

1 Depoe Bay City Council  
2 Regular Meeting  
3 Tuesday, March 1, 2005 - 7:00 PM  
4 Depoe Bay City Hall  
5

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

8 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Attorney D. Gordon,  
9 City Planner L. Lewis, Recording Secretary S. Fox  
10

#### 11 I. PLEDGE OF ALLEGIANCE

12 Mayor White called for all to stand for the Pledge of Allegiance.  
13

#### 14 II. CALL TO ORDER

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

#### 17 III. APPROVE MINUTES: February 15, 2005 Regular

18 Motion 1: Jack Brown moved to accept the minutes of the February 15, 2005 regular meeting as written.  
19 Alice Brown seconded the motion.  
20

21 Mayor White said it was moved and seconded, and called for discussion. There was none.  
22

23 Vote: Motion 1 passed.

24 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery  
25

#### 26 IV. ACCOUNTS PAYABLE

27 Motion 2: Romans moved to pay the accounts payable. Taunton seconded the motion.  
28

29 Mayor White said it was moved and seconded, and called for discussion. There was none.  
30

31 Vote: Motion 2 passed.

32 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown  
33 Abstain: Lavery  
34

#### 35 V. SPECIAL ORDERS

- 36 A. Public Hearing Continued – Council Deliberations: LUBA Remand to Depoe Bay City Council –  
37 Moreland v. City of Depoe Bay, LUBA No. 2004-01

38 Gordon said that materials that were submitted after the hearing, during the time period when the record  
39 remained open have been distributed to the Council and are part of the record, as well as materials  
40 submitted in rebuttal. He reminded the Council that the two issues remanded by LUBA to be addressed  
41 were: 1) The interpretation of the Depoe Bay Zoning Ordinance with respect to what the word  
42 “structure” means – specifically, is a retaining wall a structure for the purposes of something that is or is  
43 not allowed in a P-F Zone. The City decided that it was an allowed use, and LUBA said that the City had  
44 not adequately defined the term. 2) The Zoning Ordinance requires applicants in a coastal overlay zone  
45 to submit a plan regarding riparian vegetation and exceptional aesthetic resources. The Council  
46 determined that approval would be conditional upon submission of such a plan, and LUBA said clear

1 standards of what is required must be given. The Council must determine if the applicant has provided  
2 adequate information, or if the applicant for any reason is not required to do so. Discussion centered  
3 around the definition of “structure”. A Councilor stated a belief that a “primary structure” is a building  
4 and the proposed stabilization walls are a safety device to protect public health, safety, and welfare, and  
5 questioned whether the risk to the public park area of the cliff is sufficient to require the stabilization  
6 walls to be built, noting that there is a stabilization project at the harbor seawall that involves public and  
7 private property. Much discussion regarding definition of a structure followed. Gordon said the language  
8 of the ordinance isn’t clear and that it is the Council’s responsibility to interpret the City’s laws, and how  
9 they are interpreted is given great deference by other entities such as LUBA. He said there are two ways  
10 of looking at the ordinance: either 1) Explicitly. Anything fixed to the ground would be considered a  
11 structure. or 2) Certain entitlements of ownership that have been historically accepted in the community  
12 would not be considered structures. Mayor White quoted the definition of structure from the Depoe Bay  
13 Zoning Code (Ord. #24) 1.030.126: “Something constructed or built, and having a fixed base on or fixed  
14 connection to the ground or other structure.”  
15

16 Motion 3: Alice Brown moved from the standpoint of land use planning, that the proposed stabilization  
17 walls are not primary or accessory structures; they are a stabilization device to protect public health,  
18 safety, and welfare. Romans seconded the motion.  
19

20 Mayor White said it was moved and seconded, and called for discussion. There was additional  
21 discussion regarding the definition of a structure, and what action would be necessary by the Council if  
22 the decision was that stabilization walls are considered to be structures, and if they are not determined to  
23 be structures. Gordon said if the Council determined the stabilization walls are a structure, then they  
24 need to determine whether or not they are allowed. If they are not a structure, then no determination on  
25 whether they are allowed would be needed. He interpreted the intention of the motion as: establishing  
26 that a stabilization wall would not be considered a structure for purposes of the zoning ordinance, and  
27 said that this would be a permitted use in the P-F zone because it is not prohibited and does not need to  
28 be specifically allowed.  
29

30 Amendment: Alice Brown amended the motion that a P-F zone is primarily governmental use. There  
31 was no second. Gordon noted that this amendment would not assist in the LUBA remand decision. Alice  
32 Brown withdrew the amendment. The original motion was re-stated.  
33

34 Vote: Motion 3 failed.

35 Ayes: Alice Brown, White, Romans

36 Noes: Cameron, Taunton, Jack Brown, Laverty  
37

38 Motion 4: Jack Brown moved that the proposed stabilization walls are classified as a structure in  
39 accordance with the Depoe Bay Zoning Ordinance, and that the Council make a final decision on  
40 whether they’re allowed or not at the appropriate meeting. Cameron seconded the motion.  
41

42 Mayor White said it was moved and seconded, and called for discussion. There was additional  
43 discussion on the meaning of “structure” and what action would be required by the City if the walls are  
44 determined to be a structure vs. if they are not, and uses in a P-F zone.  
45

46 Vote: Motion 4 failed.

1           Ayes: Cameron, Jack Brown, Lavery

2           Noes: Taunton, Alice Brown, White, Romans

3  
4   Motion 5: Alice Brown moved to continue deliberations at the next regular Council meeting. Romans  
5   seconded the motion.

6  
7   Mayor White said it was moved and seconded, and called for discussion. There was none.

8  
9           Vote: Motion 5 passed.

10          Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery

11  
12   Gordon reminded the Council that the matter must not be discussed between now and the next meeting.

13  
14        B. Public Hearing: Amendments to City Public Contracting Rules

15   Murray said the State of Oregon's public contracting code has been heavily revised, and the new laws go  
16   into effect today. In association with this, any local government laws and rules regarding public  
17   contracting expire today, so all City resolutions adopted since 1984 regarding public contracting expire  
18   today. Depoe Bay Res. #52 requires the City to conduct a public hearing before making any changes to  
19   public contracting rules, and this public hearing on proposed Ord. #270 (copy of proposed Ord. #270 and  
20   Murray's memo dated 2/24/05 attached to original of these minutes) was scheduled in keeping with that  
21   directive. There was no written testimony received. No oral testimony was given during the meeting.  
22   There was a brief question and answer period with the Council. Gordon explained that the Department  
23   of Justice did not complete their revisions until December, which left little time for local municipalities  
24   to revise their laws. There was discussion regarding whether to hold a workshop; Murray said she had  
25   merged portions of the old rules together with the new State law into the proposed ordinance. It was the  
26   consensus of the Council to defer scheduling a workshop unless a problem should arise in the future.

27  
28   VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

29   Dick Johnson, Planning Commission Chairman, asked the Council to move forward with scheduling a  
30   public hearing on the "Matrix". The Council will discuss setting a date for the public hearing at the next  
31   regular meeting.

32  
33   VII. PUBLIC COMMENTS

34   Pete Cameron, 60 SE Cook Avenue, said he felt Fran Recht impugned his integrity when she accused  
35   him of bias at the beginning of the public hearing on the LUBA remand. He stated he had never  
36   discussed the subject with any of the people involved.

37  
38   Peggy Leoni, Chamber of Commerce, reminded everyone that the Citizen of the Year Banquet is  
39   scheduled for Saturday, March 12 at the Gleneden Beach Community Center. There are great items to be  
40   auctioned, and it will be a lot of fun. Cost is \$25 per couple.

41  
42   VIII. UNFINISHED BUSINESS

43        A. Proposed Plan Revisions and Funding Request: Restrooms at Ainslee Building (Neighbors  
44            Against Drugs)

45   Mayor White said a request had been received asking that this item be postponed, due to funding issues  
46   and the need to redraw plans.

1  
2  
3 IX. NEW BUSINESS

4 A. Proposed Ord. #270 – An Ordinance Amending the City of Depoe Bay Public Contracting  
5 Rules Pursuant to Oregon Revised Statutes (ORS) Chapters 279A, 279B, and 279C; Superseding  
6 Previously Adopted Rules – City Resolutions No. 52, 69, 70, 80, 124, and 148; and Declaring an  
7 Emergency  
8

9 Motion 6: Laverty moved that the first and second readings of Proposed Ord. #270 be read by title only.  
10 Alice Brown seconded the motion.

11  
12 Mayor White said it was moved and seconded, and called for discussion. There was none.

13  
14 Vote: Motion 6 passed.

15 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Laverty  
16

17 Murray performed the first reading of Proposed Ord. #270 by title only, and called for questions or  
18 comments. A Councilor asked if the old ordinances would be codified into the new ordinance, and  
19 Murray responded in the affirmative. Gordon said the second reading should address the following  
20 recommended changes: 1) Section 1.17: "...Resolutions *which are in conflict with this Ordinance* are,  
21 *only to the extent of such conflict, repealed if they are hereby* superseded." He noted that the fact that  
22 something is superseded does not mean it is repealed. 2) Section 1.18: "~~Emergency declared to exist.~~  
23 *Whereas this ordinance is necessary to preserve the peace, health, safety, and welfare of the City of*  
24 *Depoe Bay, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect*  
25 *immediately upon its adoption by the City Council of the City of Depoe Bay and approval by the mayor.*"  
26 He recommended this change because it is what is reflected in the City Charter, and is what is normally  
27 used in Depoe Bay Ordinances.  
28

29 Motion 7: Laverty moved to adopt proposed Ord. #270 per the first reading. Alice Brown seconded the  
30 motion.  
31

32 Mayor White said it was moved and seconded, and called for discussion. There was none.  
33

34 Vote: Motion 7 passed.

35 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Laverty  
36

37 Murray performed the second reading of proposed Ord. #270 by title only. This reading included  
38 Gordon's revisions.  
39

40 Motion 8: Romans moved to read proposed Ord. #270 by title only, with amendments as noted by the  
41 City Recorder. Laverty seconded the motion.  
42

43 Mayor White said it was moved and seconded, and called for discussion. There was none.  
44

45 Vote: Motion 8 passed.

46 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Laverty

1  
2 Motion 9: Lavery moved to adopt proposed Ord. #270 with the City Attorney's recommendations  
3 pertaining to Sections 1.17 and 1.18. Taunton seconded the motion.

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

6  
7 Vote: Motion 9 passed.

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

10 B. Request to Use Community Hall for Town Hall Meeting – E. Johnston

11 Murray reported that Ed Johnston submitted a request (copy attached to original of these minutes) to use  
12 the Community Hall for a town hall meeting on SB805 and SB807. There was brief discussion, during  
13 which Councilors debated whether it would be in Depoe Bay's best interest to waive fees for a political  
14 meeting being held by someone who isn't a resident of Depoe Bay.

15  
16 Motion 9: Lavery moved to deny Johnston's request to waive fees for use of the Community Hall.  
17 Cameron seconded the motion.

18  
19 Mayor White said it was moved and seconded, and called for discussion. There was none.

20  
21 Vote: Motion 9 passed.

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

24 X. CORRESPONDENCE

25 Murray reported there was one item of correspondence: a letter from the Robison Brothers regarding  
26 renewing the restroom lease. They have proposed to renew the lease with two revisions. Murray asked  
27 whether the Council preferred scheduling this item for an Executive Session or a Regular Meeting. It  
28 was the consensus of the Council to follow established procedure regarding leases, and discuss in  
29 Executive Session.

30  
31 XI. CITY STAFF REPORT

32 Owings reviewed his written report (copy attached to original of these minutes), providing updates on  
33 the Harbor Fueling Project, the Pirate's Cove Sidewalk Project, and the Winchell Street Project. He also  
34 reported on receipt of a Lincoln County Economic Development Grant.

35  
36 Murray reported that 1) A joint meeting needs to be scheduled with the Downtown Refinement Plan  
37 Advisory Committee, and that this project must be complete by June 30, 2005. A meeting date of  
38 Monday, March 21, 2005 at 6 PM was scheduled. 2) There is a public hearing scheduled on March 15,  
39 2005 in regard to nuisance abatement at the property located at 130 SW South Point  
40

41 XII. COUNCIL COMMENTS

42 Lavery: 1) He attended a Council of Governments (COG) meeting in Albany. Meals on Wheels and  
43 COG loans were discussed. 2) He attended a Cascades West Area Commission on Transportation  
44 meeting in Corvallis. Groundbreaking for Hwy 20 work is scheduled for July 3, 2005. 3) He has  
45 received an appointment by the Governor to the Oregon Transportation Safety Committee. Councilors  
46 congratulated him on his appointment.

1  
2 Jack Brown: Told Cameron that as public officials, Councilors should expect to be challenged from time  
3 to time, and that Councilors should trust each other, and that he trusts Cameron.

4  
5 Romans: Concurred with Jack Brown's statements.

6  
7 Taunton: Asked about a new file station at the harbor. Rick Davilla, Harbor Commissioner, said the  
8 Harbor Commission has discussed it, and they are waiting for plans from the State.

9  
10 White: 1) Was unable to attend Mayors' Day at the Capitol due to illness. 2) Has been invited to meet  
11 with principals of North Lincoln County schools. The school district will have a shortfall of \$7.5  
12 million, and is laying off 30 teachers. One school may even be closed. He suggested a town hall meeting  
13 be held to discuss the situation with Depoe Bay parents. Jack Brown added that he had been contacted  
14 by the principal of the middle school because this shortfall will impact Kids Zone.

15  
16 XIII. ADJOURN

17 There being no further business, the meeting was adjourned at 9:01 PM.

18  
19

20  
21

22

---

Mayor James White

23  
24

25  
26

---

Silver Fox, Recording Secretary