

1 Depoe Bay Planning Commission  
2 Regular Meeting  
3 Wednesday, June 11, 2008 - 6:00 P.M.  
4 Depoe Bay City Hall

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6 PRESENT: President C. Connors, S. McGavock, S. Scopelleti, D. Goddard, E. Hough, R. Hageman  
7 ABSENT: B. Taunton  
8 STAFF: City Planner L. Lewis, Recording Secretary C. Duering

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10 I. CALL MEETING TO ORDER

11 Connors called the Meeting to order and established a Quorum at 6:00 P.M.

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13 II. APPROVAL OF MINUTES: May 14, 2008 Regular Meeting.

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15 Motion: McGavock moved to approve the Minutes of the May 14, 2008 Regular Meeting as written.  
16 Hough seconded the Motion.

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

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20 Vote: Motion passed.

21 Ayes: McGavock, Scopelleti, Goddard, Connors, Hough, Hageman

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23 III. ITEMS FROM THE AUDIENCE

24 There were no items from the Audience.

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26 IV. PUBLIC HEARING ITEMS

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28 Connors explained the Public Hearing procedure, noting that this procedure applies to all Public Hearing  
29 Items (Agenda Item A. and B.) that will be heard this evening. Connors said Testimony and evidence  
30 given must be directed toward criteria described by the City Planner, or other criteria in the Code that  
31 the Testifier believes apply to the request. Failure to raise an issue, accompanied by statements or  
32 evidence sufficient to afford the Commission and the parties an opportunity to respond to the issue  
33 precludes appeal to the State Land Use Board of Appeals on that issue. Application materials or other  
34 evidence relied upon by the Applicant had been provided to the City and made available to the Public.  
35 Commissioners will be asked for any declaration of ex-parte contact, conflict of interest, or bias to  
36 declare. The Public will have the opportunity to state objection to any Planning Commissioner hearing  
37 the Case. Applicants will have the opportunity to present information relevant to their Application,  
38 followed by Testimony in support of the Application, then Testimony in opposition, with the Applicant  
39 having the opportunity for rebuttal. Unless there is a request to hold the Record Open, Testimony will  
40 be closed and the Commission will enter into Deliberations on the Application.

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42 A. Case File: #2-PAR-PC-08

43 Applicant: Ronald and Nancy Usher

44 Application: Request for 2-Lot Partition

45 Map and Tax Lot: 09-11-08-AA #2001 Location: 740 E. Collins

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1 Connors asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. There  
2 was none. Connors then asked if anyone had objection to any Planning Commissioner hearing the Case.  
3 There was no objection. Lewis summarized the Staff Report (copy attached to original of these  
4 Minutes). He corrected an error in the Staff Report (Page 6 of 8) Item 3. Public Agency Comment *The*  
5 *Depoe Bay City Field Superintendent stated that ~~the Developer will be responsible for the installation~~*  
6 *and maintenance of a 6" Sewer Line and 2" Water Line from each Lot to the existing Sewer and Water*  
7 *Lines within the Indian Trail Avenue Right-of-Way. ~~Prior to construction of the Private Street and prior~~*  
8 *to issuance of a Building Permit, Water, Sewer, and Storm Drainage Plans need to be submitted to the*  
9 *City for review and approval by the City Field Superintendent. Water and Storm Drainage Plans shall*  
10 *be reviewed and approved by Lincoln County (if Water Service and Storm Drainage are within the*  
11 *Collins Street Right-of-Way).* Connors asked if the Commissioners had any questions to address to the  
12 City Planner. There was none. The Applicant was given an opportunity to testify and answer questions  
13 from Commissioners. Ronald Usher, 5320 N.E. Port Place, Lincoln City, thanked the Commission for  
14 extending the invitation to attend the Meeting. He stated that Staff has accurately described the  
15 proposed Partition. He introduced David Loomis, Loomis Surveying, who prepared the Drawings, and  
16 is available to answer any questions. Usher explained why he decided to use the Private Street (20'  
17 Easement) Approach (i.e. beneficial to Future Owner(s) – increase buildable space of Proposed Lot #1)  
18 rather than creating a Flag Lot (Staff Measurement minimum 25' Frontage). A Commissioner expressed  
19 his concern with granting Easements (Parcel #1 is paying taxes on a portion of his Property that he can't  
20 build on and/or landscape; matter of liability insurance; and Parcel #2 has a long driveway that he has to  
21 get permission from Parcel #1 Property Owner to do improvements). The Commissioner and Applicant  
22 ensued in a brief discussion concerning the matter. The Commissioner feels that the DBZO forces an  
23 Applicant to pursue Easements rather than a Flag Lot Partition (25' versus 20'). David Loomis, Loomis  
24 Surveying, Gleneden Beach, noted that the Applicant is prepared to submit a Lincoln County Access  
25 (off Collins) Permit for the both Lots tomorrow; other jurisdictions have indicated they prefer one  
26 Driveway rather than two. There was no further Testimony in favor of the Application. Connors called  
27 for Testimony in opposition to the Application. Jim Tate, 735 Collins St. (since 1980), testified that the  
28 surrounding uses are Single-Family not Multi-Family; does not support Property Owners splitting the  
29 Existing Platted Lots (congestion); Adjacent Existing Trailer House will be extremely close to the  
30 Access/Utility Easement. Ronald Usher illustrated using the Drawing (copy attached to the Staff  
31 Report) prepared by the Surveyor the location of the Mobile Home and specified he took that into  
32 consideration when he chose the Access Location (avoid building too close); the Proposed Lots far  
33 exceed the minimum square footage requirements for Single-Family Dwellings; does not intend to start  
34 construction in the near future but is certain any Homes that are constructed would be comparable to the  
35 Neighborhood. There was no request to keep the Record Open. The Public Hearing was closed and  
36 deliberations began. A Commissioner asked Lewis to differentiate between an Easement Access and a  
37 Private Street. Lewis responded they are synonymous (Easements can be for Utilities and/or Access)  
38 however, there are some Private Streets than can be accessible to the Public. In this case the Easement  
39 is for Utilities and Access for Proposed Parcel 2. A Commissioner asked Lewis to clarify the Lot Area  
40 excluding the Easement of Proposed Parcel 1. Lewis replied 5,903 sq. ft.

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42 Motion: McGavock moved towards Tentative Approval of Case File #2-PAR-PC-08 and adopt the  
43 Conditions of Approval, Items 1. thru 5. as recommended by the City Planner. Hageman seconded the  
44 Motion.

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

47 Vote: Motion passed.

1           Ayes: Scopelleti, Goddard, Connors, Hough, Hageman, McGavock

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3           B. Case File: #3-PAR-PC-08

4           Applicant: Depoe Bay, L.L.C.

5           Application: Request for 3-Lot Partition

6           Map and Tax Lot: 09-11-05-B #1109

7           Location: North End of Depoe Bay on the east side of Highway 101

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9           Connors asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. There  
10           was none. Connors then asked if anyone had objection to any Planning Commissioner hearing the Case.  
11           There was no objection. Lewis summarized the Staff Report and Updated Conclusions (copies attached  
12           to original of these Minutes). Lewis stated the Applicant submitted additional information after  
13           preparation of the Staff Report (copies attached to original of these Minutes). He noted the Application  
14           was noticed as a 3-Lot Partition and Planning Commission review of Development Plans for the portion  
15           of the Property that is zoned C-1 Retail Commercial and later revised (via e-mail) to a 3-Lot Partition  
16           only; he illustrated (using a Large Drawing submitted by the Applicant prior to the Meeting) changes to  
17           the access off Hwy. 101. Written Testimony was received from Oksenholt Corporation (copy attached  
18           to Staff Report). Written Testimony was received after preparation of the Staff Report from O.D.O.T.,  
19           Gordon Priedeman, and Kulla, Ronnau, Schaub & Chambers, P.C. (copies attached to original of these  
20           Minutes). He noted there seems to be some discrepancy of the Boundary between the C-1 Zone and R-1  
21           Zone and if the 3-Lot Partition Application is approved it would be an opportunity to clearly define its  
22           location and also eliminate the split Zoning on the Subject Lot. Connors asked if the Commissioners  
23           had any questions to address to the City Planner. There was none. Connors announced that the  
24           Application that is before the Planning Commission this evening is not the Application that was  
25           presented to the Public for review and comment and recommended proceeding with the Public Hearing  
26           with the understanding that it will be continued. The Planning Commission agreed. The Applicant was  
27           given an opportunity to testify and answer questions from Commissioners. John Pinkstaff, Applicant's  
28           Attorney, 601 S.W. Second Avenue, Suite 2100, Portland, thanked the Commission for the opportunity  
29           to present their Application and asked Craig Metzler to introduce the parties involved in the project who  
30           were in attendance. Craig Metzler, Principle, Fortress Capital Partners, testified that Fortress Capital  
31           Partners (a special situation real estate development company) formed (approximately 9 months ago)  
32           Depoe Bay, L.L.C., Walnut Creek, California. He introduced Steve Lopez, Founder and Principal,  
33           Fortress Capital Partners; John France, Project Manager, 36870 Honey Sign Drive, Lebanon; Derrick  
34           Swerhone, Architect and Land Use Planner, Avalon Architecture & Planning, 2811 E. Evergreen Blvd.,  
35           Vancouver; and Eric Jones Surveyor, Chase Jones & Associates, 716 S.E. 11<sup>th</sup>, Portland. He gave a  
36           brief history of why they chose to pursue development in Depoe Bay and expressed their love of Depoe  
37           Bay and its proximity to the ocean. He further explained the purpose for the Partition Request. John  
38           Pinkstaff, clarified the Applicant is willing to work with Staff to be certain the Property Line coincides  
39           with the Zone Line (no desire to pursue a Zone Change) and amending the Comprehensive Plan and  
40           Transportation System Plan to include the Collector street(s); reason for pursuing a simple Partition and  
41           removing Development (still engaging in negotiations with adjacent Property Owner concerning  
42           Access); identified the points of Access and acknowledged that an O.D.O.T. Access Permit, Wetland  
43           Delineation and Assessment Report, and Traffic Impact Study is necessary at the time of Development  
44           (Commercial & Residential); agreed with Larry Lewis's comments; specified that the Access for the  
45           adjacent 81 Acres is proposed through Parcel "A"; indicated he has not had an opportunity to review the  
46           Written Testimony submitted after preparation of the Staff Report; and reiterated there is a Team of  
47           people available to answer any questions. The Applicant Team and Planning Commission ensued in

1 lengthy discussion regarding: Wetland Delineation/Permit and its relationship to Access; existing  
2 unimproved Roadway (J. France referred to as a Logging and Driveway Access – predate Wetlands)  
3 extending from the Hwy. through Proposed Parcel C and Parcel A; timeline and order of sequence of  
4 Transportation Study, O.D.O.T. determination regarding the necessity of a Second Access, and  
5 Amendment(s) to the Depoe Bay Comprehensive Plan and Transportation System Plan; purpose of  
6 updated Traffic Impact Analysis prepared by Kittelson & Associates, Inc.; proposed Property Line will  
7 be consistent with the Zone Line; recommendation that the Applicant submit a revised concise  
8 Application pertaining only to the 3-Lot Partition. Connors reminded the Audience that the Public  
9 Hearing is going to be continued and they will be given the opportunity to provide Testimony in support  
10 and opposition not only tonight but at the continued Hearing as well (given ample time to review the  
11 recently submitted information and information the Planning Commission may request tonight). There  
12 was no Testimony in favor of the Application. Connors called for Testimony in opposition of the  
13 Application. There was none. Donna Beckham, (not opposition – providing information) 624 N.E.  
14 Lillian Lane, speaking on behalf of her father, Tony Wisniewski, who owns Lillian Lane, thanked the  
15 Planning Commission for continuing the Public Hearing. She recapped that her Grandparents at one  
16 time owned the Subject Property so they have considerable knowledge (i.e. logging road built in 2004);  
17 currently (since August, 2007) involved in a Way of Necessity Lawsuit with Depoe Bay, L.L.C. and  
18 Oksenholt Corporation; her family maintains documented Deeded Water Rights and Easements (existing  
19 spring fed Water Tank provides water for 4 families) on Proposed Parcel A which will be destroyed at  
20 the time a road is constructed and asked the Planning Commission to include a Condition of Approval  
21 recommending that some sort of resolution needs to be made as to what is going to happen to the Water  
22 Tank and the people it serves (there has been no effort made by the Property Owners of the Subject Lot  
23 regarding the matter, however, friendly negotiations have been occurring with John Oksenholt who has  
24 not reached an agreement or resolution of the Access issues with the Applicant). John Oksenholt, 1859  
25 N.W. 51<sup>st</sup>, Lincoln City, stated his comments are neutral and he has had cordial negotiations with both  
26 parties and believes they are close to a resolution (recently a misunderstanding or difference of opinion  
27 of his negotiations with Depoe Bay, L.L.C. and suggested they discuss the matter after the Meeting). He  
28 indicated he would be submitting his Application in the near future. A Planning Commissioner asked if  
29 he was negotiating for Access for his Property and Depoe Bay, L.L.C. He replied the negotiations for  
30 Road Access encompasses an Access Request for a Public Road and upon acceptance ultimately to be  
31 dedicated to the City of Depoe Bay. He reiterated the friendly negotiations between his Corporation and  
32 the Wisniewski Family and his respect for the Family History; the continued effort (meeting tomorrow)  
33 to reach an Agreement with all parties; and verified that the Road as proposed would impact the  
34 Wisniewski Water Supply. John Pinkstaff stated he understood that Mr. Oksenholt was negotiating on  
35 his client’s behalf with the Wisniewski Family (there was no intent to ignore the situation) and  
36 recognizes that Oregon Water Rights are sacred (Partition will not impact and accommodations will be  
37 made at the time of Development). The Public Hearing was continued (will not be re-noticed). Lewis  
38 stated his support for an Application specific to a 3-Lot Partition addressing the DBZO Criteria for a  
39 Partition and asked the Applicant to submit the information a minimum of two weeks prior to the  
40 Planning Commission Meeting (i.e. July 9, 2008 Meeting – deadline Tuesday, June 24<sup>th</sup>) in order to  
41 allow time to prepare an Updated Staff Report and opportunity for Public and Planning Commission  
42 Review. Connors concurred.

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44 V. CITY COUNCIL LIAISON REPORT  
45 Connors reported that the June 3, 2008 Regular Meeting was cancelled (lack of Quorum); Proposed  
46 Ordinance No. 279 – Parking is scheduled to be on the June 17, 2008 Agenda. Lewis will update  
47 (include the new Members) the 2008 City Council Liaison Rotation Schedule.

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VI. PLANNER'S REPORT

Lewis reviewed his Report (copy attached to the original of these Minutes) Lewis reminded the Planning Commission of the Land Use Planning Training Session presented by the Oregon Department of Land Conservation and Development (DLCD) on Thursday, June 26<sup>th</sup>, from 1:00 to 4:30 P.M.

VII. PLANNING COMMISSION CONCERNS

Brief discussion occurred with the City Planner regarding the Land Use Application Process; the importance of advising an Applicant that it is in their best interest to submit a thorough and complete Application; the obligation to precede with a Public Hearing once the Notice has been mailed/published; conservative when resolving the Zone Line discrepancy (preference for R-1 in lieu of C-1); the DBZO Standards concerning Access Easements versus Flag Lots; continue reviewing the DBZO (Lewis to prepare a Memo identifying portions of the Code that need to be clarified and/or discrepancies for the August 13, 2008 Meeting); Planning Commission leverage (impose Conditions of Approval) with a Planned Development versus an Application that begins with a Partition and progresses into a Commercial/Residential Project; City Street Standards (Grade, Fill, etc.). Lewis noted that a Planned Development with Commercial/Retail and Residential components (adjacent to City Park and east of the Harbor) may be on the July 9, 2008 Agenda. Connors and McGavock will not be able to attend the July 9, 2008 Meeting.

VIII. ADJOURN

There being no further business, the Meeting was adjourned at 8:14 P.M.

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Carol Connors, President

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Carla Duering, Recording Secretary