

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, June 1, 2004 - 7:00 PM
4 Depoe Bay City Hall
5

6 PRESENT: Mayor B. Silver, J. White, P. Taunton, A. Brown, G. Romans, J. Brown,
7 M. Lavery
8

9 STAFF: Acting City Recorder C. McCarley, City Attorney D. Gordon, Recording
10 Secretary S. Fox
11

12 I. PLEDGE OF ALLEGIANCE

13 Mayor Silver called for all to stand for the Pledge of Allegiance.
14

15 II. CALL TO ORDER

16 Mayor Silver called the meeting to order and established a quorum at 7:00 PM.
17

18 III. APPROVE MINUTES: May 6, 2004 Budget Committee Meeting; May 12, 2004 Planning 19 Commission/City Council Joint Meeting; May 18, 2004 Executive Session and Regular 20 Meeting

21 The minutes of the May 6, 2004 Budget Committee Meeting; May 12, 2004 Planning
22 Commission/City Council Joint Meeting; and May 18, 2004 Executive Session and Regular
23 Meeting stood approved, with no corrections.
24

25 IV. ACCOUNTS PAYABLE

26 Motion 1: Romans moved to approve Accounts Payable. Alice Brown seconded the motion.
27

28 Mayor Silver said it was moved and seconded, and called for discussion. There was none.
29

30 Vote: Motion 1 passed.

31 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery
32

33 V. PUBLIC HEARING

34 A. Appeal of City Recorder Decision to Grant City Business License (Shah/Bartosz)
35 Mayor Silver read the procedure for the appeal. He then asked Councilors if they had any ex-
36 parte contact, bias, or conflict of interest to declare. None was declared. There was no
37 testimony in favor or against the appeal. There were no statements and no rebuttals. There
38 was no request to keep the record open. The hearing was closed, and the Council briefly
39 deliberated. A Councilor expressed concern for the welfare of the appellant, whether he
40 understood the zoning ordinance before submitting his appeal.
41

42 Motion 2: Lavery moved to deny the appeal. Alice Brown seconded the motion.
43

44 Mayor Silver said it was moved and seconded, and called for discussion. There was none.
45

46 Vote: Motion 2 passed.

47 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

1
2 Mayor Silver directed Staff to send an appropriate response to the appellant, advising them of
3 the Council's decision. Gordon noted that Facts, Findings, and Conclusions should be
4 presented for the Council's adoption at the next regular Council meeting. An appeal can be
5 filed with the Land Use Board of Appeals (LUBA) within 21 days of the Council's adoption of
6 the Findings.
7

8 B. Continuation of Public Hearing: Council Deliberations – Appeal of Planning
9 Commission Decision: Allyn/Real Estate Centre Inc./Grey Investments Inc.

10 Mayor Silver read the public hearing procedure. He stated that the hearing was already closed
11 and that no more testimony or audience input could be accepted. He also said the Council
12 sent materials back to the Planning Commission and requested them to report back to the
13 Council, and the Council has received their report dated May 20 (copy attached to original of
14 these minutes). There were no Council questions regarding the report. Gordon reported on
15 three issues: 1) He said that new testimony was presented by the appellant at the April 29
16 appeal hearing before the Council. It was emphasized at that time that the Planning
17 Commission had not had access to some of this testimony at the time they considered the
18 application. The new testimony was remanded to the Planning Commission for it to consider,
19 along with issues that were of interest to the Council. At the Planning Commission's May 19
20 meeting, the appellant offered additional new information, which the Planning Commission
21 declined to consider. Since there had been no requests to leave the record open when the
22 offer was made during the appeal hearing, the Planning Commission acted correctly when
23 they decided to not consider the new information. He advised the Council to only consider
24 what is in the City file, and not consider any new information. 2) When something is built that
25 faces the forces of nature, it may be that whatever is built will fail, with potential loss and
26 damages from nature. If a wall is built, it is not the City's wall, and whoever builds it needs to
27 acknowledge that they hold the liability and responsibility for it. 3) Ownership of the public
28 land is unclear because it was designated as public land before Depoe Bay was incorporated,
29 and who the "public" was at that time is unknown. It is not by law owned by the City of Depoe
30 Bay. The City can say it's OK to build on property as long as you get approval from whoever
31 owns the property. The City can agree that it is appropriate for a wall to be built on that
32 property, assuming that the property owners do not object. Gordon recommended placing this
33 responsibility with the appellant. Anyone objecting to the building and claiming ownership of
34 the public land would need to prove their ownership. Issues addressed during Council
35 deliberations included: 1) Concern about possible effects on adjacent properties from water
36 being deflected away from the appellant's property. 2) Possible wave action conflict from
37 multiple walls vs. one continuous wall. 3) No precedent could be found for a wave analysis
38 study along the Oregon coast. 4) Three separate fully-developed plans were recommended
39 by the Planning Commission, rather than focusing on minimum intrusion on public land and
40 stability for public and private safety. 5) Concern about the inappropriateness of a statement
41 made by a structural engineer, to the effect that wave action would not affect neighboring
42 properties; and whether other things in that report were accurate. 6) The vegetation shown in a
43 submitted photograph of the property indicates that wave action is not frequently excessive
44 above a certain level, and where the wall is planned shouldn't cause adjacent properties to be
45 negatively affected. 7) It was pointed out per the Staff Report, a recent survey indicates at an
46 accelerated rate of erosion of 3.7 inches per year, it would take 68 years for the bluff to erode

1 to the house. A portion of the Staff Report was read into the record. 8) A Councilor who made
2 a site visit to the house noted an unsafe feeling around the outside of the house.

3
4 Motion 3: Alice Brown moved to overturn the Planning Commission's decision of denial, and
5 follow recommendations outlined in the Planning Commission report dated 5/20/04, with the
6 following changes: 1) Page 1, Item 1. – "A certified geotechnical report from a coastal, ocean,
7 or geological engineer evaluating ~~wave and tidal action~~, *safety, stabilization*, and slope
8 conditions, that includes consideration...". 2) Page 1, Item 1.b.(2) – "If a cliff stabilization
9 *project* is necessary for either or both houses, the report should address the ~~long-term~~
10 ~~potential of the alternatives covered in #2 below~~ *for long-term safety for both their properties*
11 *and adjacent properties. Any intrusion onto public land should be the minimum necessary for*
12 *stabilization."* 3) Page 2, Item 1.b.(4) – "Specific footing requirements are to be provided for
13 the structural approaches...". 4) Page 2, Item 2 – Omit. Romans seconded the motion.

14
15 Mayor Silver said it was moved and seconded, and called for discussion.

16
17 Amendment: Gordon suggested including a requirement for the appellant to sign a
18 commitment that they will accept liability associated with construction of the wall, and hold the
19 City of Depoe Bay free and clear of any responsibility associated with that effort. Amendment
20 accepted by Alice Brown and Romans.

21
22 Vote: Motion 2, as amended, passed.

23 Ayes: White, Taunton, Alice Brown, Romans, Jack Brown, Lavery

24 Noes: Silver
25

26 Staff was directed to prepare Facts, Findings, and Conclusions for presentation to the Council
27 at the June 15, 2004 Council meeting.

28
29 A recess was called at 8:30. The meeting was reconvened at 8:36.

30 31 VI. PUBLIC INPUT

32 Kay Wyatt, Kids Zone, provided an update on the seismographic equipment recently acquired
33 by Kids Zone. The equipment can sense seismographic activity world wide. It has been
34 installed and is up and running. She submitted photos (copy attached to original of these
35 minutes) of the equipment, and outlined a few projects the kids might do with the new
36 equipment.

37
38 Debbie Davilla, Chamber of Commerce, invited all to a community dessert at the Community
39 Hall at 6:30 PM on June 3. The purpose is to get the town together, discuss upcoming events,
40 and brainstorm.

41
42 Peggy Leoni, Fleet of Flowers, expressed gratitude to the City for cooperation and
43 participation in the annual event.

44 45 VII. NEW BUSINESS

- 46 A. Proposed Res. #338 – A Resolution Setting Solid Waste Removal Fees Pursuant to
47 Ord. #224, as amended, superseding Res. #261 and #303.

1 Motion 4: Lavery moved to adopt proposed Res. #338, a Resolution Setting Solid Waste
2 Removal Fees Pursuant to Ord. #224 as amended, superseding Res. #261 and #303.
3 Taunton seconded the motion.

4
5 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

6
7 Vote: Motion 4 passed.

8 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery
9

10 VIII. UNFINISHED BUSINESS

11 A. Painter (Park) Building Lease

12 McCarley reported that the City received a lease proposal from TrendWest, but that the
13 proposal was withdrawn this afternoon (copies of both documents attached to original of these
14 minutes). There was Council discussion regarding how to proceed in getting the building
15 occupied, with no new options identified. Owings noted that the building is in need of
16 renovations. Staff was directed to develop a list of renovation projects and report to the
17 Council on July 6. This item is to remain on the agenda.

18 19 B. Report on Draft Repeat Offender Policy/Review & Update Ord. #94

20 Gordon summarized the report (copy attached to original of these minutes) he submitted just
21 prior to the meeting. He said that if we have local enforcement, he would recommend either
22 setting up a municipal court (involving a paid judge and staff, and adoption of a new ordinance
23 to set it up) or contracting for this service with another city.

24 25 IX. CORRESPONDENCE

26 There was no correspondence.
27

28 X. LIAISON OFFICERS' REPORTS

29 Lavery reported 1) The Traffic Safety Commission meets June 7 at 4 PM. 2) He attended a
30 Council of Governments meeting where senior services were discussed. He provided statistics
31 on how many people are over age 65 in Lincoln County, how many of them live below the
32 poverty level, and how many more there will be as baby boomers age.

33
34 Jack Brown reported that the fuel dock continues to be the main concern of the Harbor
35 Commission.

36
37 Romans reported that the Economic Business Development Committee is scheduled to meet
38 June 7.

39
40 White and Taunton had no report.

41
42 Alice Brown reported that she informed the Parks Commission about the change in liaison
43 duties, and they have not yet decided who will be liaison.

44
45 Rick Davilla, for the Harbor Commission, said they will attend Council meetings on a need-to-
46 know basis. Their liaison will probably be a rotating assignment. Speaking as a Harbor
47 Commissioner (not for the Commission itself), he said that he is concerned about the safety of

1 incoming and outgoing vessels, and that the Coast Guard is searching for a good lookout spot.
2 He suggested they may find the top part of the Painter Building useful for this purpose.

3
4 XI. CITY STAFF REPORT

5 McCarley, reviewing Murray's memo of 5/28/04 (copy attached to original of these minutes)
6 requested authorization for purchase of a new copier.

7
8 Motion 5: Romans moved to authorize the purchase of a Canon ImageRunner C3200 from
9 Kangiser Office Machines, for \$13,010. Alice Brown seconded the motion.

10
11 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

12
13 Vote: Motion 5 passed.

14 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Laverty

15
16 Owings reviewed his written report (copy attached to original of these minutes), providing
17 updates on the Bay Street/Hwy 101 project, the Winchell Street project, the sidewalk project,
18 the Harbor Fuel Facility project, and the water plant.

19
20 XII. COUNCIL COMMENTS

21 Taunton commended City Crew's actions when a water line was cut during the Bay Street/Hwy
22 101 project. He also expressed thanks to everyone for helping to make the Fleet of Flowers a
23 success.

24
25 Alice Brown expressed concern over communications, and encouraged everyone to stay in
26 context when quoting others.

27
28 XIII. ADJOURN

29 There being no further business, the meeting was adjourned at 9:26 PM.

30
31
32
33
34 _____
35 Mayor Bruce R. Silver

36
37 _____
38 Silver Fox, Recording Secretary