

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, November 2, 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

8 ABSENT: M. Lavery
9

10 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Attorney D. Gordon,
11 Recording Secretary S. Fox
12

13 I. PLEDGE OF ALLEGIANCE

14 Mayor Silver called for all to stand for the Pledge of Allegiance.
15

16 II. CALL TO ORDER

17 Mayor Silver called the meeting to order and established a quorum at 7:01 PM.
18

19 III. APPROVE MINUTES: October 19, 2004 Regular Meeting & October 19, 2004 Executive Meeting

20 The minutes of the October 19, 2004 regular and executive meetings stood approved as written.
21

22 IV. ACCOUNTS PAYABLE

23 Motion 1: Romans moved to pay the accounts payable. Taunton seconded the motion.
24

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

27 Vote: Motion 1 passed.

28 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown
29

30 V. SPECIAL ORDERS

31 A. Public Hearing: Proposed Amendments to Zoning Ordinance, adding Commercial Fishing Gear
32 Storage as an Outright Use in the City of Depoe Bay Residential Zones, Retail Commercial Zone,
33 Light Industrial Zone, and Planned Marine and Recreation Zone

34 Mayor Silver reviewed the public hearing procedure. Murray summarized the history of this agenda item
35 in a Staff Report, and noted that the only written testimony received by the Council was a letter in
36 opposition to the adoption of the proposed Ord. #268, which was submitted at the September 7, 2004
37 regular meeting (copies of Planning Commission memo dated 7/24/04 and letter are attached to original
38 of these minutes). Silver called for public testimony; there was none. There was a brief question and
39 answer period. Silver asked if anyone requested the record remain open; there was no request. The
40 public testimony portion of the public hearing was closed, and there were brief deliberations. The public
41 hearing was then closed.
42

43 B. Public Hearing: Proposed Amendments to Zoning Ordinance and Inventory Map Relating to
44 Natural Resources Inventory

45 Planning Commission Chairman Dick Johnson presented an introductory statement for this Planning
46 Commission recommendation. He referred to a large map on display that showed wetlands that clearly

1 showed where there may be an issue with setbacks; there were eight such properties. The consultants
2 who put together the map generally recommended larger setbacks than what the Planning Commission
3 recommended to the City Council, which is generally 50' back from streams and 25' back from
4 wetlands. Exceptions to this general rule was the recommendation for North Depoe Bay Creek and
5 South Depoe Bay Creek. The consultants and Oregon Dept. of Fish and Wildlife (ODFW) recommended
6 a 120' setback from these two creeks along their entire length, for water quality and fish. The Planning
7 Commission felt a better option would be to only apply the 120' setback upstream in undeveloped areas.
8 There were eight lots fitting this criteria; three in the Timber Conservation zone, two are owned by the
9 City, and three privately-owned lots (12, 21, and 20 acres). If these lots are developed, per City
10 ordinance, they will require 35% open area, and the 120' setback would equal less than the 35% on these
11 three lots. Lewis summarized the Staff Report, focusing on the primary amendments and testimony
12 received (copies of relevant documents attached to original of these minutes). He said the eight lots were
13 identified in the draft language, and that the first one, on map 9-11-5, is shown as tax lot 100 but it
14 should be tax lot 200. He also noted that there was a request to leave the record open for 30 days. There
15 was a brief question and answer period. Silver called for public testimony. Craig Calkins, POB 597, one
16 of the three private property owners, strongly urged the Council not to impose such a restrictive setback,
17 saying that a 120' setback would eliminate over seven acres of his property from any potential housing
18 use, which could potentially cost him hundreds of thousands of dollars. He felt it was wrong for the City
19 to take property value or use from a private citizen without just compensation. Dawn Pavitt, a
20 consultant representing Dan James, who is in escrow on one of the three privately-owned lots,
21 referenced a map included in written testimony provided before the meeting (copy attached to original of
22 these minutes), saying that "Creek 1" which is shown running through the property, is a seasonal,
23 intermittent, non-fish-bearing creek. The Dept. of Forestry allowed logging there from 1994-1998, with
24 no setbacks. Mr. James did not object to the 120' setback from "Creek 2", a fish-bearing stream, but felt
25 that a 50' setback should be adequate for "Creek 1". Frank Helle, 13413 Vermeer Dr. in Lake Oswego,
26 referred to a modified map from his written testimony (copy attached to original of these minutes) to
27 demonstrate the "real world effect" of restricting development of a reasonably-sized lot. The 70%
28 buildable lot he purchased in 1993 (which has increased in value annually) will be reduced to 30%
29 buildable area if the proposed changes are adopted. He noted that this change would affect the property
30 value and his ability to build on the lot. He requested latitude in granting variances. There being no
31 further oral testimony, this portion of the public hearing was closed. Mayor Silver said that the record
32 will remain open until 5 PM on December 2, 2004. The Staff Report will be finalized and presented at
33 the December 7, 2004 regular Council meeting, where the public hearing will be resumed.

34

35 A recess was called at 7:50 PM. The meeting re-convened at 7:55 PM.

36

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

38 Alice Brown reported she attended an OCZMA meeting on October 29 at the Hatfield Marine Science
39 Center, with Maggie Brown and Fred Robison also in attendance.

40

41 VII. PUBLIC COMMENTS

42 Peggy Leoni, Chamber of Commerce: 1) The Halloween party was a big success, especially the Coast
43 Guard's haunted house. 2) The annual Community Potluck will take place in December, on a date to be
44 determined. To fund necessary purchases for the potluck, on November 6 there will be a rummage sale
45 between 10 AM and 6 PM at the Community Hall. Donated items can be brought in on November 5
46 between 10 AM and 6 PM. 3) Bayside Community Church will collect coats, hats, gloves, scarves, etc.,

1 to be given to children and teens. The church will be open to receive donations between 4-6 PM on
2 school days November 2-19. 4) Kids Zone will be selling trees and wreaths November 20 through
3 December 23. 5) The Christmas tree lighting ceremony will take place at the Painter Building on
4 November 27 at 6 PM. 6) Winners of the Christmas lighting contest will be announced at the
5 Community Potluck. 7) The Chamber will collect toys between November 26 and December 18. There
6 is a greater need for toys for older children and young teens. The toys will be distributed by the Pacific
7 Sea Lions and Depoe Bay Fire Department. 8) Santa will be downtown passing out candy canes and
8 posing for photos on Saturdays in December.

9
10 VIII. UNFINISHED BUSINESS

- 11 A. Second Reading of Proposed Ord. #268 – An Ordinance Amending Ord. #24 (Zoning Ordinance)
12 as amended, Adding Commercial Fishing Gear Storage as an Outright Use in the City of Depoe
13 Bay Residential Zones (R-1, R-2, R-3, R-4, R-5), Retail Commercial Zone (C-1), Light Industrial
14 Zone (L-I), and Planned Marine and Recreation Zone (M-P), and Declaring an Emergency

15
16 Motion 2: Taunton moved to read the proposed ordinance by title only. Alice Brown seconded the
17 motion.

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

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21 Vote: Motion 2 passed.

22 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown

23
24 Murray read proposed Ord. #268 by title only (copy attached to original of these minutes), and asked if
25 there were questions or comments from Councilors or the audience. There were none.

26
27 Motion 3: Taunton moved to adopt proposed Ord. #268. White seconded the motion.

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

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31 Vote: Motion 3 passed.

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

33
34 Mayor Silver said the ordinance will be signed tomorrow.

35
36 B. Lease Agreement – Neighbors Against Drugs (NAD) – Ainslee Building
37 Kay Wyatt was present as NAD's representative. Gordon said he had reviewed the agreement, and felt it
38 provided sufficient liability and structural damage coverage for the City. He addressed a wording change
39 proposed by NAD (copy attached to original of these minutes) regarding reimbursement by the City to
40 NAD in the event of severe damage resulting in permanent loss of the building. Lengthy discussion
41 followed. Gordon suggested reimbursing a portion of the insurance proceeds that is proportional to the
42 amount of NAD's investment compared to the total of their investment plus the current appraised value.
43 Wyatt felt the NAD board would approve this plan. She asked about insurance coverage for the AA
44 meetings that are currently being held in the building three times a week, because NAD's insurance
45 (provided by Boy Scouts) only insures youth activities, and the City's insurance will not cover their
46 meetings. It was suggested that AA investigate other potential meeting places in town such as the fire

1 station or the church, or possibly holding their meetings in Lincoln City or Newport. Staff was directed
2 to draft a revised lease agreement for presentation at the next regular Council meeting, and to send a
3 letter of apology to AA for their inconvenience, but the City will not be able to accommodate their
4 meeting needs, and to discontinue their use of the building in two weeks.

5
6 A recess was called at 9:00 PM. The meeting reconvened at 9:07 PM, without Jack Brown, who returned
7 to the meeting at 9:08 PM.

8
9 C. Review of Scenic Lands Projects (from August 26 workshop meeting)

10 Mayor Silver started discussion by noting that the appropriate time to review this project would be at the
11 annual goal-setting meeting. (See memo dated 11/2/04 from Murray on Review of Scenic Land Projects,
12 copy attached to original of these minutes.) There was lengthy discussion, which included the following
13 subjects: 1) Why the Council wasn't informed there is a Scenic Lands Acquisition Project (SLAP)
14 manager. Mayor Silver said the project manager was an integral part of the project since 1996, and
15 Murray added that the project manager is a volunteer whose services have a dollar value attached to
16 them as part of the City's grant match. 2) The SLAP manager should report directly to the Council. 3)
17 The SLAP manager should attend the annual goal-setting meetings, to update the Council on the project
18 and what upcoming project goals are. 4) An opinion was expressed by multiple Councilors that the City
19 has acquired sufficient open space, and should not pursue further acquisitions. 5) A suggestion to review
20 and amend project goals.

21
22 Motion 4: Romans moved that the City not apply for any further grants for open land, other than the lot
23 on the east side of the existing park. Taunton seconded the motion.

24
25 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor suggested waiting
26 until January to review this issue. Romans withdrew his motion; Taunton withdrew his second.

27
28 Motion 5: Romans moved that the City not move forward to acquire tax lot 700 or any interest therein,
29 including "first right of refusal". Alice Brown seconded the motion.

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31 Mayor Silver said it was moved and seconded, and called for discussion. Discussion followed regarding
32 having the SLAP manager answer questions directly to the Council. A Councilor said the full Council
33 should meet with the SLAP manager, City Staff, ODOT's project manager, and the Scenic Byways
34 project manager to ensure all know the Council's position. Romans withdrew his motion; Alice Brown
35 withdrew her second.

36
37 Staff was directed to request the SLAP manager provide the Council with a report that includes a brief
38 history of the project, current activities, and future vision statements. Rick Beasley, Chamber member,
39 said the Chamber is concerned about finite commercial inventory being removed and replaced with
40 public parks, and suggested placing commercial inventory in another location when it is replaced with
41 public parkland. Dick Johnson, Planning Commission Chairman, clarified that the Planning Commission
42 has had no involvement in a scenic overlay deed restrictions. Dick Johnson, Downtown Refinement Plan
43 representative, said the property south of the fish market could help revitalize the area south of the
44 bridge, and not to undervalue it. Peggy Leoni, 355 SW Hwy 101, questioned why tax lot 700 is being
45 pursued when other nearby properties are for sale. Staff was directed to put Scenic Land Acquisition
46 Project Report on the next agenda, and to invite Ray Langston (owner of tax lot 700), the SLAP

1 manager, ODOT's project manager, and the Scenic Byways project manager to the next meeting, with
2 the SLAP manager's presence required for the agenda item to be scheduled.

3 4 IX. NEW BUSINESS

5 A. LUBA Final Opinion and Order: Moreland vs. City of Depoe Bay

6 Mayor Silver said this item was discussed in the earlier Executive Session, and the Council was not
7 prepared to discuss it at this time. It was tabled to the next meeting.

8 9 B. Parks Commission Recommendations to Council

10 Murray reviewed the memo dated 10/20/04 (copy attached to original of these minutes) regarding Parks
11 Commission input on the following items: 1) Wood sculpture in City Park. There are no funds
12 available for this purchase. Staff was directed to send a letter to the seller expressing thanks for the offer,
13 but there is no funding available at this time. 2) Land and Water Conservation Fund Grant Program

14
15 Motion 5: Alice Brown moved the direct Staff to apply to the federal Land and Water Conservation
16 Fund Grant Program per the Parks Commission's recommendation to develop the City Park nature trail.
17 White seconded the motion.

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

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21 Vote: Motion 5 passed.

22 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown

23 24 X. CORRESPONDENCE

25 Murray reported there were three items of correspondence (copies attached to original of these minutes):
26 1) A letter from the Lincoln County Board of Commissioners regarding the annual joint session. The
27 Council consensus was to accept the date of March 9, 2005 at 6 PM at City Hall for the joint session.
28 This meeting will be immediately followed by their Board meeting. 2) A letter from Larry Hardy
29 regarding concerns south of the bridge. 3) A fax from Brandon Kent of the *Beacon* inquiring whether
30 the City is interested in running a continuous advertisement on Channel 4 to inform the general public
31 about Council and Commission meetings, at a cost of \$2.74 per day. The Council consensus was to
32 consider this item, and discuss it at a later date.

33 34 XI. CITY STAFF REPORT

35 Owings had no report.

36
37 Murray reported that the mailing of the letter regarding groundfish closure has not occurred before the
38 ODFW public meeting at the Hatfield Marine Science Center on October 13. She suggested a redraft to
39 acknowledge that meeting, and read the re-draft (copy attached to original of these minutes) into the
40 record. The Council consensus was to approve the letter for Mayor Silver's signature.

41 42 XII. COUNCIL COMMENTS

43 Jack Brown commented on the opinions expressed tonight on community value of open land, noting that
44 he believes the spirit of the original plan was to preserve the view of the ocean, and that balance should
45 be the goal.

1 White requested a copy of the letter Murray presented under her Staff Report.

2
3 Taunton 1) Regarding open space, some people are just looking for fairness. 2) Suggested people
4 wanting to display outside Christmas trees contact ODOT for permission (if on Hwy 101), or Owings to
5 provide instructions on fastening them down. 3) Requested “dressing up” of the green PUD box in front
6 of the Spouting Horn, perhaps with a seat. Owings was directed to contact PUD. 4) Challenged people
7 who are critical of local government to run for office themselves.

8
9 Alice Brown 1) Commended White and Silver for running clean campaigns. 2) Expressed concern
10 regarding the progressive loss of commercial inventory, noting that you can put a building on a
11 commercial lot without losing the ocean view.

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13 XIII. ADJOURN

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

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Mayor Bruce R. Silver

Silver Fox, Recording Secretary