

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, March 15, 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. Laverty
7

8 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Attorney D. Gordon,
9 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 Executive and March 1, 2005 Regular

18 Motion 1: Alice Brown moved to accept the minutes of the February 15, 2005 executive meeting and the
19 March 1, 2005 regular meeting as written. Taunton 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, Laverty
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, Laverty

33 Abstain: Jack Brown
34

35 V. SPECIAL ORDERS

36 A. District Attorney Barnett – Annual Report

37 Mayor White said Ms. Barnett's report will be rescheduled to the April 5, 2005 meeting.
38

39 B. Interview Applicants for City Commissions and Committees

40 John Rose (application attached to original of these minutes) was present and came forward to tell about
41 himself and why he is interested in participating on the Salmon Enhancement Commission, and
42 answered questions from Councilors regarding his qualifications and application.
43

44 C. Public Hearing Continued – Council Deliberations: LUBA Remand to Depoe Bay City Council – 45 Moreland v. City of Depoe Bay, LUBA #2004-101

1 Gordon reminded the Council that deliberations are only on the two items remanded from LUBA: 1)
2 Whether the use of a stabilization wall in a P-F zone is an allowed use, and 2) Whether the proposed
3 stabilization walls are in the coastal overlay zone, and if so, has the applicants' plan for protection of
4 riparian vegetation and exceptional aesthetic resources met the requirement per Depoe Bay Zoning
5 Ordinance. (Copy of LUBA remand summary attached to original of these minutes.) A Councilor quoted
6 Definitions Section 1.030: "When definitions conflict with ordinance language, the ordinance shall
7 control," and a definition of 'structure' in a flood hazard zone from Ord. #256: "...a walled and roofed
8 building, including a gas or liquid storage tank, that is above ground"; saying that the proposed
9 stabilization walls are not structures in accordance with the above definition, which takes precedence
10 over the old definition of "structure".

11
12 Motion 2: Alice Brown moved that stabilization walls are allowed in a P-F zone because they are not
13 structures. Romans seconded the motion.

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

16
17 Motion 3: Jack Brown moved that retaining walls are not specified as structures because they are in
18 common usage in the central coastal zone. Motion died for lack of second.

19
20 A Councilor was concerned about setting a precedence that violates Ord. #256, and reiterated that when
21 definitions conflict with ordinance language, the ordinance takes precedence over any definition.
22 Another Councilor stated the walls should be allowed for public safety. Gordon noted that the two
23 motions are not in conflict with each other, and could be alternative bases on which to interpret the
24 ordinance. He said that the fact that there were and are many retaining walls in existence both at the time
25 of the adoption of the zoning ordinance and as it has been applied through the history of the zoning
26 ordinance, is another basis for approval, in addition to public safety and the Ord. #256 definition of
27 "structure".

28
29 Vote on Motion 2: Motion passed.

30 Ayes: Cameron, Taunton, Alice Brown, White, Romans

31 Noes: Jack Brown, Lavery

32
33 Regarding the second remand issue, a Councilor stated her belief that the property is in the coastal
34 shorelands overlay zone, and therefore is subject to the riparian vegetation protection requirement. She
35 expressed concern regarding aspects of White's Landscaping plan: 1) that the proposed lawn not extend
36 past the property line, perhaps by utilization of a demarcation line, and 2) that there be sufficient depth
37 of soil to allow adequate root system to facilitate drainage. A Councilor asked if the matter of
38 conducting the construction without damage to the applicant's or neighboring properties still needs to be
39 addressed. Gordon clarified this is included in the Conditions of Approval.

40
41 Motion 4: Alice Brown moved to adopt Item B from page 3 of the LUBA remand summary: "If 3.360(5)
42 does apply to this application the record includes sufficient information to determine compliance with
43 the standards regarding protection of riparian vegetation and aesthetic resources, and there is nothing
44 impermissible in requiring additional information to be submitted prior to building permit review, i.e.
45 the record includes how the visual character of the aesthetic resource is not substantially altered and the
46 proposed walls are located outside the zone of riparian vegetation." Cameron seconded the motion.

1
2 Mayor White said it was moved and seconded, and called for discussion. There was none.

3
4 Vote: Motion 4 passed.

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

6
7 Motion 5: Taunton moved to direct Staff to prepare Findings of Fact and Conclusions of Law for
8 Council consideration at the next meeting. Alice Brown seconded the motion.

9
10 Mayor White said it was moved and seconded, and called for discussion. There was none.

11
12 Vote: Motion 5 passed.

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

14
15 D. Public Hearing: Nuisance Complaint at 130 SW South Point Street

16 Gordon summarized the process for this hearing. Mayor White opened the public hearing. Owings
17 reviewed the Staff Report (copy attached to original of these minutes, after the last page of the Legal
18 Notice attachment). Mayor White called for public input. Willard Freeman, 204 SW South Point spoke
19 in support of action being taken to clean up the property. There was no other public input. The public
20 hearing was closed, and Council deliberations began. Discussion included: 1) clarification that someone
21 is presently living on the premises, 2) there appear to be a lot of rats, 3) the building is in such poor
22 shape that it does not look salvageable, 4) whether the tenant would need a place to stay during the
23 cleanup process, 5) the City's limitation regarding access to private property – when there is a health
24 issue involved the City may trespass, 6) the owner's lack of response to previous threats of a \$500/day
25 fine, and the need to follow through with this by actually billing the property owner at the rate of \$500
26 per day if the Council decides to pursue this route, 7) a suggestion that Gordon write a letter to the
27 owner.

28
29 Motion 6: Lavery moved to direct the City Attorney to write a letter to the property owner informing
30 him that he has been found in violation of City ordinances and has 10 days to clean up the property. If
31 the property is not brought into compliance, appropriate action will be taken. If the City has to clean up
32 the property, a commercial company will be used as a precautionary measure to protect City employees,
33 and the property owner will be billed. A copy of the letter will be sent to the tenant. Romans seconded
34 the motion.

35
36 Mayor White said it was moved and seconded, and called for discussion. Gordon clarified that in
37 addition to the City abating the nuisance by hiring a company to clean up the premises, a fine of \$500
38 per day can also be imposed until the property is brought into compliance. He added that the motion
39 should include findings that the property owner and the tenant have violated the terms of the City's
40 nuisance ordinance and that this statement should be included in the letter.

41
42 Vote: Motion 6 passed.

43 Ayes: Cameron, Alice Brown, White, Romans, Jack Brown, Lavery

44 Abstain: Taunton

45
46 VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

1 There were no reports.

2

3 VII. PUBLIC COMMENTS

4 Dorothy Mayes: 335 SE Anchor, said the State of Oregon defines a retaining wall as a structure. She
5 wanted to address the agenda item on Park Avenue improvement, and was advised she would have an
6 opportunity to provide input when that item is discussed.

7

8 Peggy Leoni, Chamber of Commerce, said the Chamber expects to profit from the Citizen of the Year
9 banquet by around \$6,000, and thanked everyone who participated.

10

11 Terri Anne Thalman, Depoe Bay Candy Shoppe, said Gleneden Beach isn't having an Easter Egg Hunt
12 this year, so Depoe Bay is expected to have more children than usual participating in our Easter Egg
13 Hunt. Last year 2,800 eggs were provided; this year the goal is 6,000. Businesses are being asked to
14 donate 48 eggs filled with something to bring kids back to the businesses instead of just to the park –
15 like a coupon for an ice cream cone, etc. The Chamber has purchased a new bunny costume and has
16 donated \$100 towards eggs and candy. She asked the City to help.

17

18 Motion 7: Alice Brown moved to donate \$100 from the Special Events line item in the budget to the
19 Chamber of Commerce for the purchase of Easter eggs. Cameron seconded the motion.

20

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

22

23 Vote: Motion 7 passed.

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

25

26 Maggie Brown, 15 SE Ainslee, invited everyone to an open house at the Kids Zone at 630 SE Hwy 101,
27 on March 24 from 4-6 PM.

28

29 Bob Watkins 121 SE Ainslee, said he has a trash problem with his neighbor and asked if it could be an
30 agenda item for the next regular meeting. When advised to complete a formal complaint form, he said he
31 had submitted four. Owings responded that with each complaint he has contacted the owner, who
32 responds by cleaning up the property. Mayor White said this item will be addressed at the next regular
33 meeting.

34

35 John O'Brien, 270 NE Bensell, suggested it might be appropriate to refer the tenant at 130 SW South
36 Point to adult services, since the property is a health hazard and the tenant has medical problems which
37 may prevent him from cleaning up the property. Mayor White said he would personally follow up on
38 this.

39

40 VIII. UNFINISHED BUSINESS

41 A. Discussion: Procedure for proposed Amendments to Comprehensive Plan, Zoning Ordinance,
42 And Zoning Map Relating to Uses and Standards in the City of Depoe Bay

43 Council comments included: 1) a statement that this item should not be rushed, 2) that the Planning
44 Commission finished their work on it in November 2004, and it needs to proceed, 3) a request for input
45 from the Economic Business Development Committee; a Committee member said it is on their agenda
46 for discussion at their April 7 meeting, and the committee will supply their input in the form of a letter.

1 Gordon said he would finish his review of Measure 37 as it relates to the “Matrix” and provide a written
2 report to the Council within a week. Fran Recht, 66 NE Williams, questioned whether the committee’s
3 comments should be considered separate from the public hearing. Gordon responded that anybody can
4 speak at a public hearing, but committees can discuss the matter in their own meetings and their written
5 input would be part of the public hearing record. A date for the public hearing on the Matrix will be set
6 at the April 19, 2004 regular meeting.

7
8 IX. NEW BUSINESS

9 A. Proposed Restroom Facility Lease Agreement – Robison Brothers

10 Motion 8: Laverty moved to approve the Robison Brothers Restroom Facility Lease Agreement (copy
11 attached to original of these minutes) as discussed in Executive Session. Alice Brown seconded the
12 motion.

13
14 Mayor White said it was moved and seconded, and called for discussion. A Councilor asked Lars
15 Robison if he’d like the lease details summarized since he had not attended the Executive Session; Mr.
16 Robison said that was not necessary.

17
18 Vote: Motion 8 passed.

19 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Laverty
20

21 B. Potential Action with Regard to Executive Session Matters

22 Gordon said nothing needs to be done at this time.
23

24 C. Appointments to Fill Vacancies on City Commissions and Committees

25 Ballots were filled out, signed, and handed in. Murray tallied the votes (copy of ballot attached to
26 original of these minutes) and announced the results. The vote to appoint John Rose to the Salmon
27 Enhancement Commission was unanimous.

28
29 Motion 9: Laverty moved to accept the canvass of votes and appoint John Rose to Salmon Enhancement
30 Position #5. Taunton seconded the motion.
31

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

34 Vote: Motion 9 passed.

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

37 D. Request to Waive Fees for Use of Community Hall – John and Maria Kennedy

38 Murray said a request was received (copy attached to original of these minutes) to waive the fees for
39 rental of the Community Hall for a free concert by Dada Ragatmananda, whose visit is being sponsored
40 by Depoe Bay residents and members of the Renaissance Artists and Writers Association, John and
41 Maria Kennedy. There was discussion regarding the benefit to the community and the projected ability
42 of the association to cover the fee.
43

44 Motion 10: Laverty moved to not waive the fees for John and Maria Kennedy to use the Community
45 Hall. Taunton seconded the motion.
46

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

2
3 Vote: Motion 10 passed.

4 Ayes: Taunton, White, Romans, Jack Brown, Lavery

5 Noes: Cameron, Alice Brown

6
7 E. Request to Improve a Portion of Park Avenue for Access to Private Property – Bob Watkins
8 Mr. Watkins explained that his request (copy attached to original of these minutes) is primarily to
9 improve access for emergency vehicles and to alleviate the congested traffic situation. He also is
10 working on creating a small park area to give neighborhood children a place to play that is not in the
11 street, which is where they play now. He said he was willing to improve it in any way the City wants,
12 including storm drains, curbs, asphalt, etc. A Councilor expressed concern regarding a possibility that
13 Park Avenue is not the normal street width, which may cause a problem if it is improved. Dorothy
14 Mayes, 335 SE Anchor, made a general request that the City secure surveys before approving this type of
15 request. She believes there is something on adjacent tax lot 409. A Commissioner asked the City Field
16 Superintendent for input. Owings responded that there is a stream that runs through there and asked Mr.
17 Watkins how he would handle it, and said that when it storms a lot of water comes through there.
18 Watkins said he is willing to do whatever is necessary to make this work. It was the consensus of the
19 Council to allow Owings and Watkins to look at the property and send letters to affected property
20 owners allowing them a chance to provide input before proceeding.

21
22 F. Chamber of Commerce Annual Boat Show and Crab Feed – Use of City Facilities: Harbor Docks
23 And Parking Lot, Community Hall/OLCC

24 Maggie Brown requested permission to 1) use the harbor parking lot on April 23-24, 2005 for the
25 Annual Wooden Boat Show and Crab Feed, 2) allow overnight camping in the boat show area for a few
26 exhibitors to provide security for their boats, 3) move a few boats from their existing moorage on either
27 dock 3 or 4 so participating boats can temporarily moor there, 4) use the water for races Saturday
28 morning, a parade of new boats, and a small launch area. This request has already been presented to the
29 Harbor Commission.

30
31 Motion 11: Lavery moved to approve the above request for the Annual Wooden Boat Show and Crab
32 Feed. Taunton seconded the motion.

33
34 Mayor White said it was moved and seconded, and called for discussion. Gordon asked whether the City
35 has the authority to move boats from assigned moorages. Jack Brown said the relocations would be
36 voluntary, and at most it will be 2-3 boats. Murray suggested including approval of a temporary OLCC
37 application in the motion.

38
39 Amendment: Lavery amended the motion to include approval of a temporary OLCC license. Taunton
40 seconded the amendment.

41
42 Vote: Motion 11 as amended passed.

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

44
45 G. Lincoln County Community Economic Development Grant Agreement – Harbor Improvements

1 Murray reported that the City received a \$15,500 grant for harbor improvements, and must agree to
2 abide by this agreement (copy attached to original of these minutes) in order to receive the funds. There
3 were no questions.

4
5 Motion 12: Cameron moved to accept the agreement for the \$15,500 grant, and authorize the mayor to
6 sign the agreement. Taunton seconded the motion.

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

9
10 Vote: Motion 12 passed.

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

12
13 Jack Kinnaman, 230 SE Bayview, requested a status report on the Harbor Fuel Project. Owings said the
14 mechanical engineer has it almost drawn up, the structural engineer is working with the Corps of
15 Engineers to finalize the “vault”. There is a concern that it is too close to the seawall and might put
16 pressure on it. Bryant Fuel Tanks should provide an updated quote this week; the tank will take six
17 weeks to build. Additional power is being brought down to the panel. There are three quotes out for the
18 explosion proof pump out station. As soon as the mechanical engineer finishes the drawings, the job will
19 go out for bid. The plans are being finalized with the fire marshall, and the City still hopes to have it
20 completed by June 1.

21
22 Mayor White called a five-minute recess at 8:59 PM. The meeting reconvened at 9:06 PM. Gordon was
23 excused from the rest of the meeting.

24
25 H. State Legislative Matter Relating to Freight Routes – Highway 101

26 Murray reviewed her memo dated 3/11/05 (copy attached to original of these minutes). There was
27 discussion regarding the difference between the existing traffic on Hwy 101, and the expected traffic
28 should Hwy 101 be declared a freight route.

29
30 Motion 13: Cameron moved to send a letter signed by the mayor to Senator Verger and to
31 Representative Alan Brown, stating that Depoe Bay strongly opposes Hwy 101 becoming a freight route.
32 Lavery seconded the motion.

33
34 Mayor White said it was moved and seconded, and called for discussion. A Councilor clarified that
35 SB894 is what is being opposed, and that SB566 prohibits designation a highway as a freight route if the
36 highway is designated as a scenic highway. There was additional discussion regarding the traffic on a
37 freight route, with a comment that intra-state freight traffic would be acceptable.

38
39 Vote: Motion 13 passed.

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

41
42 Motion 14: Lavery moved to approve sending a letter in support of SB566 to Senator Verger and
43 Representative Alan Brown, with a copy to the bill’s sponsor, Senator Morrisette. Alice Brown seconded
44 the motion.

45
46 Mayor White said it was moved and seconded, and called for discussion. There was none.

1
2 Vote: Motion 14 passed.

3 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery
4

5 I. Oregon Parks and Recreation Department Local Government Grant Program – City Park
6 Expansion Project

7 Murray said if the Council wants to pursue submitting a grant application to expand City Park by
8 approximately 10 acres, she needs authorization to spend about \$5,500-6,000 in up-front costs for an
9 appraisal, surveying, and a preliminary title report, which are all required to be submitted as part of the
10 application packet. She reviewed her memo dated 3/15/05 (copy attached to original of these minutes).
11 There was brief discussion.

12
13 Motion 15: Lavery moved to proceed with the Parks and Recreation grant application and to authorize
14 Murray to spend up to \$6,000 for application permits, a survey, and whatever else is necessary. Taunton
15 seconded the motion.

16
17 Mayor White said it was moved and seconded, and called for discussion. A Councilor clarified that this
18 preliminary work only needs to be done one time, even if other grants are applied for.

19
20 Vote: Motion 15 passed.

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

23 Motion 16: Lavery moved to direct Staff to apply for the Oregon Watershed Enhancement Board grant.
24 Alice Brown seconded the motion.

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

27
28 Vote: Motion 16 passed.

29 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery
30

31 X. CORRESPONDENCE

32 Murray reported there were two items of correspondence (copies attached to original of these minutes):
33 1) A letter from the Chamber of Commerce requesting assistance in relocation. Mayor White said at
34 yesterday's Chamber luncheon, Chamber President Debbie Davilla said she was in discussion with the
35 building owner to resolve the issue. No action is necessary at this time. 2) A letter from Hugh Mayes
36 regarding concerns about development costs to the City and uncontrolled growth. A Councilor reported
37 she spoke with Mr. Mayes regarding System Development Charges (SDCs) that the City currently has in
38 place. She noted that there isn't an SDC for Public Safety, and that might be something the Council
39 wants to consider in the future.
40

41 XI. STAFF REPORT

42 Owings asked if there were any questions regarding his written report (copy attached to original of these
43 minutes), which was discussed at last night's workshop meeting. There were no questions.
44

45 Murray reported an OLCC application was received from The Blow Hole Restaurant, located at 10 SE
46 Bay Street.

1
2 Motion 17: Lavery moved to approve the OLCC application to be sent to the State for proper edification
3 of a liquor license for The Blow Hole Restaurant. Alice Brown seconded the motion.

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

6
7 Vote: Motion 17 passed.

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

9
10 XII. COUNCIL COMMENTS
11 Alice Brown: mentioned the conflict the Council dealt with over the definition of the word “structure” is
12 a specific example of why codification of Ord. #256 is necessary.

13
14 White: said he asked Sheriff Dotson to arrange for more patrols to come through Depoe Bay. The
15 County and State are planning on doing a “saturation patrol” on Hwy 101 perhaps two times a month.
16 He also discussed neighborhood watch groups with the sheriff, who is willing to help with our
17 neighborhood watch.

18
19 XIII. ADJOURN
20 There being no further business, the meeting was adjourned at 9:35 PM.

21
22
23
24
25 _____
26 Mayor James White

27
28
29 _____
Silver Fox, Recording Secretary