

Depoe Bay City Council  
Workshop Meeting  
Thursday, August 26, 2004 – 7:00 PM  
Depoe Bay City Hall

PRESENT: Mayor B. Silver, J. White, P. Taunton, A. Brown, B. Romans, J. Brown,  
M. Laverty

STAFF: City Field Superintendent T. Owings, City Attorney D. Gordon (arrived 7:04  
PM), City Recorder P. Murray

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

Agreement – Neighbors Against Drugs/Kids Zone – Ainslee Building

Silver noted the following members of the Neighbors Against Drugs (NAD) Board Members were present for discussion on this item: Jack Brown, Maggie Brown, Phil Taunton, Kay Wyatt and Sharron Kelley, as well as Director Carla Kearns.

Kay Wyatt distributed copies of a handout prepared for tonight's meeting to provide background information on NAD and the Kids Zone and their activities and programs (copy attached to the original of these minutes). During her review of the handout, she noted that the group is no longer involved with Neighborhood Watch Programs, although those programs do exist in Depoe Bay. Wyatt said that the group is seeking a long term commitment from the city for tenancy in the building, especially if they are successful in obtaining grant funding to remodel and enlarge the building. In response to a Councilor's question, Kearns stated there typically are 15 to 20 children involved in the various activities, with a total roster of 30 children.

City Attorney Gordon said he does not find it necessary to advertise the building for lease in this circumstance and reviewed his concerns related to property and liability insurance coverages typically required of tenants. Gordon noted the reversionary clause included in the property deed and the need for a commitment from the former owner for a long term (10 to 20 years) lease agreement. Murray reported the city's insurance agent recommends a lease agreement which requires the tenant to provide property and liability coverage and the amount should be determined and stated in the agreement, suggesting the amount could be the same as the city's or at least the tort claim limit, and the city should be named as additional insured on the policy. In response to a Councilor's question, Gordon explained that if NAD obtains grant funds to remodel/enlarge the building and if NAD dissolves, the city would not be in the position of repaying the grant funds since the building would still be there. However, any grant documents should be reviewed to determine if there is any use time limit included.

Silver asked staff to review the process relating to the reversionary clause included in the deed. Murray reported that each time a new use of the building is being proposed, a letter is sent to Helen (Ainslee) Caldwell, providing information on the proposed use and asking for written approval by signature on the letter sent. It was noted that this approval had been obtained when NAD first began leasing the westerly portion of the building in 2001. A letter had been sent earlier this month relating to NAD and Kids Zone utilizing the entire building and grounds and the proposed remodeling and expansion of the building itself. The city has not received a response as of the date of this meeting. Gordon suggested the

city could pose the question of eliminating the reversionary clause so the city would have outright ownership.

Wyatt stated that NAD has liability insurance in an amount of \$1,000,000, with some activities insured under Boy Scouts' insurance. Currently, the Rowing Club is not covered, but they are working on getting that included. The AA group, which uses the building for meetings through NAD, is also not covered. This will be further investigated, to determine if AA has insurance, and if another location could be found for their meetings. Lengthy discussion occurred on length of term of a lease agreement, shorter term (5 years) with renewal options, longer term (20 years) with periodic reviews, and NAD's commitment to staying in the building without remodeling/expansion. Gordon explained that even with a long term commitment, a provision for earlier termination should be included with reasons for termination stated in the agreement (ie; failure to provide services as agreed, failure to uphold any term of the agreement). It was suggested to include language that the agreement may be nullified by either party. Wyatt confirmed the group is committed to staying even if funding for building improvements can not be obtained. Gordon said the city would want insurance coverage to the extend of Oregon Law tort limit, the city be named additional insured on the policy and he advised to no longer allow AA use of the building if there is no insurance coverage. NAD will pursue coverage for the Rowing Club through the Boy Scouts program. Staff will obtain further information from the city's insurance agent, relating to the city's coverage if the lessee is not required to provide insurance. Wyatt referred to the first paragraph on page 2, the wording that relates to termination and vacation within 30 days, noting there is no opportunity for the lessee to respond to such notice. Gordon said the idea is that the city could terminate if the lessee is no longer providing the services agreed to in the agreement, an escape clause needs to be included that does not intimidate the lessee or potential funding sources. A reasonable due process would be provided, but the process typically acts to allow the city to regain possession of the property expeditiously, should the need arise.

Silver reviewed the draft revised lease agreement (copy attached to the original of these minutes), noting the proposed changes from the existing agreement. The following were agreed to by consensus: 1) the agreement will have a stated term of 20 years, 2) there will be no required review periods for the Kids Learning Center, although NAD has offered to provide an annual report, and the city would reserve the right to review activities conducted by NAD, 3) on page 1, the paragraph immediately following the legal description (strike-through type) and the paragraph immediately following will be deleted, 4) The paragraph which provides for termination upon 60 day notice (page 1) and the first paragraph on page 2 will be revised per discussion, 5) item 5 on page 3 (strike-through type) will be deleted. Staff asked for clarification as to responsibility for utilities, maintenance and legal costs. It was agreed the lessee is responsible for exterior building maintenance and any major electrical or plumbing repairs, lessee is responsible for interior and grounds maintenance including supplies, the city will provide materials and labor to finish the fencing along the south side of the property and will pay legal costs for lease negotiations. There were no other revisions to the remaining sections of the lease agreement discussed. Staff was directed to prepare a revised draft agreement for presentation at the September 7<sup>th</sup> regular council meeting. Wyatt requested a draft be emailed to her once prepared.

Silver called for a break at 9:20 PM, meeting was reconvened at 9:27 PM.

### Scenic Lands Projects

Silver asked Taunton to open discussion since he'd requested this item be on the agenda. Taunton reviewed comments made about acquiring property for scenic lands at a meeting related to the Highway Improvement Plan and Mr. Langston's comment at a recent council meeting about his understanding that acquiring his property was part of the city's plan. Taunton questioned what the plan is and its origination, noting that he served on the Parks Commission prior to being on the Council and he knows little about the plan. Silver asked staff to provide background information. Murray reviewed portions of the Feb. 1996 grant application file, noting it was the first grant application submitted for the scenic lands acquisition project, the reference to the landscape visioning document included in the application and the identification of the "corridor" on the west side of the highway from Whale Park north to North Point as the area to be acquired over time. Murray added that the current Harbor Overlooks Land Acquisition Project is an amendment to the original plan. Discussion followed regarding impacts of property no longer being on the tax rolls, the value of scenic lands and views to the community, the proposed Resolution No. 343 and the condemnation process. Gordon explained the process is for government to take property when it is determined the government needs the property. In Oregon it is lawful for government to take property for roadways, parks and scenic views, and if condemnation becomes necessary the city pays the costs of that process. Gordon continued that the Resolution declares the city's right to condemn, but the city is not bound to go through with it, not compelled to proceed. In response to a Councilor's concern on acquiring developed property, Gordon explained that appraisals are based on the highest value whether developed or not and are separate from Assessor's appraised values.

Taunton said he would like to see a list of all properties identified for acquisition during the visioning process. Lengthy discussion followed, including 1) the visioning process; 2) the Harbor Overlooks Project, with staff noting if the Council did not wish to proceed that determination should be made very soon before grant money is spent; 3) proceeding with the Harbor Overlooks Project with acquisition of the lot under the bridge (harbor side) being first priority; 4) a suggestion to adopt a resolution stating the city will not pursue acquiring any developed properties; 5) abandoning the vision of open land acquisition for scenic purposes. In response to a question, Gordon explained that if the city finds itself in the situation of condemnation being necessary to proceed with an acquisition and chooses not to proceed, the financial liability would be to pay for work done up to that point.

Romans moved to adjourn the meeting. A. Brown seconded the motion. Taunton asked if this subject will be discussed at the September 7<sup>th</sup> meeting. It was noted that proposed Resolution No. 343 was tabled to that agenda. After brief discussion it was agreed to continue the discussion on review of the City's Scenic Lands Projects at the first regular meeting in October.

The meeting was adjourned at 11:23 PM.

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Mayor Bruce Silver

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Pery Murray, City Recorder