

1 Depoe Bay Planning Commission
2 Regular Meeting
3 Wednesday, August 13, 2008 - 6:00 P.M.
4 Depoe Bay City Hall

5
6 PRESENT: President C. Connors, S. McGavock, S. Scopelleti, B. Taunton, D. Goddard, E. Hough,
7 R. Hageman

8 STAFF: City Planner L. Lewis, Recording Secretary C. Duering
9

10 I. CALL MEETING TO ORDER

11 Connors called the Meeting to order and established a Quorum at 6:00 P.M.
12

13 II. APPROVAL OF MINUTES: July 9, 2008 Regular Meeting.
14

15 Motion: Goodard moved to approve the Minutes of the July 9, 2008 Regular Meeting as written. Hough
16 seconded the Motion.
17

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

20 Vote: Motion passed.

21 Ayes: Scopelleti, Taunton, Goddard, Hageman

22 Abstain: McGavock, Connors, Hough
23

24 III. ITEMS FROM THE AUDIENCE

25 There were no items from the Audience.
26

27 IV. PUBLIC HEARING ITEMS

28 Connors announced that Public Hearing Item B. Case File #2-PD-PC-08 (Applicant: Vintage Coastal
29 Homes) Request for Planned Development, Zone Change, Coastal Shorelands, Geologic Hazard Permit,
30 and Variance Application has been postponed to the September Meeting.
31

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

1 A. Case File: #3-PAR-PC-08
2 Applicant: Depoe Bay, L.L.C.
3 Application: Request for 3-Lot Partition
4 Map and Tax Lot: 09-11-05-B #1109
5 Location: North End of Depoe Bay on the east side of Highway 101
6

7 Connors asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. There
8 was none. Connors then asked if anyone had objection to any Planning Commissioner hearing the Case.
9 There was no objection. Lewis briefly summarized the New Staff Report prepared for the August 13,
10 2008 Planning Commission Meeting (copy attached to original of these Minutes). Lewis stated the
11 Applicant submitted additional information after preparation of the Staff Report (copy attached to
12 original of these Minutes). Written Testimony was received after preparation of the Staff Report from
13 O.D.O.T. and Kulla, Ronnau, Schaub & Chambers, P.C. (copies attached to original of these Minutes).
14 Lewis reminded the Planning Commission the key is make sure that Depoe Bay Zoning Ordinance and
15 Comprehensive Plan is being followed and that applicable Code Criteria and Standards are being met.
16 Lewis noted: the Lillian Lane Access has been eliminated; and the O.D.O.T. e-mail (dated August 8,
17 2008) *In this circumstance, ODOT's existing Highway Approach Road Permit can be used as Access to*
18 *all of the Parcels created by this Partition, provided the resulting Parcels have recorded Access*
19 *Easements across the Approach Road. Use of the Approach Road is limited to the Property's Existing*
20 *Use. Additional Development of the Property will require new Approach Road Permits and appropriate*
21 *documentation to address any Change of Use that would be proposed.* Connors asked if the
22 Commissioners had any questions to address to the City Planner. There was none. Connors stated she
23 was a little uncomfortable proceeding given the late Submittals (will discuss the matter at a later time).
24 The Applicant was given an opportunity to testify and answer questions from Commissioners. John
25 Pinkstaff, Applicant's Attorney, Lane Powell, P.C., 601 S.W. Second Avenue, Suite 2100, Portland,
26 testified that he would be asking that the Record be kept Open at the appropriate time (opportunity to
27 read the 20 page document submitted by Joan Chambers and formulate a response). He complemented
28 Lewis on his summary of the Application which is basically a simple 3-Lot Partition along Zoning Lines
29 with no Development and identifying the key issues (agree with Staff Report and characterization of the
30 Application). He gave a brief synopsis of the history of the Application. He reiterated their intent to use
31 the O.D.O.T. approved existing Access; Wetland expert (in attendance) is currently refining the
32 Wetlands Delineation Report for submittal at the time of Development; agreed with Condition of
33 Approval Item 5. *Prior to Development in an area which contains a designated Wetland Resource, the*
34 *Applicant shall submit a detailed Site Plan and Written Statement demonstrating how the proposed*
35 *activities will conform to each of the applicable Standards of DBZO Section 4.8000. The Planning*
36 *Commission shall review the Application in a Public Hearing and determine if all of the applicable*
37 *Criteria are met;* believes we all agree that we need to be assured that a Collector Street will be
38 preserved and available when there is Development and identified the entities involved and the process;
39 referenced his e-mail requesting modifications to Condition of Approval Item 4. and the Attachment
40 demonstrating the proposed Private Crossover Easements to Parcels "A" and "B". Susan Wright, Traffic
41 Engineer, Kittelson & Associates, Inc., 610 S.W. Alder St., Suite 700, Portland, explained the
42 circumstances that led them to propose the crucial Crossover Easements and the involvement of
43 O.D.O.T. (discussions and responses) regarding Access. She illustrated (using a large Graphic of the
44 Lane Powell e-mail attached Exhibit) the location of the existing O.D.O.T. Permitted Access and
45 Crossover Easements (could be relocated at the time of Development). Connors asked if the Crossover
46 Easements would be recorded as Dedicated Crossover Easements. John Pinkstaff answered the intent is

1 to have the Private Crossover Easements appear on the Final Plat as indicated (preserves future Public
2 Access), however is not a Dedication of a Public Road. Connors asked if the Easement (serving the
3 adjacent 81 acre Parcel) is sufficient Access to Hwy. 101 considering the topography. Susan Wright
4 deferred the question regarding Elevation Profiles and the ability to construct a Road to the Engineer but
5 did respond that the Easements between Parcels “A”, “B”, and “C” are being required to assure we are
6 working in good faith with the City. A Commissioner asked if there were prepared Elevation Profiles of
7 the proposed Roads. John Pinkstaff replied those are existing Roads (and are there as place holders).
8 Applicant recognizes at the time of Development there will need to be Engineered Plans demonstrating
9 that the Easement(s) is reasonably located for Development of a Public Collector Street (i.e. Condition
10 of Approval Item 4. in the Staff Report and Applicant’s proposed Condition of Approval Item 4.). Lewis
11 asked the Applicant what is the assurance that the proposed Private Crossover Easements will be future
12 Public Access. John Pinkstaff answered they will be shown on the Recorded Plat (can not be amended
13 without City Approval) *A “Cross” Easement for future Public Right-of-Way which may be required at*
14 *the time of future Development of the affected Property or Adjacent Property if the Oregon Department*
15 *of Transportation (O.D.O.T.) approves a new Highway Approach Access point on Highway 101 in the*
16 *vicinity of the southern boundary line of Parcel “C” on the Subject Property.* Susan Wright expounded
17 on the circumstances that would require the Applicant to initiate an Application for Hwy. 101 Approach
18 and new Public Roads to be constructed as a Collector Street; and the course of action in the event that
19 Lillian Lane were proposed as an Access off Hwy. 101. John Pinkstaff reiterated that they are
20 attempting to make it easy on the City by showing an Access Easement on the Subject Property along
21 Lillian Lane (no existing O.D.O.T. Access Permit). A Commissioner said the Access Easement as
22 drawn appears to be on the existing Wisniewski Water Tank and asked does the City want to allow a
23 Private Easement over a 3rd Party Water Supply. John Pinkstaff stated they assumed an agreement
24 would be reached regarding relocation of the well, but if necessary the Road would be realigned (noted
25 on Final Plat as per Condition of Approval Item 4.). He explained that Amendments can be made to the
26 Comprehensive Plan and Transportation System Plan to include Collector Street(s), at the time of
27 Development Engineered Drawings are prepared demonstrating the exact location, and the Applicant if
28 necessary pursues O.D.O.T. Approval (O.D.O.T. currently recognizes the existing Private Road as
29 Access). He encouraged the Planning Commission to read their Submittal and recapped *Dolan v. City of*
30 *Tigard*. There was no Testimony in favor of the Application. Connors called for Testimony in
31 opposition to the Application. Joan Chambers, Attorney, Kulla, Ronnau, Schaub & Chambers, P.C.,
32 4488 N.E. Devils Lake Blvd., Lincoln City, (representing The Hills of Depoe Bay Limited Partnership
33 and Oksenholt Corporation) posed a procedural question regarding the status of the Application (new or
34 revised). Lewis responded this is a continuance of the previous Partition Application and gave a brief
35 synopsis. Chambers requested the Kittleson & Associates, Inc. Traffic Impact Report (dated March 13,
36 2008) and the original Whale Watch Submittal be part of the Record. She stated it is required that the
37 31.94 Acre Parcel “A” have Access (Depoe Bay Ordinance and Division of Partition Law), once the
38 Applicant (who has indicated they have no plans for Development) has completed the Final Partition
39 Phase the Property can be sold or conveyed. The Applicant is presenting a very circular argument (can’t
40 get O.D.O.T. Approval now so they can’t dedicate the Property – They can’t because they haven’t
41 submitted an O.D.O.T. Application). She stressed Preliminary Plat (Sheet 3 submitted by the Applicant)
42 shows no Road Access at all to the Proposed Parcel “A” (the Parcel would be landlocked). She
43 presented the important issues pertaining to the case as detailed in her prepared Narrative (copy attached
44 to the Staff Report). She concluded by responding to some of the Applicants comments: Any
45 modifications to Condition of Approval Item. 4. should be limited to *Collector Street (60’ or no less*
46 *than 50’ of Right-of-Way)*; before approval Applicant should be required to provide a detailed

1 Engineering and Geotechnical Review, Wetlands Analysis, and Topographical Review (Easement(s) is
2 meaningless if Road(s) is not feasible due to Wetlands, Wisniewski Water Lines and Tank, Topography,
3 etc.) there is simply insufficient evidence to approve this Plan; the Applicant has declared they have no
4 authority to grant Access to Hwy. 101 - Without Access there is no Road or Service to Parcel "A"
5 (Applicant is responsible for demonstrating that the proposed Access has O.D.O.T. Approval and meets
6 the DBZO and State Law). She cited DBZO Section 10.060 Item 1. *Application Materials: All*
7 *Application Materials, Documents, or other Evidence relied upon by the Applicant for any Land Use*
8 *Approval shall be provided to the City and made available to the Public at least 20 days prior to the*
9 *Hearing. If any Documents or evidence in support of the Application are provided for consideration by*
10 *the Hearings Body after 20 days prior to the Hearing, any Party shall be entitled to a continuance of the*
11 *Hearing* and requested that the Public Hearing be continued. She closed with noting that the Applicant
12 clearly hasn't meet the Ordinance Criteria regarding Partitions and the Planning Commission could
13 certainly deny the Application. Connors asked if Chambers is representing The Hills of Depoe Bay
14 Limited Partnership in the Petition to Establish a Way of Necessity with the Lincoln County Circuit
15 Court (Case No. 073110) and what does that entail. Chambers answered with a comprehensive
16 summary (Hearing has not taken place). There was brief discussion. John Oksenholt, Oksenholt
17 Corporation and the Hills of Depoe Bay Limited Partnership, 1859 N.W. 51st, Lincoln City, testified this
18 is an uncomfortable position to be in as a Developer who is in support of well planned, well thought out
19 Developments; Subject Property is a very significant piece of Property to the City and it is very
20 important to ensure that there is adequate to and through connectivity to adjacent Properties; announced
21 his purchase of the adjacent 81 acre Parcel; continuing negotiations with Depoe Bay, L.L.C. and the
22 Wisniewski Family and is hopeful they will reach an Agreement with all parties soon and that he will be
23 able to support the Applicant's Proposal at the next Meeting. He briefly commented: Obviously the
24 Applicant intends to do something on a significant scale; don't understand the strategy of the Partition;
25 been in situations where he was required to provide feasible and adequate Access to an adjacent Property
26 (very common in every jurisdiction); expects to be held to the same Standards (at the time he submits an
27 Application) as they are asking be adhered to by the Applicant; Extensive Meetings between his
28 Corporation and O.D.O.T. and Applicant's previous Submittal (Kittleson & Associates, Inc. Traffic
29 Impact Report) have ultimately identified Lillian Lane for Development as the appropriate Access off
30 Hwy. 101 for all Parcels; asked the Commission to look at the situation globally including the impacts
31 to his Development (no intention to sell, has seen every Development through from start to finish); he
32 clarified he is not negotiating for Depoe Bay, L.L.C. in regards to the Lillian Lane Access; and
33 encouraged the Applicant to deal with the items identified by Kittleson & Associates, Inc., O.D.O.T.,
34 and the Planning Commission. Connors asked his view on the Crossover Easement portrayed in red
35 (Site Access Easement Exhibit submitted by the Applicant). Believes they are all conceptually in
36 agreement that the southern Access (green) is the most realistic Route, speculates there would be
37 topographical issues with the proposed (red) Crossover Access (difficult without cut, fill, grade, and
38 elevation shots). Connors asked how close is the (green) Crossover Easement to the Primary Access
39 Road identified in your Exhibit "A". He replied it is close - O.D.O.T. wants to see the Access aligned
40 with the southerly Access for Trendwest. He doesn't feel the City can take a step back from looking at
41 the long term impacts (scale of the Property and the significance to the City). He is in support of the
42 Access Routes recommended in the Kittleson & Associates, Inc. Traffic Impact Report. He
43 acknowledged that both Parties have mutual interests (i.e. feasible Access over Lillian Lane, resolution
44 to the Water Rights Matter, etc). and stated his desire to reopen communication. A Commissioner
45 announced that all entities can do a better job of getting their material submitted to the City in a timely
46 manner. Donna Beckham, 624 N.E. Lillian Lane, speaking on behalf of her father, Tony Wisniewski,

1 who owns Lillian Lane reiterated there has been ongoing friendly negotiations between the Wisniewski
2 Family and the Oksenholt Corporation regarding Lillian Lane Access and the Wisniewski Water Rights.
3 She anticipates a resolution in the near future. John Pinkstaff requested a five minute Recess.

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5 Recess: 7:40 to 7:50 P.M.
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7 John France, J Squared, Inc., Project Manager, P.O. Box 2143, Lebanon and Julias Horvath, Civil
8 Engineer, Progressive Consultants, Inc., 8100 N.E. Parkway, Suite 40, Vancouver. John France
9 testified: Obviously the Applicant has plans for future Development of the Subject Property; 30 years
10 experience developing and contracting and has found there are logical stages; described each phase
11 (comparison to creating a picture) beginning with the Partition to the ultimate goal (market and sell
12 Commercial/Retail Space, Single-Family Homes, Hotel). The (green) Crossover Easement is a graphical
13 representation of prepared Engineered Drawings (shared in joint amicable Meetings with David Reece,
14 P.E., Reece & Associates, Inc., Engineer for Oksenholt Corporation). Julias Horvath agreed. A
15 Commissioner asked if they also have the cuts for the (red) Route. John France replied both Access
16 Routes are close to being finalized. Julias Horvath agreed. A Commissioner asked if the Wetland Issues
17 have been addressed. John France answered it is premature to discuss Wetlands now (not developing)
18 although Michael Rotsolk, Fernwood Environmental Services Co. is here (confirmed communication
19 with the State Wetlands Division); acknowledged that the Applicant understands prior to Development
20 O.D.O.T., Wetlands, Geological, and Archaeological issues will need to be addressed (information has
21 been submitted to the City - not pertinent to the simple Partition Application). A Commissioner noted
22 the difficulty the Planning Commission is experiencing when the affected Property Owners are not in
23 agreement. Connors reminded France although it may be a simple Partition, the Planning Commission
24 is obligated to make sure the DBZO and Comprehensive Plan are adhered to. John France
25 recommended requiring the Applicant to obtain a Performance Bond to ensure Access Roads will be
26 built. Susan Wright restated for the Record there is a Traffic Study that is part of the Record that
27 coincides with a virtually full scale Development and she still supports those Findings. The Partition
28 and Crossover Easement(s) (best future Access scenario) have been created for the sole purpose of being
29 consistent with the long term plan. She feels O.D.O.T. is presenting a circular argument in regards to
30 Hwy. 101 Access and have forced them to do the same. Nonetheless O.D.O.T. has agreed with the
31 Crossover Easement approach to the 3-Lot Partition. Steve Lopez, Partner, Depoe Bay, L.L.C., 1600 S.
32 Main, Walnut Creek, California (Craig Metzler was unable to attend). He explained: his role is more
33 finance than land; primary reason for Partition is for ease in securing financing; here to do the best job
34 for the City; intention to adhere to all regulations; believes they are close to agreement with Oksenholt
35 Corporation and agrees their interests are aligned and would like to see the two entities collaborate in the
36 long run. John Pinkstaff summarized: Final Plat will guaranty the City and any future Owner will retain
37 control; simplify and rectify Zone Line discrepancy – proposed Property Lines coincides with the Zone
38 Line; referred to O.D.O.T. e-mail (dated August 8, 2008) which recognizes the existing Approach Road
39 in the middle of the Subject Property and agrees with Recorded Crossover Easements to proposed
40 Parcels; suggested seeking City Attorney’s opinion in regards to Dolan vs. City of Tigard Case;
41 Applicant is seeking coordination between the City and O.D.O.T.; Applicant and adjacent Property
42 Owners are negotiating - City should not get mired down with requiring a Public Road Dedication (Way
43 of Necessity is going to being heard in Circuit Court); proposing a simple 3-Lot Partition with no
44 Development; requested to keep the Record Open; he feels the Applicant is in compliance with the
45 Code and encouraged the Planning Commission to read the Application, Staff Report, and O.D.O.T. e-
46 mail (dated August 8, 2008). A Commissioner cited from the Staff Report (2nd paragraph, Page 1) *The*

1 *Applicant submitted the following Statement with the July 22, 2008 Submittal: The Revised Partition*
2 *Application replaces the original Application and previous Submittals which are hereby withdrawn and*
3 *of no further force and effect in this Revised Application.* She asked does that include the Traffic Study.
4 John Pinkstaff answered the revised Application is in response to the Planning Commissions request at
5 the June 11, 2008 Meeting – The statement was the distinction between what is in the Record (for
6 Partition and Development) and the revised Application (Partition only). There was short discussion
7 concerning: the e-mail received from O.D.O.T. (dated August 8, 2008); significance of Performance
8 Bond. Lewis addressed the request to leave the Record Open versus continuing the Public Hearing. The
9 Planning Commission decided to continue the Public Hearing to the next Planning Commission Meeting
10 Thursday, September 18, 2008, 6:00 P.M. (due to several Planning Commissioner’s scheduling conflicts
11 the Regular Meeting Date “2nd Wednesday of the Month” was changed). Chambers requested that the
12 large replica of the Applicant’s “Site Access Easements” Exhibit (displayed at the Meeting by Susan
13 Wright) be submitted into the Record. Connors reiterated the request that all Parties please have their
14 Written Testimony submitted two weeks prior to the Meeting.

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16 NEW BUSINESS

17 There was none.

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19 VI. CITY COUNCIL LIAISON REPORT

20 Connors reported that Barbara Leff was appointed to fill City Council Position #4; City Council moved
21 to adopt Proposed Ordinance No. 282, An Ordinance Approving the Depoe Bay Urban Renewal Plan
22 and Directing that Notice of Approval be Published. Lewis announced Proposed Ordinance No. 279 –
23 Parking was not adopted.

24

25 VII. PLANNER'S REPORT

26 Lewis reviewed his Report (copy attached to the original of these Minutes).

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28 VIII. PLANNING COMMISSION CONCERNS

29 There was none.

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31 IX. ADJOURN

32 There being no further business, the Meeting was adjourned at 8:35 P.M.

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Carol Connors, President

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Carla Duering, Recording Secretary