

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, September 7, 2004 - 7:00 PM
4 Depoe Bay City Hall
5
6

7 PRESENT: Mayor B. Silver, J. White, P. Taunton (arr 7:04), A. Brown, G. Romans, J. Brown,
8 M. Lavery
9

10 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Attorney D. Gordon
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

17 III. APPROVE MINUTES: August 17, 2004 Regular Meeting and August 26, 2004 Workshop Meeting
18 The minutes of the August 17, 2004 regular meeting and the August 26, 2004 workshop meeting stood
19 approved as written.
20

21 IV. ACCOUNTS PAYABLE

22 Motion 1: Romans moved to pay the accounts payable. Lavery seconded the motion.
23

24 Mayor Silver said it was moved and seconded, and called for discussion. There was none.
25

26 Vote: Motion 1 passed.

27 Ayes: White, Alice Brown, Silver, Romans, Jack Brown, Lavery
28

29 V. SPECIAL ORDERS

30 A. Presentation to U.S.C.G.

31 Mayor Silver presented Chief Sparkman a certificate of congratulations on the re-commissioning of
32 Station Depoe Bay on August 2, 2004. Chief Sparkman presented a certificate of appreciation to Mayor
33 Silver.
34

35 VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

36 Bill Sachs Chairman of Traffic Safety Commission (TSC), 1) One of the requirements of the grant
37 Depoe Bay received from ACTS for the new radar trailer is to make public service announcements
38 (PSA), and the TSC has about 25 posters that Sachs requested the Council's approval to ask the
39 Chamber of Commerce to distribute to local business owners for display in their shop windows (see
40 copy of TSC memo dated 9/3/04 attached to original of these minutes). There was no objection to the
41 TSC asking the Chamber to distribute the PSA posters. 2) Reported on the Council's request that the
42 TSC investigate a pedestrian guard rail for the bridge. The TSC drafted a letter to ODOT (copy attached
43 to original of these minutes) for the mayor's signature requesting placement of a guard rail on the bridge.
44 There was no objection to the mayor signing the letter to ODOT. 3) The TSC surveyed Depoe Bay
45 streets to identify blind intersections. They found that many residential intersections do not meet the 30'

1 requirement, and recommended informing residents that they are required to maintain the 30' clear
2 vision area, as required by City ordinance.

3
4 Fran Recht, Planning Commission Liaison, reported: 1) The Planning Commission discussed the
5 Natural Resources Inventory at the August 18 meeting. 2) The September Planning Commission
6 meeting has been rescheduled from September 15 to September 22. 3) The 45-day notice on proposed
7 zoning ordinance changes (the "Matrix") was mailed to the Department of Land Conservation and
8 Development. The first public hearing has been scheduled for October 13, 2004.

9 10 VII. PUBLIC COMMENTS

11 Peggy Leoni, Chamber of Commerce, reported 1) The annual Salmon Bake is scheduled for September
12 18. Tickets are on sale, and volunteers are needed. 2) The chamber has a new supply of whale watch
13 pins and salmon bake pins.

14 15 VIII. UNFINISHED BUSINESS

16 A. Lease Agreement – Neighbors Against Drugs/Kids Zone – Ainslee Building
17 Mayor Silver said that the City Attorney had reviewed the agreement drafted by Staff (copy attached to
18 original of these minutes). Neighbors Against Drugs/Kids Zone representative Kay Wyatt said she and
19 the board had reviewed it. Gordon noted that the land was given to the City upon conditional approval of
20 use by the Ainslee family.

21
22 Motion 2: Lavery moved to approve the lease agreement draft dated September 2, 2004 between
23 Neighbors Against Drugs and the City of Depoe Bay, conditional upon approval of the Ainslee family
24 that they are agreeable to the use of the building, and authorizing the mayor to sign the agreement upon
25 Ainslee family approval. Alice Brown seconded the motion.

26
27 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

28
29 Vote: Motion 2 passed.

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

31
32 Wyatt handed out a list of proposed modifications to the building (copy attached to original of these
33 minutes). Procedural questions were addressed.

34
35 B. Proposed Res. #343 – A Resolution Declaring the Necessity and Intent of the City of Depoe Bay
36 To Acquire Certain Described Real Property for Scenic View Protection Purposes

37 Gordon said that while researching this item he specifically asked whether language regarding
38 condemnation is required, and it is. He also said that it is not mandatory to proceed with condemnation,
39 but that the City must be willing to exercise that authority before the federal government will award the
40 grant money for the project. John Rose, 135 NE Allen, agreed with objections to exercising eminent
41 domain, and suggested proceeding slowly and not turning down the project or grant money. Fran Recht,
42 66 NE Williams, spoke as a citizen and scenic lands project manager. She said that in the previous
43 scenic lands project a resolution like this was adopted, and encouraged the Council to move forward
44 with this project. Councilor comments included: 1) A recommendation to proceed with the project
45 without tax lot 700 and not pursue future land acquisitions. 2) A recommendation to proceed with the
46 two harbor overlook properties as soon as possible. 3) A concern about un-developing the developed

1 property. Gordon recommended adopting the proposed resolution, and suggested with the addition of
2 prioritizing wording regarding the two vacant properties. Discussion followed.

3
4 Motion 3: Lavery moved to adopt proposed Res. #343, A Resolution Declaring the Necessity and Intent
5 of the City of Depoe Bay To Acquire Certain Described Real Property for Scenic View Protection
6 Purposes. White seconded the motion.

7
8 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

9
10 Vote: Motion 3 passed.

11 Ayes: White, Alice Brown, Silver, Romans, Jack Brown, Lavery

12 Noes: Taunton

13
14 C. Review Draft Revisions to City Correspondence and Complaint Procedure

15 Motion 4: White moved to table this agenda item to the October 19, 2004 regular Council meeting. Jack
16 Brown seconded the motion.

17
18 Mayor Silver said it was moved and seconded, and called for discussion. Brief discussion occurred.

19
20 Vote: Motion 4 passed.

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

22 Noes: Romans

23
24 D. Oregon Parks and Recreation Department – Painter (Park) Building

25 Mayor Silver noted that a proposed agreement with Oregon Parks and Recreation Department had been
26 distributed (copy attached to original of these minutes). John Allen of the Parks Dept. was present to
27 answer questions. Gordon questioned the lack of a time commitment for volunteer staff, and an annual
28 provision of “up to \$5,000” for displays leaves the dollar value at the discretion of the Parks Dept.
29 Council concerns included a question of the parity between leases, specifically citing two examples: 1)
30 the Neighbors Against Drugs/Kids Zone lease stipulates that the tenant will pay utilities, while this
31 proposed agreement does not require the tenant to pay utilities, and 2) previous Painter Bldg. tenants
32 have been required to have the building open a certain number of hours and to pay utilities. Mr. Allen
33 responded that the Parks Dept. would keep the building open during normal business hours seven days
34 per week during summer months and five days per week the rest of the year, excluding Christmas Day
35 and a couple other holidays. He estimated that hiring a full-time employee would cost \$45,000 per year,
36 and \$6,000 per year for restroom maintenance, plus \$5,000 per year for displays.

37
38 Motion 5: Lavery moved to approve the Intergovernmental Agreement between the City of Depoe Bay
39 and the Oregon Parks and Recreation Dept. with the addition of language clarifying when the building
40 will remain open, and authorize the mayor to sign the agreement. White seconded the motion.

41
42 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

43
44 Vote: Motion 5 passed.

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

46 A five-minute recess was called at 8:10 PM. The meeting reconvened at 8:15 PM.

1
2 IX. NEW BUSINESS

3 A. Proposed Agreement for Engineering Services – Harbor Fueling Project

4 Owings reported that this project requires specialized services that have been difficult to obtain in the six
5 months since the project was begun. He met with several potential engineers, and presented a proposal
6 from William Crorey (copy attached to original of these minutes), who appears to have the appropriate
7 credentials for the project. Ron Smith, Chief of Depoe Bay Rural Fire District, and Fran Recht, Pacific
8 States Marine Fisheries Commission employee, spoke in support of this agreement. Recht also expressed
9 concern about potential fuel spills on the water. Gordon noted that requests for proposal are not
10 necessary for this project because it is a specialized engineering skill.

11
12 Motion 6: Lavery moved to approve the engineering agreement with William Crorey, subject to legal
13 review, and authorize the mayor to sign. Jack Brown seconded the motion.

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

16
17 Vote: Motion 6 passed.

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

19
20 B. Central Lincoln PUD Request to Use Council Chambers

21 Murray referred to a letter from PUD dated August 31, 2004 (copy attached to original of these minutes),
22 requesting use of the Council chambers for their regular monthly meeting on October 20, 2004.

23
24 Motion 7: Jack Brown moved to authorize use of Council Chambers by PUD on October 20, 2004 for
25 public meetings between 10:00 AM and 4:00 PM. White seconded the motion.

26
27 Mayor Silver said it was moved and seconded, and called for discussion. It was clarified that use of the
28 chambers for this public meeting is a public issue because it's a public utility group, which is different
29 from a meeting that is not relevant to the general public.

30
31 Vote: Motion 7 passed.

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

33
34 C. Request for Waiver of Fees to Use Community Hall – E. Johnston/Lincoln County PAC

35 Ed Johnston, Lincoln County Political Action Committee (PAC) presented a request for waiver of fees
36 for use of the Community Hall on September 8, 2004 (copy of application attached to original of these
37 minutes) for the purpose of creating a petition to the Dept. of Fish and Wildlife regarding the financial
38 strain of new fishing limits. Fran Recht urged caution in granting this waiver, as other groups the
39 Council may not agree with may request waivers.

40
41 Motion 8: Taunton moved to waive Community Hall fees for Ed Johnston of Lincoln County PAC on
42 September 8, 2004. Lavery seconded the motion.

43
44 Mayor Silver said it was moved and seconded, and called for discussion. A concern was expressed that
45 Mr. Johnston is running for election, and that the meeting purpose must clearly be as stated.

1 Vote: Motion 8 passed.

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

3
4 D. Proposed Ord. #268 – An Ordinance Amending Ord. #24 (Zoning Ordinance), as Amended;
5 Adding Commercial Fishing Gear Storage as an Outright Permitted Use in the City of Depoe Bay
6 Residential Zones (R-1, R-2, R-3, R-4, R-5), Retail Commercial Zone (C-1), Light Industrial
7 Zone (L-1), and Planned Marine and Recreation Zone (M-P); and Declaring an Emergency
8 Mayor Silver outlined the procedure for proceeding with adoption of proposed Ord. #268 (copy attached
9 to original of these minutes).

10
11 Motion 9: Lavery moved to read proposed Ord. #268 by title only. Taunton seconded the motion.

12
13 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

14
15 Vote: Motion 9 passed.

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

17
18 Murray read proposed Ord. #268 by title only, and noted that one item of written testimony from Beverly
19 Gruntorad (copy attached to original of these minutes) in opposition to the proposed ordinance was
20 received and distributed. There were no questions or comments from the audience.

21
22 Motion 10: Lavery moved to adopt proposed Ord. #268 as written. Taunton seconded the motion.

23
24 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor requested
25 Gruntorad's street address, as her letter only listed a post office box; Murray said Gruntorad is a Depoe
26 Bay resident, but didn't know her exact address.

27
28 Vote: Motion 10 passed.

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

30 Noes: Silver

31
32 Mayor Silver remarked this item will be carried over to the next regular Council meeting, as the vote
33 was not unanimous.

34
35 E. Planning Commission Recommendation: Proposed Amendments to Ord. #24 (Zoning Code) and
36 Inventory Map Relating to Natural Resources Inventory

37 Mayor Silver noted the Planning Commission has gone through the public hearing process and has
38 drafted proposed language for natural resource and local wetlands recommended text changes (see copy
39 of Planning Commission memo dated August 19, 2004, attached to original of these minutes). The
40 Council's options are to: 1) schedule a public meeting to get more public input and direct Staff to
41 advertise the meeting, 2) accept the Planning Commission's recommendation and direct Staff to start
42 the adoption process, 3) other action as the Council desires.

43
44 Council comments and concerns expressed during discussion included: 1) A concern that some of the
45 wording of the proposed text amendments conflicts with other wording in the ordinance; Planning
46 Commission Chairman Dick Johnson said that the proposed text amendments do not change the specific

1 example cited. 2) A misunderstanding regarding the nature of the grant, which was thought to just do an
2 inventory, not amend the ordinance. Johnson said a grant requirement was to have the ordinance refer to
3 the inventory, and those are the only proposed changes, with the exception of certain 120' setbacks near
4 north and south Depoe Bay creek areas. 3) A question whether a house on a wetlands property can be
5 replaced if it burns down. Johnson responded that this would fall under a non-conforming use and could
6 probably rebuild it within a certain time frame. 4) A suggestion to further discuss this at another
7 meeting with the City Planner present. 5) A procedural question why the 120' setback was not discussed
8 when Ord. #256 was being worked on, and an opinion that a public hearing is necessary to discuss this
9 because it is modifying Ord. #256. Gordon responded that in legislative cases, which this is, a hearing is
10 required and was held at the Planning Commission level only. 6) A question whether the 120' setback
11 along the creek would affect Craig Calkins' development plans. 7) An opinion that every city along the
12 coast needs to take responsibility for preserving their wetlands. The salmon come up the streams because
13 there are habitats for them upstream, and losing salmon would affect everyone. 8) An opinion that
14 ocean-caught fish are not the same fish that swim upstream, and that experts sometimes change their
15 recommendations over time.

16
17 Murray said there was a fax from Mike Van (copy attached to original of these minutes) received late
18 this afternoon on this matter that she wanted the Council to be aware of before Correspondence, since
19 the subject matter is being discussed now. Peggy Leoni, 355 SW Hwy 101, said there were questions
20 brought up at the Planning Commission regarding the noticing of the public meeting, and the wording of
21 the agenda item. Rick Beasley, 2050 NE Hwy 101, said the 120' setback was radical, and that people
22 were assured a 120' setback would not occur. Betty Langdon, 1635 Tintinnabulary, said she felt the
23 notice on the change in fishing gear storage was not adequate, but she did not feel the wetlands notice
24 was inadequate. She said Tony Stein wrote a letter recommending a 120' setback because the streams
25 are salmon-bearing, and that the setback would not interfere with development because the setback does
26 not affect small lots. She added that there is a hardship provision included in the proposed text
27 amendments. Fran Recht, 66 NE Williams, said each individual wetland is assessed by a biologist for
28 their significance for salmon and other endangered species, and that a 50' setback is minimal and is not
29 what biologists recommend as it does not provide full protection. She encouraged the Council to review
30 the inventory documents to understand the recommendations for greater setbacks in certain areas. She
31 also said the Planning Commission's discussion was a public hearing, and public input was taken
32 seriously in their decision-making process.

33
34 Mayor Silver reminded the Council that should they choose to proceed with the adoption process, the
35 public has an opportunity to speak two times and the Council can consider public input at that time.
36 Murray noted that a Measure 56 mailing would not be necessary as notice was mailed prior to the
37 Planning Commission's public hearing. There was further discussion regarding whether or not to hold
38 another public hearing on this issue.

39
40 A recess was called at 9:43 PM. The meeting re-convened at 9:48 PM.

41
42 Murray read the Measure 56 notice mailed out June 29, 2004 into the record. Peggy Leoni said that the
43 legal language of the notice is complicated and difficult for the average person to understand. Betty
44 Langdon said this language is required by law. A Councilor expressed concern that the notice included a
45 statement that the Council would hold a public hearing. Gordon recommended that the Council hold a
46 public hearing, and said it does not have to be noticed like a Measure 56 hearing. The Council scheduled

1 a public hearing for October 19, 2004 for both the second reading of Ord. #268, and proposed
2 amendments to Ord. #24 and Inventory Map relating to the Natural Resources Inventory.

3
4 X. CORRESPONDENCE

5 There were four items of correspondence (copies attached to original of these minutes): 1) A letter from
6 Mike Van regarding proposed changes to zoning code relating to the natural resources inventory. 2) A
7 letter from Larry Hardy regarding clear vision areas at street intersections. 2) A letter from Larry Hardy
8 regarding property maintenance. 3) A letter from Larry Hardy regarding large pot holes.

9
10 XI. CITY STAFF REPORT

11 Owings reviewed his written report (copy attached to original of these minutes), covering updates on the
12 water plant, the waste water system pump problems, the Pirate Cove Sidewalk Project, the Winchell
13 Street Project, and Water System Improvements Project.

14
15 Murray reported 1) The Scenic Lands Project review had been scheduled for the first meeting in
16 October, and there was a request to reschedule this discussion to the September 21, 2004 regular Council
17 meeting, and asked the Council if this date would work. Due to unavailability of Councilors on
18 September 21, the item was rescheduled for the November 2, 2004 regular Council meeting. 2) The tax
19 measure for law enforcement has been filed with the county and will appear on the ballot, as well as
20 everyone who filed as a candidate for a Depoe Bay position.

21
22 XII. COUNCIL COMMENTS

23 White: was confused by a statement made by Dick Johnson, and questioned who is in charge of the City
24 Planner. Mayor Silver said he would discuss this with White outside of the meeting.

25
26 Jack Brown: said it was a good idea for Councilors to inform Murray ahead of time when they know
27 they will be out of town, as this information can be helpful in setting meeting dates.

28
29 Romans: apologized to Mayor Silver for forgetting the mayor had been on the Planning Commission
30 when the Scenic Land Acquisition Project was first started.

31
32 XIII. ADJOURN

33 There being no further business, the meeting was adjourned at 10:20 PM.

34
35
36
37
38 _____
39 Mayor Bruce R. Silver

40
41 _____
42 Silver Fox, Recording Secretary