

1 Depoe Bay City Council  
2 Regular Meeting  
3 Tuesday, June 7, 2005 - 7:00 PM  
4 Depoe Bay City Hall  
5  
6

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

8  
9 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Planner L. Lewis  
10

11 I. CALL TO ORDER

12 Mayor White called the meeting to order and established a quorum at 7:00 PM.  
13

14 II. PLEDGE OF ALLEGIANCE

15 Mayor White called for all to stand for the Pledge of Allegiance.  
16

17 III. APPROVE MINUTES: May 17, 2005 Executive and Regular Meetings  
18

19 Motion 1: Alice Brown moved to accept the minutes of the May 17, 2005 Executive and Regular  
20 Meetings. Cameron seconded the motion.  
21

22 Mayor White said it was moved and seconded, and called for discussion. There was none.  
23

24 Vote: Motion 1 passed.

25 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery  
26

27 IV. ACCOUNTS PAYABLE

28 Motion 2: Romans moved to pay the accounts payable. Lavery seconded the motion.  
29

30 Mayor White said it was moved and seconded, and called for discussion. There was none.  
31

32 Vote: Motion 2 passed.

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

35 V. SPECIAL ORDERS

36 A. Budget Hearing – Fiscal Year 2005-06

37 Murray advised this public hearing was for adopting the budget as approved by the Budget Committee.  
38 There was one written request for contribution from Mary Sasaki, Executive Director of the Children's  
39 Advocacy Center (copy attached to original of these minutes), who was present to personally request a  
40 contribution of \$1,500 and provided an overview of the program. Program brochures were distributed  
41 (copy attached to original of these minutes). Mayor White said he asked Ms. Sasaki to approach the  
42 Council, and she had been unaware of the proper procedure for submitting a request. Murray noted it  
43 was not possible at this point to add a line item, but the request could be accommodated by increasing  
44 the *Miscellaneous Expenses* line item in the General Fund (up to 10% of total expenditures in the fund)  
45 and decrease the *Unappropriated Ending Fund Balance*.  
46

1 Motion 3: Lavery moved to increase the *Miscellaneous Expenses* line item in the General Fund by  
2 \$1,500 to support Lincoln County Children’s Advocacy Center. Taunton seconded the motion.

3  
4 Mayor White said it was moved and seconded, and called for discussion. There was none.

5  
6 Vote: Motion 3 passed.

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

8  
9 Murray asked if there were requests, questions or comments regarding the Budget for the upcoming  
10 fiscal year. Hearing none, the public hearing was closed.

11  
12 B. Public Hearing: Appeal of Planning Commission Decision on Application for Development in  
13 the Coastal Shorelands Overlay Zone – Case File #3-CS-PC-05 – Appeal

14 Murray read the opening statement (copy attached to original of these minutes). Mayor White called for  
15 declarations of conflict of interest, ex-parte contact, or bias. There were no declarations. He asked if  
16 anyone had opposition to any Councilor hearing the case. There was no opposition. Lewis noted that the  
17 primary reason for the appeal is the area of visual concern, which in the Pirate’s Cove area is defined as  
18 40’ back from the top of the bluff. The code requires building outside the area of visual concern unless it  
19 can be demonstrated that it would be very difficult to build a reasonably-sized house in, and in that case,  
20 three standards or exceptions to the area of visual concern would need to be satisfied in order to be able  
21 to build in that area. He said the Planning Commission approved a 24’ setback, which has been  
22 appealed. He summarized the appellant’s reasonings, followed by those of the Planning Commission and  
23 then the applicants (copies of all relevant documents attached to original of these minutes). Also  
24 received was written testimony from Ruth Moreland in favor of the appeal, and written testimony from  
25 the applicants opposing the appeal (copies attached to original of these minutes). Mayor White called for  
26 testimony in favor of the appeal. Fran Recht, 66 NE Williams, submitted copies of Depoe Bay Zoning  
27 Ordinance Sections 3.360 and 10.030, and several photographs (copies attached to original of these  
28 minutes). She said she was not provided with a complete record of this hearing; specifically, she did not  
29 receive a letter dated May 19 that appears in the record, nor did she receive information that was handed  
30 out tonight. Referring to a handout, she said she supplied a number of feasible variance options, and that  
31 there is clearly a way to minimize the intrusion, citing specifically that the existing footprint of the house  
32 could be shifted back to be outside the area of visual concern. She said that to comply with the code, if it  
33 is feasible it must be done. She said that there was no detailed site plan submitted by the applicant, and  
34 that the application did not meet the standards of Section 3.360 or Section 10.030. Councilors asked  
35 several clarifying questions of the City Planner and the appellant. Leslie Thompson, 450 NW Yaquina,  
36 encouraged the Council to be careful and ensure all rules are being followed. She felt the North Point  
37 area should be protected, and said the applicant’s plans should be more specific. There was no further  
38 testimony supporting the appeal. Mayor White called for testimony in opposition to the appeal. Jean  
39 Ford, owner of the property in question as of 5/11/05, said she and her husband do not intend to sell it;  
40 they intend to live here. She said the logical place to put the house is in the natural clearing, and if the  
41 40’ setback is enforced, they would be the only house in the area with a 40’ setback because all the  
42 others have been grandfathered. Rick Davilla, 35 SW South Point, said the Planning Commission’s job  
43 is to know the ordinances and codes applicable to variance applications, and their job was done well on  
44 this application. He suggested setting a condition of approval that the variance stays with the owners,  
45 and if the property were to be sold, the variance would be revoked. He said if variances are not going to  
46 be allowed, they should be eliminated. Mayor White called for testimony by other interested parties.

1 Dick Johnson, Planning Commission Chairman, said he was not speaking for or against the appeal. He  
2 said the request was the “minimum necessary” before you significantly impact the value of the property,  
3 and that there was more involved than just putting the footprint back 40’. Mayor White called for a  
4 rebuttal by the applicant. Recht clarified that the owners had not requested a variance; what they applied  
5 for was an exception to the setback. She suggested they withdraw their application and apply for a  
6 variance when they need one. She pointed out that the ordinance requires that an option that must be  
7 considered is to maximize variance setbacks on sides of development away from aesthetic resources to  
8 minimize the impact. She re-iterated that any of her examples would be feasible, and said that a  
9 reversion condition is not do-able, because all applicants must be treated the equally. Mayor White asked  
10 if there were any requests to hold the record open; there were none. There was no other testimony, and  
11 the hearing was closed. The Council began deliberations. A Councilor noted that under Ord. #256, an  
12 800-square-foot footprint is set as a hardship. The applicants were asked if they would consider rotating  
13 the house to increase the setback. Recht opposed questioning the applicant. Mayor White pointed out  
14 that testimony is not allowed during deliberations.

15  
16 Motion 4: Lavery moved to remand this issue back to the Planning Commission. Alice Brown seconded  
17 the motion.

18  
19 Mayor White said it was moved and seconded, and called for discussion. A Councilor felt there was not  
20 enough information to make a decision on this issue, and it would be better handled by the Planning  
21 Commission.

22  
23 Vote: Motion 4 failed.

24 Ayes: Lavery

25 Noes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown

26  
27 Deliberations continued.

28  
29 Motion 5: Cameron moved to uphold the Planning Commission’s decision of approval, with the  
30 exception that the approval expires upon sale of the property. Romans seconded the motion.

31  
32 Mayor White said it was moved and seconded, and called for discussion. Mayor White thanked Ms.  
33 Recht for the information she provided. He noted that it was the Planning Commission’s job to review  
34 and make decisions on applications, and that the Council should rely on their decisions.

35  
36 Vote: Motion 5 passed.

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

38  
39 Murray noted that Staff will draft the Findings, Conclusions, and Final Order, and bring back to the next  
40 Council meeting for review and approval.

41  
42 VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

43 There were no reports.

44  
45 VII. PUBLIC COMMENTS

1 Peggy Leoni, Fleet of Flowers, said it was a successful, well-attended event, and thanked everyone who  
2 gave time, money, and effort to make this event a success.

3  
4 John Rose, 135 SE Ainslee, presented *Thar Be Whales* stickers and a sponsor sign to Mayor White. He  
5 said the stickers were received in time to have them distributed to merchants before Memorial Day.

6  
7 Theodore Scott, from Palmyra, New Jersey, presented a certificate of congratulations on being elected  
8 mayor, signed by the mayor of Palmyra, to Mayor White, a former Palmyra resident.

9  
10 VIII. UNFINISHED BUSINESS

11 There was no unfinished business.

12  
13 IX. NEW BUSINESS

14 A. Request to Waive Fees for Use of Community Hall – Depoe Bay Emergency Preparedness  
15 Committee

16 Maryse McGuirk gave a brief summary of the committee's purpose and handed out a packet to  
17 Councilors (copy attached to original of these minutes). She said the committee is in need of members.  
18 (Copy of request for waiver of Community Hall fee attached to original of these minutes.)

19  
20 Motion 6: Cameron moved to waive the fee for use of the Community Hall by the Depoe Bay  
21 Emergency Preparedness Committee for June 8, 2005, and for future use. Lavery seconded the motion.

22  
23 Mayor White said it was moved and seconded, and called for discussion. There was brief discussion  
24 regarding the possibility of holding their meetings at City Hall. Murray noted that only official City  
25 committees hold meetings at City Hall, and in that case there are recordkeeping requirements.

26  
27 Vote: Motion 6 passed.

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

29  
30 Murray noted that the committee would be added to the list of organizations approved for Community  
31 Hall use without fee.

32  
33 A recess was called at 9:03 PM. The meeting reconvened at 9:10 PM.

34  
35 B. Proposed Res. #348 – Declaring the City's Election to Receive State Revenues

36 Murray said that adoption of this resolution enables the City to receive revenue from cigarette, liquor,  
37 and gas taxes. (Copy of proposed resolution attached to original of these minutes.)

38  
39 Motion 7: Lavery moved to adopt proposed Res. #348, A Resolution Declaring the City's Election to  
40 Receive State Revenues. Taunton seconded the motion.

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

43  
44 Vote: Motion 7 passed.

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

1 C. Proposed Res. #349 – Adopt the Budget, Make the Appropriations, Impose and Categorize the  
2 Ad Valorem Tax Levy for the 2005-06 Fiscal Year

3 Murray reminded Councilors that a motion was made earlier in this meeting to increase the  
4 *Miscellaneous Expenses* line item in the General Fund by \$1,500. Revisions necessary to accommodate  
5 the revision from the Budget hearing earlier in the meeting were: 1) On Page 1 in the General Fund  
6 section, the *Materials and Services* amount should be revised from \$244,530 to \$246,030. 2) At the  
7 bottom of the General Fund section, the *Unappropriated Ending Fund Balance* should be revised from  
8 \$362,375 to \$360,875. 3) At the top of Page 3, *Total Appropriations All Funds* should be revised from  
9 \$7,038,327 to \$7,039,827, followed by 4) *Total Unappropriated Amounts All Funds*, which should be  
10 revised from \$812,175 to \$810,675. (Copy of proposed resolution attached to original of these minutes.)  
11

12 Motion 8: Lavery moved to adopt proposed Res. #349, Adopt the Budget, Make the Appropriations,  
13 Impose and Categorize the Ad Valorem Tax Levy for the 2005-06 Fiscal Year, with corrections as  
14 reviewed by the City Recorder. Taunton seconded the motion.  
15

16 Mayor White said it was moved and seconded, and called for discussion. A Councilor clarified that the  
17 corrections included the \$1,500 change approved earlier in the meeting.  
18

19 Vote: Motion 8 passed.

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

22 D. Proposed Res. #350 – Extending Workers’ Compensation Coverage to Volunteers of the City of  
23 Depoe Bay for Policy Year 2005-06, Superseding Res. #335.

24 Murray said this proposed resolution is required by the City’s insurance company; nothing is changing.  
25 Covered volunteers include Councilors, Commissioners, Committee members, and adult volunteers  
26 working with the Rowing Club. It also provides coverage for volunteers working on City-sanctioned  
27 projects such as a clean-up day. (Copy of proposed resolution attached to original of these minutes.)  
28

29 Motion 9: Cameron moved to adopt proposed Res. #350, Extending Workers’ Compensation Coverage  
30 to Volunteers of the City of Depoe Bay for Policy Year 2005-06, Superceding Res. #335. Lavery  
31 seconded the motion.  
32

33 Mayor White said it was moved and seconded, and called for discussion. There was none.  
34

35 Vote: Motion 9 passed.

36 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery  
37

38 E. Proposed Res. #351 – Special City Allotment (SCA) Grant Application – Winchell Street  
39 Improvements, Phase 3

40 Murray noted that this project was discussed during the Budget meetings, and the grant application needs  
41 to be submitted to the State by the end of this month. Maximum funding available through this program  
42 is \$20,000. (Copy of proposed resolution attached to original of these minutes.)  
43

44 Motion 10: Alice Brown moved to adopt proposed Res. #351 – Special City Allotment (SCA) Grant  
45 Application – Winchell Street Improvements, Phase 3. Lavery seconded the motion.  
46

1 Mayor White said it was moved and seconded, and called for discussion. He asked for clarification of  
2 Phase 3 parameters.

3  
4 Vote: Motion 10 passed.

5 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery  
6

7 F. Proposed Res. #352 – To Adopt the Depoe Bay Comprehensive Plan and Zoning Ordinance as  
8 Compiled and Printed to Incorporate Amendments Up To and Including Ordinance #268  
9 Murray explained that this proposed resolution would provide for zoning ordinance copies free of strike  
10 outs and corrections, and would also allow future amendments to be incorporated into the document as  
11 they are approved. There was discussion regarding clarifying future changes to the code. (Copy of  
12 proposed resolution attached to original of these minutes.)  
13

14 Motion 11: Lavery moved to adopt proposed Res. #352 – To Adopt the Depoe Bay Comprehensive Plan  
15 and Zoning Ordinance as Compiled and Printed to Incorporate Amendments Up To and Including  
16 Ordinance #268, and all or any part or portion of the planning and zoning code passed subsequent to the  
17 adoption of this resolution will be incorporated into the code, and will be made a part of the ordinance  
18 list of this code. Alice Brown seconded the motion.  
19

20 Mayor White said it was moved and seconded, and called for discussion. Murray noted she will revise  
21 the title of the resolution: "...to Incorporate Amendments Up To and Including Ordinance #268, and  
22 *Include Amendments Passed Subsequent to the Adoption of this Resolution*".  
23

24 Vote: Motion 10 passed.

25 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery  
26

## 27 X. CORRESPONDENCE

28 There was one item of correspondence (copy attached to original of these minutes): a letter from Elaine  
29 Placido, resigning from the Planning Commission and the Economic Business Development Committee,  
30 effective June 16.  
31

32 Motion 12: Cameron moved to accept Elaine Placido's resignation, and directed Staff to post a notice of  
33 the vacancy, and send her a letter of thanks. Lavery seconded the motion.  
34

35 Vote: Motion 12 passed.

36 Ayes: Cameron, Taunton, Alice Brown, White, Romans, Jack Brown, Lavery  
37

## 38 XI. CITY STAFF REPORT

39 Murray had no report.  
40

41 Owings reviewed his written report (copy attached to original of these minutes). There were four change  
42 orders for the Winchell Street Project (copy attached to original of these minutes), at a total increased  
43 cost of \$3,493.25, plus as-needed excavation. He asked for authority to work with the engineer to keep  
44 costs down on the excavation.  
45

1 Motion 13: Lavery moved to approve four Devil's Lake Rock contract change orders for the Winchell  
2 Street Project, and to authorize Owings to work with the engineer to develop ways to save on excavation  
3 costs. Taunton seconded the motion.

4  
5 Mayor White said it was moved and seconded, and called for discussion.

6  
7 Vote: Motion 13 passed.

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

9  
10 Owings continued his report: The Water Storage Project Committee will bring items for discussion to  
11 the June 21, 2005 Council meeting; engineers will be present. He called four concrete contractors to  
12 generate interest in the Harbor Fuel Project, and hopes to have quotes from two of the contractors early  
13 next week. He is still waiting for a response from the State Marine Board regarding an extension. The  
14 tank is in the process of being constructed; it will not be shipped until we are ready to receive it.

15  
16 XII. COUNCIL COMMENTS

17 Alice Brown brought up her on-going concern about the presence of tansy ragwort. Owings suggested  
18 that due to limited Crew availability, volunteers might be able to help with its control and eradication.

19  
20 Lavery said that Oregon has the smartest drivers in 48 states. However, he read a statement from  
21 Michael Ronkin which said (in part) "This morning I saw a driver blatantly run a red light. Do you think  
22 he didn't know it was illegal?" According to a study by GMAC, one in five licensed drivers don't know  
23 they must stop for pedestrians in crosswalks, and one in 10 drivers would fail a state driver's test if they  
24 had to take one today.

25  
26 Jack Brown said the dredging is complete. Thanks to Owings for the extra things he did to make it work.

27  
28 Romans said people are illegally feeding seals in Depoe Bay, which keeps them hanging around. In mid-  
29 July, smolt will be released, and most of them won't make it to the ocean if the seals are here. He  
30 suggested the City send the charter offices a letter and a copy of the applicable ordinance, to remind the  
31 charter boat operators and fish cleaners that it is illegal to feed seals in the harbor. He is hopeful that an  
32 official from Astoria will come down and speak to one of the worst violators.

33  
34 Taunton added to Romans' concern: there is a Dept. of Fish and Game representative at the harbor who  
35 takes no action on this issue.

36  
37 Mayor White 1) Commended Owings for the work that has been done in the Council chambers. 2) A  
38 proclamation was received from President Bush, declaring Memorial Day 2005 as a day of peacemaking.

39  
40 XIII. ADJOURN

41 There being no further business, the meeting was adjourned at 9:47 PM.

42  
43  
44 \_\_\_\_\_  
45 Mayor James White

46 \_\_\_\_\_  
47 Fox Dreamingtime, Recording Secretary