

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, July 17, 2012 - 7:00 PM
4 Depoe Bay City Hall
5
6
7

8 PRESENT: Mayor C. Connors, S. Hoytink, B. Leff, D. Goddard, T. Lewis, D. Zimmerman
9

10 ABSENT: P. Cameron
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12 STAFF: City Field Superintendent T. Owings, City Recorder P. Murray, City Planner L. Lewis,
13 Recording Secretary E. LuMaye, City Attorney R. Williamson
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16 I. PLEDGE OF ALLEGIANCE

17 Mayor Connors called for all to stand for the Pledge of Allegiance.
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19 II. CALL TO ORDER

20 Mayor Connors called the meeting to order and established a quorum at 7:00 PM.
21

22 III. APPROVE MINUTES: July 3, 2012 Regular Meeting
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24 Motion 1: Goddard moved to approve the minutes from the July 3, 2012 Regular Meeting as
25 presented. T. Lewis seconded the motion.
26

27 Mayor Connors said it was moved and seconded, and called for discussion. There was none.
28

29 Vote: Motion 1 passed.

30 Ayes: Hoytink, Connors, Goddard, T. Lewis

31 Abstain: Leff, Zimmerman
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33 IV. ACCOUNTS PAYABLE

34 Motion 2: Zimmerman moved to approve Accounts Payable as presented. T. Lewis seconded the
35 motion.
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37 Mayor Connors said it was moved and seconded, and called for discussion. There was a question on
38 the bill for mutt mitts. Staff said the reason for the dollar amount was the volume purchased.
39

40 Vote: Motion 2 passed.

41 Ayes: Hoytink, Leff, Connors, Goddard, T. Lewis, Zimmerman
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43 V. SPECIAL ORDERS

44 A. Public Hearing: Case File #1-APPEAL-PC-12 – Appeal of Planning Commission Decision on
45 Application for Development in Coastal Shorelands Overlay Zone and Geological Hazards
46 Permit (Case File #1-CS-PC-12)

47 Mayor Connors read the *Hearings Officer Opening Statement – Public Hearing Procedure* statement
48 into the record (copy attached to original of these minutes). She then called for declarations of
49 conflict of interest, ex-parte contact, or bias; Councilor Goddard declared she had a brief
50 conversation with someone involved with the case until she learned of their involvement, at which
51 time she concluded the conversation. Mayor Connors then asked if anyone present was in
52 opposition to any member of the Council hearing the case; there was no opposition. Mayor Connors
53 asked City Planner L. Lewis to present the Staff Report. L. Lewis reviewed the Staff Report (copy of

1 Appeal, Staff Report, and Brief in Support of Appeal [supplied by the Appellant] attached to original
2 of these minutes).

3
4 Mayor Connors called for testimony from the Appellant. David Phillips of Vial Fotheringham LLP,
5 7000 SW Varns Street, Portland, OR 97223, represented the Harbor @ Depoe Bay (H@DB). He
6 questioned whether the record would be kept open since new evidence had been, and more is
7 likely to be, submitted tonight. L. Lewis said it was the Council's decision whether or not to hold
8 the record open; City Attorney Williamson said new evidence would be accepted. Mr. Phillips
9 requested the record remain open. He reviewed his brief, citing the following points in conjunction
10 with the Depoe Bay Zoning Ordinance and Comprehensive Plan (DBZO-CP): 1) The Planning
11 Commission erred in calculating the area of coastal erosion setback. 2) The Planning Commission
12 erred in determining the Applicant was eligible for an exception because the proposed use is not
13 precluded by strict adherence to setback requirements. 3) The Planning Commission erred in
14 applying the exception provisions of the zoning ordinance. 4) The Planning Commission erred in
15 failing to deny the Applicant's exception request when modification of the applicable coastal
16 setbacks can only be granted under zoning ordinance variance procedures. 5) The Planning
17 Commission's decision is inconsistent with Goal 17 of the comprehensive plan. 6) The Planning
18 Commission's decision is inconsistent with Statewide Planning Goal 17. Mr. Phillips said the
19 Applicant should be required to prove the exception and the "undue burden" requirement. He
20 respectfully requested the record be kept open, and encouraged the Council to enforce the setback
21 code as written and to deny the exception request.

22
23 Nelson Maler of Grants Pass and a H@DB condo unit owner said he obtained 150 signatures
24 opposing Mr. Petry's application, and none in support of the application. He believed the evidence
25 presented to the Planning Commission was flawed. He discussed the undercutting of the bluff and
26 noted that the bluff erosion is dramatic. He said none of this information was present in the
27 geologist's report, possibly because the land was evaluated aerially. He believed the proper setback
28 should have been measured from the innermost point of the cave. He said members of the H@DB
29 Board of Directors believe Mr. Petry's request is unsafe, and that setbacks required by the code
30 should be enforced. He requested the Planning Commission's decision be overturned and Mr.
31 Petry's application be denied.

32
33 Mayor Connors called for testimony from proponents. Glenn Petry of 64420 Old Bend Redmond
34 Hwy, Bend, OR 97701, said a 40-foot setback in a commercial zone is unheard of. He said the
35 Planning Commission has approved most of the exceptions that have been submitted by other
36 applicants. He displayed several oversize photos of the area as he described how each related to
37 his application and why the application should be approved. He addressed the letter of opposition
38 from the H@DB condo owners, saying he felt the H@DB owners were misled by the H@DB Board of
39 Directors. He said people want to be close to the bluff, and that it's good business to provide
40 customers with a good view. He said the suggestion of putting the parking area on the ocean side
41 would be more of a visual impact than his proposal. He requested the addresses of all the people
42 who signed the form letter so he can send them copies of the pictures he presented at the hearing.
43 City Attorney Williamson requested Mr. Petry leave the original photos for the record (on file at City
44 Hall).

45
46 Sue Elliott of 70 NW Sunset Street, said she and her husband manage the Inn at Arch Rock. She
47 said there's never been an issue with parking and there is enough space for parking for the
48 proposed units. She said she had several [H@DB] owners tell her they were embarrassed about
49 the Board of Directors getting involved. She said "everyone" isn't as upset as it's been made to
50 appear.

51
52 Dennis Bartoldus, attorney representing the Petrys, reviewed his brief in response to the
53 Appellant's brief (copy attached to original of these minutes), citing the following points in
54 conjunction with the DBZO-CP: 1) The Planning Commission did not err in calculating the area of

1 coastal erosion setback. 2) The Planning Commission properly determined the Applicant is eligible
2 for an exception because the use would be precluded by strict adherence to setback requirements.
3 3) The Planning Commission did not err in applying the exception provisions; the request is the
4 minimum necessary, disruption of the visual character of the area is minimized, and other options
5 to minimize impact have been exercised or are not feasible. 4) The Planning Commission did not
6 err in failing to deny the Applicant's exception request because the variance procedures have
7 nothing to do with granting an exception. 5) The Planning Commission decision is consistent with
8 Goal 17 of the comprehensive plan. 6) The Planning Commission decision is consistent with
9 Statewide Planning Goal 17. He said that a 40-foot setback takes away all economic use of the
10 property. He requested seven days in which to submit written arguments.

11
12 Mayor Connors called for testimony from opponents; there was none. She called for testimony from
13 other interested parties; there was none. She called for rebuttal by the Appellant. Mr. Phillips
14 returned to the podium, and said that the reason for the 40-foot setback isn't because of the
15 zoning but because of the location, and that both development regulations for the commercial zone
16 and specific setbacks mandated by the State and the City must be dealt with. He said compliance
17 with the requirements for an exception must be in the record. He said if the Applicant wants to
18 vary the setback, he could apply for a variance, but that he doesn't qualify for an exception. He
19 said that even with a 40-foot setback, the Applicant could build something economically viable and
20 in compliance with the code. Mr. Phillips closed by asking about the timeline for evidence. Mayor
21 Connors said the 120-day time limit would end on August 17. Mr. Bartoldus said Mr. Petry was
22 willing to waive the time limit; City Attorney Williamson said the waiver must be in writing. There
23 were several minutes of informal conversation.

24
25 City Attorney Williamson said both the Appellant and the Applicant were willing to leave the record
26 open for all parties to submit new testimony and evidence through July 27 at 5:00 PM at City Hall.
27 The Applicant will have until August 3 at 5:00 PM at City Hall to issue a final written argument to
28 the Council. At the August 7 Council meeting, the Council will finalize the hearing and make a
29 decision. The Final Order will be presented for adoption at the August 21 Council meeting. The
30 Applicant agreed to waive the 120-day rule through August 31, and will provide this agreement to
31 waive in writing.

32
33 Mayor Connors closed the public hearing.

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

35 There were no reports.

36 VII. PUBLIC COMMENTS

37
38 Richard Hall, of 205 SW South Point Street addressed the Council to get on record a complaint he
39 had against a City employee. He read his written complaint. Mayor Connors asked if he'd received
40 the July 17 letter written to him in response to his complaint; he had not. A Councilor passed his
41 copy of the response letter to Mr. Hall. Mayor Connors told Mr. Hall his complaint was not
42 actionable because there were no specific incidents or violations cited. Owings said complaints
43 against employees are not to be discussed in a public meeting unless the employee requests it. Mr.
44 Hall asked for a copy of the complaint procedure; Owings said he would supply a copy.

45
46 City Planner L. Lewis left at 8:40 PM.

47 VIII. UNFINISHED BUSINESS

48
49 A. Proposed Ord. #292, Amending Harbor Ordinance – Review City Attorney Comments
50 It was the consensus of the Council that the proposed changes (copy of Williamson's email dated
51 6/21/12 and the proposed ordinance attached to original of these minutes) be discussed in a joint
52 meeting with the Harbor Commission at 5:30 PM on August 21. Murray will meet with Williamson
53

1 before then to review the proposed changes and resolve some of Williamson's questions. Staff was
2 asked to confirm the workshop meeting date with the Harbor Commission.

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4 IX. NEW BUSINESS

5 A. Oregon Department of Transportation (ODOT) Speed Zone Investigation Report and
6 Recommendation

7 Murray, reviewing ODOT's letter dated 6/29/12 (copy attached to original of these minutes, with
8 copy of ODOT's report), said ODOT has requested a written response by September 22 to their
9 recommendation that no changes be made to the existing speed limits within the City limits. There
10 was discussion about the report.

11
12 Motion 3: Goddard moved to direct Staff to write a letter objecting to ODOT's recommendation to
13 keep the speed zones the same, have the Mayor sign the letter, send it to ODOT, and find out the
14 procedure for contesting the recommendation and the date of ODOT's next hearing. Hoitink
15 seconded the motion.

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17 Mayor Connors said it was moved and seconded, and called for discussion. There was none.

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19 Vote: Motion 3 passed.

20 Ayes: Hoitink, Leff, Connors, Goddard, T. Lewis, Zimmerman

21
22 B. R.W. Baird, Inc. Underwriting Engagement Letter – Debt Refinancing

23 Murray reviewed the underwriting engagement letter from R.W. Baird dated 7/11/12 (copy
24 attached to original of these minutes), and said August 7 is the scheduled date for presentation of
25 the resolution to refinance. There was brief discussion.

26
27 Motion 4: Hoitink moved to accept the underwriting engagement letter from Baird, and authorize
28 the Mayor to sign. T. Lewis seconded the motion.

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

31
32 Vote: Motion 4 passed.

33 Ayes: Hoitink, Connors, Goddard, T. Lewis, Zimmerman

34 Abstain: Leff

35
36 C. Proposed Res. #422 – Application to Oregon Department of Transportation (ODOT) Special
37 City Allotment (SCA) Program – Bay Street Improvements

38 Murray reviewed the proposed resolution (copy attached to original of these minutes) for overlay
39 improvements to several streets. She said this is the first time the City can request up to \$50,000.
40 The application must be submitted by resolution.

41
42 Motion 5: Hoitink moved to adopt Res. #422 as written. T. Lewis seconded the motion.

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

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46 Vote: Motion 5 passed.

47 Ayes: Hoitink, Leff, Connors, Goddard, T. Lewis, Zimmerman

48
49 X. CORRESPONDENCE

50 There was one item of correspondence (copy attached to original of these minutes): A letter from
51 John Leahy regarding his concerns about how serious tsunamis can be and encouraging the City to
52 do what it can.

53
54 XI. CITY STAFF REPORT

1 Owings reported the emergency communications trailer is just about completely finished, and Crew
2 is very proud of it. Staff and short-wave radio personnel have expressed a desire to take the trailer
3 to other communities to show people what it can do, and they have requested jackets with
4 embroidered patches (copy of patch with cost quote attached to original of these minutes).

5
6 Murray had no report.

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8 XII. COUNCIL COMMENTS

9 Leff 1) Said it was nice to see everyone. 2) Last weekend the fire department rescued a father and
10 son caught in a riptide, using EMILY (Emergency Integrated Lifesaving Lanyard). This was the first
11 documented rescue anywhere using an EMILY. 3) As of July 1, the offices of LinCom are being run
12 by Willamette Valley Call Center. It is likely that most of the staff will move to Salem in six months.
13 She thanked Councilor Lewis for his help.

14
15 Hoitink encountered someone who's questioned the placement of the siren pole on Winchell Street,
16 complaining that it will be in his view of the bridge, ocean, and harbor.

17
18 Lewis said it was brought up during the Budget Committee meetings to discuss Staff salaries, and
19 he would like to see this take place. He volunteered to be on a discussion committee, and
20 suggested Staff compile information for discussion next month.

21
22 Mayor Connors: 1) Will be at the Oregon Mayors Conference in Florence next Wednesday-Sunday.
23 She asked which department directors the Council felt would be most advantageous for her to
24 speak with; hearing no suggestions, she said to let her know by Tuesday. 2) The Chamber of
25 Commerce received about 85 emails (now deleted) and a lot of phone calls about the fireworks;
26 City Hall also received many emails and phone calls about the fireworks. Many of the contacts were
27 nasty. Mayor Connors responded to all emails arriving at City Hall with an explanation that the City
28 didn't cancel the fireworks - U.S. Fish & Wildlife wouldn't allow the fireworks at Boiler Bay, and the
29 State wouldn't issue a permit for them. She also explained the situation by participating in two
30 radio talk shows and a Channel 6 interview. She has been in contact with Federal legislators, and
31 thought it might be a good idea to let them know how much email was received from across the
32 U.S. and that there was even an article about it in a London newspaper. She said unless the City
33 wants to take on doing the fireworks, we have no control over whether or not they will take place
34 in the future, and she wants to do whatever's possible to facilitate having fireworks again. It was
35 the consensus of the Council that Staff put together and send a packet of fireworks email contacts
36 to Federal legislators for possible consideration of amending the treaty.

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38 XIII. ADJOURN

39 There being no further business, the meeting was adjourned at 9:23 PM.

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Carol Connors, Mayor

50 Emma LuMaye, Recording Secretary