betty Langdon got into a discussion. She said Tyler stood up when Plechaty had called him into question about using a foul word, and Dick Johnson used the gavel. Tyler said this happened after the meeting. Steen said he heard Tyler use foul language more than once that evening, and he talked to a woman with a child, who had been sitting in front of Tyler. That woman spoke to Steen about it after the meeting, and others heard the language. Tyler said this was not true and he had video tape to prove it.

Mary Nissen 515 NW Spencer, said the focus should be on children. She came to the meeting to support the community. We have to get together and think of the children. They are what's important. She wanted everybody to calm down and stop pointing fingers. She thought it was inappropriate for people in the audience to be reading the *Beacon* instead of listening to what people had to say. She hoped everyone could all get along.

Dick Johnson, referring to Romans' statement, clarified that Romans had asked him what he thought about everything going on relative to Tyler, and he had responded that he wasn't going to get involved defending a Planning Commissioner, but that he would defend the Planning Commission as a whole. He strongly objected to the comments Romans attributed to him, and did not think those statements should be considered in deliberations. He said Tyler comes to Planning Commission meetings, is involved in deliberations, and votes according to his conscience. Scorpio asked if Romans' comments were untrue. Johnson responded that he made the statements in an informal discussion, just as he's made other positive and negative comments about other Planning Commissioners informally, and he never intended the statements to be made public.

Austin Scorpio 147 NW Hwy 101, said he doesn't blame people for their mistakes, but asks that they pay for them. He said Tyler has been very antagonistic with his video camera. He said he resigned from the Budget Committee with regret in April, because he didn't feel he could serve after having Tyler say "f--- you" three inches from his face, after asking him to stop video taping his wife. He said other people heard Tyler say this, and that he never made any threats to Tyler after that incident, but Tyler twice filed false charges against him with the sheriff's department.

Rick Beasley P.O. Box 947, submitted a petition for Tyler's removal from the Planning Commission (copy attached to original of these minutes). He addressed comments made regarding his interest in this case, because he felt his right to be interested had been

questioned. He said a business license violation is not much of a story, but this is more than that - it's about a City official who serves on an influential and powerful commission, and operates above the law. When caught in repeated infractions, Tyler repeatedly said "I didn't know". He said that playing dumb shouldn't be rewarded with a commission to serve as a public official where knowledge of the laws is a requirement of the job. He asked what else Tyler didn't know, and how this lack of knowledge would help or harm an applicant. He read the cover letter accompanying the petition into the record.

Betty Langdon 1635 Tintinnabulary, read a written presentation (copy attached to original of these minutes) into the record. She was unable to complete the entire presentation due to lack of time.

Chris Nowark 425 Pine Court, spoke in support of Tyler. She has attended several Planning Commission meetings and never seen any negative actions toward applicants or other Planning Commissioners. Outside of meetings, she said he's a great neighbor - the first to help. He keeps his yard clean. His house is nice. He's a devoted father, and an animal lover. She felt he is an asset to the Planning Commission. She encouraged the Council to keep him on the Planning Commission.

Bill Sachs 1450 Walking Wood, said about 75% of testimony he's heard tonight was irrelevant. He hoped that during deliberations, the Council would only consider those things relevant to Planning Commission performance. He said that if everyone listened to all the little things heard about everybody from the President on down, we'd have no government. If irrelevant input is allowed in deliberations, then everyone should look in the mirror more closely, because we all have things which can be used against us.

Ron Nowark 425 Pine Court spoke in support of Tyler. He said that during his four years as liaison to the Planning Commission, he never saw anything negative that he would report to the Council. Tyler was always prepared and his attendance was very good. He participated in deliberations and never abstained from voting. He said some of Romans' comments were heresay. He said he attended the meeting where Romans claimed Tyler rolled his eyes and made hand gestures, and that when he approached Romans that evening asking him if he'd witnessed that, Romans had told him that someone else had seen it. He said he had never witnessed Tyler swearing or using vulgar language in his capacity as a Planning Commission in that forum. He stated that he had seen Tyler stand between another Commissioner and an aggressive applicant. He commented on the amount of effort expended to keep Tyler from operating his business as he has been for 25 years, and did not comprehend why anyone would want to deprive someone of their ability to earn a living in Depoe Bay.

Rick Davilla 325 Coast Avenue, said the information submitted by Fran Recht (copy attached to original of these minutes) was a smokescreen, designed to throw the Council off the subject at hand, which is listening to information on Tyler and whether he should or should not be retained as a Planning Commissioner. He said he was attacked in Recht's packet, and he didn't think it was appropriate to have to defend himself in this meeting. He said the information Recht provided was false, and hoped that it would not be considered in deliberations. He said he attends at least 90% of Planning Commission meetings, and has

many times heard Tyler say "I didn't know", and has heard Recht tell applicants "It's not our job to tell you what you have to have to come before us. It's your job to get it." He addressed Tyler, saying it's his job to know what he must have to do business in the city. He said that every contractor in the city has been attacked by these people. He's tried to just let it go by, but after seven years, he's tired of it. He questioned how somebody could have a business license, let it expire, and then say "I didn't know".

Steen asked that no more testimony be given on the business license issue.

Scorpio said that as a private citizen prior to being on the City Council, she witnessed Tyler being coached on how to vote on a subject on more than one occasion. She said she's not the only one who's witnessed this, but most are afraid to come forward out of fear of retribution. She has seen him get in her husband's face and heard him use filthy language.

Alice Brown said that Council Rules were adopted earlier this year, and they should be followed. Planning Commissioners should follow the Rules when attending Council meetings. She said that during Ord. #256 Text Amendment hearings, she labored under a great deal of stress, and remembered looking up at Tyler, who was waving his arms around and mouthing "no, no, no" at her, which interfered with her concentration. There is something in the Council Rules which indicates that audience members are not to engage in distracting behavior. She did not feel such behavior should be condoned.

Steen asked if there was any further testimony. He said that written testimony may be provided up until the next meeting. He closed the hearing. Silver asked Gordon to elaborate on the procedure from this point forward. Gordon said that the statute Langdon referred to, ORS 227.030, requires a hearing be held before someone is removed from an appointed commission, although the statute is not specific on the hearing process. He said that tonight's hearing was for the Council to hear the complaints, and to decide whether to proceed with a formal process of removal. This would involve someone arguing the case for the Council with Tyler defending himself against the removal, and then Council making a final decision. This would be a political decision based on a standard of misconduct or non-performance of duty, but this is not defined, so Council would need to define the standard and apply it. This could be done tonight, or at the next meeting. Alice Brown suggested the Council consider that Tyler has only one year left in his appointment on the Planning Commission. She wondered if a warning, reprimand, or probation would be possible - something besides removal. Gordon said that was within the discretion of the Council, but a different Council could make a different decision. Alice Brown stated she thought it was a good idea to give people a second chance, and that she was unsure what the standard for removal was because the guidelines were so rough. She said she would feel more comfortable with something with accountability at the time his term comes up, if he would cease and desist the behavior she has observed, and obey the Council Rules. She said going through the removal process would be expensive, and he only has a year left. Scorpio said she would agree with that except for the aggressiveness of his behavior - using the camera as an aggressive weapon, aggressive behavior towards people in the audience, coaching from the audience, coaching on his side of the room during votes, and false charges made against two men. She didn't think you could teach someone manners with a finger shake, or that good behavior would begin with a reprimand. She thought

the Council should move forward with removal proceedings. Alice Brown said he has a legal right to tape, but she noticed in one instance, one of his tapes was provided to a Councilor, without the rest of the Council having the chance to view it. She is very concerned about context abuse, depending upon how a camera is used and potential editing of material, which could put the Council at risk. She wondered if there was a provision by which the Council could insist he provide a copy of his tape to the entire Council.

Motion 4: Scorpio moved to move forward with proceedings for Tyler's removal from the Planning Commission, and schedule a formal hearing at the next Council meeting. Jack Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Jack Brown asked Gordon to elaborate on the criteria for a formal hearing. Gordon responded that there is little guidance, but the Council can decide what conduct constitutes grounds for removal. Typically, non-attendance (failure to perform appointed duties) or illegal conduct such as theft or abuse of office for benefit of family are used as grounds for removal - the criteria are usually fairly severe, but courts will usually defer to Council. He will bring a summary of specific standards which have been applied in reported cases, to the next meeting.

Vote: Motion 4 passed.

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

Silver asked Murray to provide a record of Tyler's attendance and his Planning Commission activities. Murray asked who would be presenting the City's case in the hearing. Questioning a point of order, Langdon asked if Tyler shouldn't be provided legal counsel also, and Gordon said there was no legal responsibility for the City to provide counsel for this purpose. Langdon said she was astonished that Council members claiming they had no bias gave lengthy testimony. Scorpio said she stated facts that have many witnesses to back them up, and that's not bias.

VI. NEW BUSINESS

G. Presentation of Audit/S. Grimstad - Fiscal Year 2001-2002

Steen invited Signe Grimstad to make her presentation so she could go on to another meeting. Grimstad asked the Council if they wanted a detailed report or a summary. Steen said they had not had a chance to review the report. Silver asked if there were any advisements the Council needed to consider this year. Grimstad responded that there are new standards coming into place. In the fiscal year ending June 2004 there will be an involved, new disclosure presentation. She commented on the large number of funds the City has. She said Murray does an excellent job, but her time is limited and she needs more help. In response to Lavery's question about what kind of help, she specifically suggested someone with an accounting background. The books will be getting more sophisticated, with more requirements. She expressed concern about being in compliance, specifically with the GASB bill in the future. Scorpio asked what funds could be consolidated, and Grimstad mentioned Enterprise, Water, and Sewer Funds. Murray said there is concern about using line items as opposed to separate funds, that needs to be overcome.

V. PUBLIC INPUT

Austin Scorpio said that Recht's packet was a deflection piece, and addressed her investigation of his company, down to the inspection conducted when he opened in South Beach. His business is located in South Beach, even though the inspector erroneously listed Newport as the location. He said retribution goes too far, and he's seen aggression since they first came to town - you're either on this side or the other side - the town is divided. The way to keep yourself, your family, finances, and business safe is to stick your head in the dirt. He said when someone investigates a number of years into the past, it shows how far people are willing to go to discredit someone. He said his family has received anonymous letters through the mail. The letters have been threatening and very personal. They have no return address. Some are hand written. Some are in Mother Goose rhymes. They have had some typewritten ones investigated and compared to City memorandums, and have found some matches of fonts. Regarding his business, he said they are licensed with the State, and as a wholesale manufacturing company, they can operate anywhere in the country. He didn't like Recht naming his clients. He said this is all frustrating, and asked when it would end. He asked if Councilors had any questions for him, and offered to provide verification on where his business is located, and will ensure that next year's license reflects South Beach instead of Newport.

G.K. "Bud" Romans encouraged Councilors to read the three pages he submitted just prior to the meeting. He said he did not understand why so much unrelated written testimony was provided for the hearing.

Peggy Leoni Chamber of Commerce, drew attention to a Raggedy Ann doll sitting on the stairs holding a Christmas stocking. Tomorrow will be the Community Potluck dinner. Everyone is welcome and invited. Bring a side dish or dessert, and your own utensils. Festivities start at 6 PM. There will be six Christmas stockings filled with gifts, and wine that had been donated will be raffled off. She had some raffle tickets with her. She said it will be a lot of fun - and like the crab feed and salmon bake, everybody's ill will, animosity, and bad breaks are left at home.

Debbie Davilla 325 Coast Avenue, said she'd intended to write a letter to the Mayor and the Council in response to Recht's packet dated December 17, but since it had been passed around publicly, she felt it was appropriate to respond publicly. She responded to Recht's packet: 1) There is a vacant lot they have been actively working on for the past year and a half. They have done significant debris removal, site cleanup, tree removal, grading, and brush removal, and they obtained all the permits needed to do this work. She said there was a sign on the property advertising it for sale. 2) The sign in the other photo had been placed by the building to obtain the photo, because the sign had not been there in that position. She said that property had been in significant disarray when it was purchased, and it was not being advertised as a Villa Construction property. She said there was definitely a fear of retribution, and there were a number of accusations in the packet. When letters such as this are circulated, the damage is done, and it's difficult to recover from it, even when answers are provided and everything is appropriate. She said the information in the packet was not honest.

Larry Tyler, responding to Debbie Davilla, said he took the pictures. He said nobody entered the property or turned the sign over. He said he took the photo with a zoom lens from South

Point Road. He said the picture with the sign in an empty lot did not contain a “for sale” sign; it contained a Villa Construction sign, and that’s illegal. Scorpio asked Tyler why he was defending Recht’s packet.

Chris Nowark said the Council should realize this was getting out of hand. She disputed Austin Scorpio’s claim that their business was in South Beach. She said it is in the Newport Business Plaza. Serena Scorpio asked how she knew this, and why the mayor permitted this. Austin Scorpio said the Newport Business Plaza is located in South Beach.

Motion 5: Silver moved to recess the meeting for five minutes, so the room could calm down. 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

Meeting recessed at 8:38 PM. Meeting reconvened at 8:46 PM.

Chris Nowark said that according to Barbara Hills, who handles Newport’s business licenses, the Newport Business Plaza is in Newport, and the Scorpions are required to have a business license because they have a business in that plaza. Serena Scorpio asked Nowark what she had to gain by backing up Recht’s document, which was a vicious attack against innocent people. Nowark said she knew nothing about Recht’s packet, but that Serena Scorpio had recently stated that public officials needed to be held to a higher standard, and that Serena Scorpio needed to ensure her own back yard was clean. She said there are Councilors who are not following the rules, and there are Planning Commissioners aware that ordinances are being violated. She said the town is more divided than it has ever been since it’s incorporation. The Council should not have to spend so many hours dealing with this kind of thing; there is important City business that should be dealt with - things like the wastewater treatment plant and water storage - things that are important to the vitality of the town.

Steen said that Gordon could represent both sides in Tyler’s formal hearing. Gordon said that the role of the person would be to present the reasons for removal, and also to present reasons for retention, while developing the evidence that the Council would use to make a determination. He said he would exercise his own judgment in what he considered to be relevant and pertinent to make the presentation, if he was the one to do it, so that extraneous material is not presented. He said he was comfortable doing that, or being an advocate for either side. Serena Scorpio asked if Gordon would provide the same service to another official in a similar circumstance. Gordon responded that it would depend on the circumstances. Silver asked who the Council should look to for advice in this situation. Gordon responded that he (if he were presenting the case) or a previous City Attorney would be appropriate sources for advice. Jack Brown said there should be legal significance associated with this decision, as it was an important one, and will be setting the stage for what can happen in the future. He wanted to ensure the City Attorney would guide the Council to address the right things. Scorpio asked about people taking responsibility for themselves and providing their own

counsel. Gordon said there is no specific guidance on this in the statutes - there is no requirement that an attorney be the presenter. Having someone present both sides would be appropriate, and having two presenters would also be appropriate. Steen said he felt it was appropriate for the City Attorney present both sides, noting how important it was for the right thing to be done. Silver said his concern was in sorting out relevant testimony, and that he felt the City Attorney should provide this guidance; he still questioned who should provide legal advice beyond this guidance. He said the Council should be impartial and Councilors should not provide testimony. Gordon said the question at hand was whether or not there was enough information to move forward - thereby making a preliminary decision, but also retaining the ability to reach a fair decision after a full trial. Based upon statute and the Council's judgment, the Council needed to decide what constitutes conduct appropriate for removal from office. Owings suggested an arbitrator could be helpful because they are impartial. Jack Brown strongly felt that Gordon was neutral and he was comfortable with having Gordon present both sides. There was a consensus of the Council that Gordon should present both sides of the case on January 6, 2003, with Scorpio not in agreement.

There was no further Public Input.

VI. NEW BUSINESS

B. GIS Viewing Application Agreement

Murray said the County received a grant to do a mapping project. Murray visited the County to view their example, and was impressed by it. Depoe Bay would need a lot of work to get up and running; however some CAD mapping done in the past will interact with this program. She presented an agreement (copy attached to the original of these minutes) for the Council to authorize to enter into the mutual mapping and sharing of information with the County. She said the following Agenda item was connected to this item.

Motion 6: Silver moved to approve the GIS Agreement and authorize the mayor to sign. 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, Lavery

C. Proposed Resolution #314 - A Resolution Entering Into An Interagency Agreement With Lincoln County to Share Geographical Data

Murray said the proposed Resolution (copy attached to original of these minutes) was the City's Resolution to enter into the GIS agreement.

Motion 7: Silver moved to adopt Resolution #314, A Resolution Entering Into An Interagency Agreement With Lincoln County to Share Geographical Data. Lavery seconded the motion.

Vote: Motion 7 passed.

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

D. DLCD Technical Assistance Grant Agreement - Inventory & Mapping

Murray said this was the actual contract (copy attached to original of these minutes) with DLCD (Department of Land Conservation and Development), to conduct the wetlands study, inventory and mapping in accordance with the grant in the amount of \$26,000 the City was recently awarded. This agreement outlined the end results of the project. Scorpio asked if there was any cost to the City. Murray responded that there was in-kind work totalling \$4,000, but no cash (total project cost \$30,000). Alice Brown asked if this project would dovetail with Ord. #256. Murray responded that it would go beyond, because Ord. #256 was to create an inland streams map, and the grant is for a full mapping of city wetlands. The project will have to move quickly because of the time frame involved.

Motion 8: Lavery moved to approve the DLCD Technical Assistance Grant Agreement for inventory and mapping of wetlands, and authorize the mayor to sign. Silver seconded the motion.

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

Vote: Motion 8 passed.

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

Noes: Scorpio

E. LOC Request for Contribution for PERS Related Projects

Murray referred to a letter (copy attached to original of these minutes) from the League of Oregon Cities (LOC) regarding the financial problem being faced by Public Employees Retirement System (PERS). The LOC, representing all their member cities, is expending time and effort to find possible solutions to the problem. They are requesting a voluntary contribution of \$10 to \$12 per active employee member. Depoe Bay has 12 active employee members.

Motion 9: Silver moved to authorize the City to contribute \$144 toward this process. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Scorpio asked what the PERS-related projects were. Murray said she had not had the opportunity to call and get specific information on this, but they were in the process of collecting data, and once this was done they would present their findings. Silver said this would be an economical way to get an advocate to help out, since earnings have sharply fallen because of the market.

Vote: Motion 9 passed.

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

Noes: Scorpio

F. Request to Prohibit Soliciting in Depoe Bay

Murray said that a letter (copy attached to original of these minutes) signed by Amber Slonaker of Nautical Nook and John Dempsey of Ainslee's Taffy was submitted just prior to this meeting. She read the letter into the record.

John Dempsey 235 SW 11th Street, Newport, said that limiting soliciting to the west side of the highway would eliminate the problem. Lavery noted that there is a new restaurant going in where Mr. P's used to be. Dempsey said the soliciting boundary could be restricted to south of Whale Park. Alice Brown asked about the aquarium store, and Dempsey said he hadn't spoken with them. Scorpio said she lives in that area, and that she had been accosted while gardening in her yard last year, and didn't think a restricted area would be acceptable. Alice Brown suggested limiting soliciting to "x" number of feet from the front door of a business. Taunton said he would like to see it totally eliminated, saying that tourists should be able to come to an area and not be harassed. Lavery agreed. Murray said Slonaker brought copies of Newport's ordinances regarding soliciting, and would provide copies to the Council upon request.

Robert Menees 22 Collins, said soliciting should be stopped. He is an employee of Ainslee's Taffy. He said he can't take a break outside the store without being accosted, talked to, or taken advantage of. Moving the soliciting to one sidewalk or another won't do any good. He said when he is on vacation and sees somebody handing something out, he walks away or turns his head to miss these people, and he might miss a shop he'd find something interesting in. He said soliciting steers people away.

Debbie Davilla said Community Cleanup is very important to her, and her concern was discarded fliers.

Linda Dempsey 235 SW 11th Street, Newport said she was virtually assaulted by a person who stopped her near Gracie's by standing directly in her path, and tried to block her when she tried to step around. She had flyers flicked at her, almost striking her in the face. She said she had heard complaints all the way up to the Factory Stores in Lincoln City, where she is a store manager. She felt this type of soliciting is offensive to a lot of tourists.

Motion 10: Lavery moved to direct Staff to develop an ordinance prohibiting soliciting in the City of Depoe Bay. Scorpio seconded the motion.

Steen said it was moved and seconded, and called for discussion. Taunton asked if a fine could be added. Gordon said that was the Council's choice. Scorpio suggested being very specific about the type of soliciting, as it has a broad definition. Ron Nowark asked if door-to-door soliciting in residential areas would be allowed. Alice Brown noted the Chamber of Commerce distributes event fliers, and she saw a difference between handing out information and seeking to get someone to buy something. Scorpio thought it should be limited to the business district. Silver said if this motion passed, Staff would need specific direction as to what was meant by "no soliciting". He didn't want to escalate the issue, but the comments made were all relevant. Scorpio said everything from verbal assaulting on the street to sandwich board signage close to other businesses to pamphlet passing should be included in the ordinance. Peggy Leoni suggested developing a committee to look at ordinances from other cities and consult with the Chamber.

Vote: Motion 10 passed.

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

Motion 11: Silver moved to appoint a committee to assist Staff in developing the draft ordinance prohibiting soliciting. Alice Brown 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, Lavery

VII. UNFINISHED BUSINESS

- A. 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

Murray said the first reading of proposed Ord. #261 was by title only at the previous meeting. There was a motion to direct Staff to draft amendments and bring to this meeting (copy attached to original of these minutes). Silver suggested allowing further public comment after the revisions were read and before moving to adopt at the first reading. Murray read the revised wording into the record.

Chris Nowark questioned Item 3.E. regarding the basis for the application not arising from a violation of the ordinance. She said she recalled discussion on that subject but did not see any changes in the wording. Scorpio said the issue was the proposed ordinance, not whether anyone was in violation of it, which subject would be dealt with as a separate agenda item. Gordon said it was up to the Council to determine whether consideration of the overlay zone was an appropriate policy decision.

There was no further public comment.

Motion 13: Scorpio moved to adopt at the first reading with the proposed revisions and amendments noted at the last meeting. Alice Brown seconded the motion.

Steen said it was moved and seconded, and called for discussion. Gordon identified a misnumbered paragraph.

Vote: Motion 13 passed.

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

Noes: Silver

Murray noted that the second reading will take place at the next Regular Meeting, on January 6, 2003.

B. Findings of Fact, Conclusions of Law and Decision - Appeal of City Recorder Decision to Grant City Business License

Murray said this was a draft summary of what was heard during the appeal, and the Council's findings on the appeal. Scorpio was uncomfortable with the name change of the company, saying it was a way to avoid taking responsibility for the past. Murray explained that there are two choices when applying for a business license: new, with a one-time application fee, or renew, with a 20% late fee if renewed after January 31. If a business license was not held during the previous year, the only option is to apply for a new license.

Motion 14: Lavery moved to accept the Findings of Fact, Conclusions of Law and Decision. Silver seconded the motion.

Steen said it was moved and seconded, and called for discussion.

Vote: Motion 14 passed.

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

Noes: Scorpio

C. Pedestrian Enhancement Along Bay Street Project

Regarding the two benches and rest stops on Bay, Street, Owings said he spoke to property owner Allen, who was willing to proceed with an easement, lease, etc.

Motion 15: Silver moved to direct Staff to draw up a lease or license agreement with Mr. Allyn, to move forward with pedestrian enhancement along Bay Street. Alice Brown seconded the motion.

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

Vote: Motion 15 passed.

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

D. Staff Report on Complaint - Alleged Violation of Ord. #234

Owings reviewed the contents of a packet which had been distributed to Councilors, as well as additional information received at a later date (copies of all attached to original of these minutes). Alice Brown asked if it would be appropriate to request a transcript to ensure there would be no misinterpretation, since minutes are being quoted. She specifically referred to tenses - past or present. She said paraphrasing can distort and create context abuse, something she's been concerned about in the past. Steen commented on Staff time involved with transcription. Alice Brown said this information was being used in a targeted manner, and the process shouldn't be too lengthy. Silver clarified that what was being requested was a verbatim transcription of evidence presented in the minutes. He asked Owings if he, as Enforcement Officer, had listened to the tapes. Owings replied he had not, and Silver suggested it would be appropriate to obtain a verbatim transcript of the sections referred to in

the minutes of the July 17, 2002 Planning Commission meeting and the November 6, 2002 City Council meeting. Silver asked Gordon to assist with specific wording on notification letters, to avoid receiving responses which provide no information other than acknowledging the receipt of the notification letter. Gordon suggested including date(s) and time(s), if known. Scorpio stated for the record that she questioned a section of Nowark's complaint, wondering why her out-of-state daughter would seek lodging instead of staying with the Nowarks. She did not like dealing with evidence that was gathered in a questionable manner.

Ron Nowark said they have six children, two having their own families, and when they have all their family here at once, it gets too crowded, requiring additional lodging.

Chris Nowark said they only have a three-bedroom house, and took offense at Scorpio's comment. She said she didn't want this to turn into a personal attack - that the bottom line is Ord. #234 either is or is not being violated. She recommended against pulling emotion into it, and said to stick to the facts. She has listened to the tapes, and said that more information about violations would be forthcoming in the verbatim transcripts.

Alice Brown said that physical evidence such as receipts would be helpful. Steen said this item would appear on the next agenda. Silver said the verbatim transcripts would be presented as evidence at that time. Lavery suggested postponing this item to the second meeting in January, to give Staff sufficient time to prepare. Jack Brown noted the need to distinguish between use by friends and family, and actual nightly rentals. Owings said the only way to prove nightly rentals is by physical evidence, as stated by Alice Brown. In order to get such evidence, the City Attorney would need to write letters to get access to the books.

G.K. "Bud" Romans said he looks after three properties for absentee owners, turning off lights and gas fireplaces, and checking for damage after windstorms. He said at least a third of the subject properties are owned by people who live out of state, who have out-of-state licenses on their cars. He said Chris Nowark accused him of violating his Oath of Office by knowing but not doing anything about the overnight rentals. He had told her he doesn't have time to check all the license plates and find out if they are related to the owners. He said even if he had a mind to, he wouldn't be able to keep an eye on everything that goes on in that neighborhood, even though he lives so close by.

Debbie Davilla urged caution on the part of the Council regarding questioning property owners who are not in violation of Ord. #234. She used as an example a property that was a nightly rental before it sold about two years ago. The new owner lives in Florida. Her daughter informed her about the letter that was sent out recently, and they were frantic about the possibility of the property being used by someone they were unaware of. Upon contacting Davilla for more information, she was incensed that she was being accused of using the property as a nightly rental, when she only allows family to use it.

VIII. CORRESPONDENCE

Murray said there were four items (attached to original of these minutes): 1) A letter from Millenium Digital Media announcing they are raising their rates. 2) A letter from Bob Wood, ODOT's District 4 Manager, agreeing to extend the lease option for Tradewinds. He would like

to meet with Council representatives soon to review this matter. 3) A letter of resignation from the Salmon Enhancement Commission, submitted by Jon Miller, who is going into the Navy. A notice for this vacancy will be posted. 4) A letter from the Council of Governments listing the names of all representatives and alternates on the Cascades West Area Commission on Transportation (CWACT). Laverty is the current representative, and Jack Brown is the alternate. Their two-year terms are expiring. Silver asked Laverty if he was willing to continue as Depoe Bay's representative, and Laverty responded that he was.

Motion 16: Silver moved to appoint Laverty as the City of Depoe Bay's representative to the Council of Governments. Scorpio 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

Abstain: Laverty

Motion 17: Silver moved to appoint Jack Brown (if he was willing) as the City of Depoe Bay's alternate representative to the Council of Governments. Alice Brown seconded the motion.

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

Vote: Motion 17 passed.

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

Abstain: Jack Brown

IX. LIAISON OFFICERS' REPORTS

Jack Brown reported that the Harbor Commission had not met, and he was sad to report a boat had been lost. There were three skippers on board, all of whom were safely rescued. He commended the *Beacon* for a nice article they ran about Jon Miller about a month ago. He would like to see more articles like this on our youth.

Scorpio reported that the Economic Business Development Committee (EBDC) met December 12: 1) Business-oriented events such as wine tasting, "storm specials" at hotels, and restaurant discounts were discussed. 2) Evelyne English would like to see a Newport-style seafood and wine festival in Depoe Bay. 3) Rick Davilla attended a meeting in Newport where all local events were shown support. 4) Bob Ward arranged to have EBDC minutes forwarded to the Chamber of Commerce. 5) There was discussion about a joint meeting with the Chamber. 6) There was a long discussion on the need for more volunteers. 7) Dick Johnson said the committee should help to make Depoe Bay more business friendly. 8) Bob Ward spoke with Rick Beasley regarding getting the EBDC space in the *Beacon*. 9) Dick Johnson discussed a stakeholders' meeting for the parking study project. Two consultants will meet with the group over three meetings. 10) There was a long discussion on signage.

Taunton reported that Salmon Enhancement met on December 4: 1) Georgia-Pacific will be donating approximately \$2,000 worth of materials. 2) The Commission will be receiving

20,000 eggs this month. Hatch boxes are being prepared. 3) Beanie Robison applied to retain his position on the Commission. 4) Jon Miller resigned. 5) The Commission is still selling hats. 6) The Commission would like to thank everyone for their support.

Silver reported 1) The Solid Waste Consortium met this afternoon. They are still awaiting the monitoring results. 2) The Safety Committee met this morning. There were no accidents reported.

X. CITY STAFF REPORT

Murray reported 1) She distributed copies of a letter (copy attached to original of these minutes) that was today mailed to Oregon Department of Parks and Recreation requesting an extension to our grant for Whale Park improvements and Scenic Lands Acquisition. The initial six-month extension period is coming to a close, and second extensions are normally not granted. However, the City is very close to finishing these projects. She said there were other cities in similar situations, and getting the extension looked favorable. 2) She asked the Council to look at reviewing the City business license ordinance. The last review was conducted in 1996-97, with only a few procedural revisions since then, which have not been incorporated into the ordinance.

Owings reported that 1) Bids were received on the surplus slide from the Fire Department. He recommended going with the high bid of \$200. There was a consensus of the Council to do so. 2) He had not heard back from ODOT regarding the change in the Pirate's Cove Sidewalk Project. He thought they were studying the storm water problem. The project, which started at \$50,000, will end up costing between \$150,000 and \$180,000. 3) He had quotes on paving the area south of the aquarium store. He planned to discuss this at the next Parks Commission meeting for ideas, concerns, and approval before continuing. He will bring their recommendations back to the Council. 4) He found a contractor who can fix the memorial bench at the City Park south of the aquarium store. The work will be done as soon as the weather permits. 5) He said the City's worker's comp modification factor has dropped from 2.68 to 1.79 this year, resulting in a savings of approximately \$9,000 for the year. The City also received a Gold Medal Safety Aware from the League of Oregon Cities and City County Insurance Services, for a zero injury frequency rate for 2001-02. This stated, he requested approval to expend the line item in the 2002-03 Budget for Safety Bonuses.

Motion 18: Silver moved to authorize staff to distribute the bonus for safe working habits in Depoe Bay. Laverty seconded the motion.

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

Vote: Motion 18 passed.

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

XI. ACCOUNTS PAYABLE

Alice Brown noted an item listed for principal and interest on the water bond, and asked Murray to provide background information on it. Murray said the payment is on a 1978 issue bond to pay for our current water treatment plant and distribution system. There is about six

years remaining on this bond. We also make an interest only payment in June. The newer water bond issues (1995-96) covered the water treatment plant upgrade, development of the Rocky Creek water source, and transmission and distribution system improvements. Those two bond annual payments are made in March.

Motion 19: Alice Brown moved to approve Accounts Payable as written. Silver seconded the motion.

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

Vote: Motion 19 passed.

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

XII. COUNCIL COMMENTS

Alice Brown said she was concerned about the memo dated December 4 from the League of Oregon Cities, regarding the issue of local pre-emptions. She said it appeared that the lodging industry wanted to collect part of the room tax, and prevent raising room tax to provide for public safety. Also, the Oregon Grocery Industry Association wants to pre-empt cities' ability to implement a street utility tax or fee. She said she brought the idea of a street fee to the Budget Committee a few years ago. With the defeat of Measure 18, Depoe Bay will never be able to get a tax base, she said it was a good idea to take another look at the street fee, and to do whatever is possible to assist the League of Oregon Cities to help protect us so we retain all the potential sources of revenue that cities are supposed to have. Steen said a letter should be written.

Scorpio talked about the importance of taking responsibility for what one does - don't pass the blame off on someone else.

Taunton questioned the amount of the donation authorized for Council of Governments Senior Meals on Wheels. Murray responded that she would find out what the amount was. He wished everyone Happy Holidays.

Motion 20: Silver moved with reluctance to accept Jon Miller's resignation from Harbor Commission. Taunton seconded the motion.

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

Vote: Motion 20 passed.

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

Silver said new liaisons would be assigned next year, and he had spoken with Jack Brown regarding taking his seat on the Solid Waste Consortium. He said this was not a mayor's appointment and needed a Council decision. He asked the Council to consider this for the first January meeting.

XII. ADJOURN

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

Mayor John Steen

Silver Fox, Recording Secretary