

1 Depoe Bay Planning Commission
2 Regular Meeting
3 Wednesday, September 9, 2009 – 6:00 P.M.
4 Depoe Bay City Hall
5

6 PRESENT: S. McGavock, S. Scopelleti, B. Taunton, R. Hageman, D. Goddard, J. Hayes, P. Leoni
7 STAFF: City Planner L. Lewis, Recording Secretary C. Duering
8

9 I. CALL MEETING TO ORDER

10 Goddard called the Meeting to order and established a Quorum at 5:59 P.M.
11

12 II. APPROVAL OF MINUTES: August 12, 2009 Regular Meeting.
13

14 Motion: McGavock moved to approve the Minutes of the August 12, 2009 Regular Meeting as written.
15 Scopelleti made the following correction: Page 4, Line 32, Vote, *Noes*: McGavock, ~~Scopelleti~~. Goddard
16 re-stated the Motion to approve the Minutes as amended. Hageman seconded the Motion.
17

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

20 Vote: Motion passed.

21 Ayes: McGavock, Scopelleti, Taunton, Hageman, Goddard, Leoni

22 Abstain: Hayes
23

24 III. ITEMS FROM THE AUDIENCE

25 There were no Items from the Audience.
26

27 IV. NEW BUSINESS
28

29 V. PUBLIC HEARING ITEMS
30

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

45 A. Case File: #1-CU-PC=-09

46 Applicant: Adrianna M. Lee-Hill

47 Application: Request for Conditional Use Permit

1 Map and Tax Lot: 09-11-17-BC #02500
2 Location: 1845 S.W. McDonald Avenue
3

4 Goddard asked if there was exparte contact, conflict of interest, or bias to declare. There was none.
5 Goddard then asked if anyone had objection to any Planning Commissioner Hearing the Case. There was
6 no objection. Lewis summarized the Staff Report (copy attached to original of these Minutes). Goddard
7 asked if the Commissioners had any questions to address to the City Planner. The Applicant was given an
8 opportunity to testify and answer questions from Commissioners. Adrianna Lee-Hill, 1845 S.W. McDonald
9 Avenue, testified that she would like to be able to offer her clients who are unable to make her schedule at
10 the Spa an alternative (accessible location). She is pursuing the Conditional Use Permit for Home
11 Occupation in order to comply with DBZO. She doesn't anticipate the increase in traffic to be significant
12 (occasional vehicle); neighbors are in complete support and have not expressed any concerns; and definitely
13 not a noise issue. Goddard asked the Applicant to clarify whether she had obtained a City Business License
14 already for Massage Therapy. Lee-Hill confirmed that initially when she applied for her Business License
15 she was under the impression that she would be allowed to have occasional clients in her home as well as
16 outside her home, however the DBZO Residential R-1 Zone only allows for a Transparent Home
17 Occupation so she applied for the Conditional Use Permit. There was no Testimony in support of the
18 Application and no Testimony in opposition. There was no request to keep the Record Open. The Public
19 Hearing was closed and Deliberations began.
20

21 MOTION: Hageman moved to approve the Applicant's request for a Conditional Use Permit (Case File #1-
22 CU-PC-09) and adopt Conditions of Approval Items 1. through 8. as recommended by the City Planner.
23 McGavock seconded the Motion.
24

25 Goddard said it was moved and seconded, and called for discussion.
26

27 Vote: Motion passed.

28 Ayes: Scopelleti, Taunton, Hageman, Goddard, Hayes, Leoni, McGavock
29

30 The Commission agreed to direct Lewis to prepare the Findings, Conclusions, and Final Order for
31 Goddard's signature.
32

33 B. Case File: #3-CS-PC-09 (Continued)

34 Applicant: Jerry Hogevoll

35 Application: Request for Development in the Coastal Shorelands

36 Map and Tax Lot: 09-11-08-BD #06900

37 Location: 335 S.W. Coast Avenue
38

39 Goddard asked if there was exparte contact, conflict of interest, or bias to declare. Hageman recused
40 himself from the Hearing. Hayes recused himself (Goddard noted that Hayes was just recently appointed to
41 the Planning Commission). Leoni declared exparte contact: She received a letter today from Mr. Hogevoll
42 (copy attached to original of these Minutes) stating again his objection to her hearing the Case and
43 announced that a complaint naming her (alleged violation of OGE Public Official Law) has been filed
44 with the State of Oregon Ethics Commission (additional information is necessary for the Commission to
45 take action at this time). She reminded the Planning Commission that she has no problems with the
46 construction on the Subject Lot as long as it is according to the DBZO (just trying to do her job). Lewis
47 summarized his Memo dated September 3, 2009 regarding the City Superintendent's decision regarding the

1 Storm Drain Easement (copy attached to original of these Minutes). He noted the Applicant submitted
2 today: a letter from the Engineering Geologist (Oregon Geotechnical Services) dated September 8, 2009,
3 revised Plot Plan with attached Exhibits (Photo illustrating the adjacent Home's Rear Setback and
4 Foundation and the proposed Setback on the Subject Lot and an Aerial Photograph demonstrating the
5 Setbacks of other structures on Coast Avenue) (copies attached to original of these Minutes); and revised
6 Plans eliminating the Stairwell to the Roof. He noted the Planning Commission needs to determine if the
7 Proposed Building is located outside the Area of Visual Concern (establish the Point of Measurement –is
8 the Retaining Wall or the "Natural Bluff" that meanders west of the Retaining Wall the Top of the Coastal
9 Bluff). The Applicant was given an opportunity to testify and answer questions from Commissioners. Jerry
10 Hogevoll, 2517 River Rd. S., Salem (also Palm Springs and Pacific City) thanked the Planning Commission
11 for being here and acknowledged they are busy people. He gave a brief synopsis of his family history;
12 ownership of the Subject Lot (30 years), the prior (June 2002) Coastal Shorelands Development
13 Application; and the completed improvements (Retaining Wall) on the Subject Lot. He restated his
14 objection to Leoni hearing his Case and absolutely believes she does have a Direct Conflict of Interest. He
15 thought the issue was addressed in a Letter written by his Attorney dated July 13, 2009 (copy attached to the
16 Staff Report) so he did not voice his objection at the beginning of the August 12, 2009 Public Hearing and
17 was astonished that she did not recuse herself from the proceedings. He cited excerpts from information he
18 submitted today to Lewis regarding Government Ethics - Public Officials and Conflicts of Interest (copy
19 attached to original of these Minutes). Goddard interrupted Mr. Hogevoll and stressed her desire to proceed
20 with the Public Hearing. There was brief discussion concerning the Attorney's Letter. Hogevoll stated for
21 the Record: Leoni has an Actual Conflict of Interest and emphasized that the City does not have a recorded
22 10' Easement. Goddard briefly summarized for the Applicant her understanding of the following: Revised
23 plans have been submitted eliminating the Stairway to the Roof; a Letter from the Geologist dated
24 September 8, 2009 identifies a Bluff; Applicant has agreed to the 9' Easement on the west and south side of
25 the Subject Property (Hogevoll disclosed that he also has agreed to maintain the Storm Drain); Applicant
26 has requested to raise the proposed Foundation 2 ft. (equivalent to the adjacent Neighbor). Hogevoll
27 reiterated his intention to not build any higher or closer to the Shoreline than any Home already constructed
28 on Coast Avenue (referred to the Aerial Photograph depicting the 12' Coastal Setbacks of 14 Houses).
29 There was brief discussion regarding the proposed Building Height. There was no Testimony in support of
30 the Application and no Testimony in opposition. There was no request to keep the Record Open. The
31 Public Hearing was closed and Deliberations began. Goddard asked Lewis to recap the Area of Visual
32 Concern matter. Goddard stated she has observed the Subject Property from the Oceanside looking
33 Landward and agreed with the Geologist's conclusions (there is a Natural Bluff). The Planning
34 Commission concurred.

35
36 MOTION: Scopelleti moved to approve the Applicants request to construct a Single-Family Dwelling in
37 the Coastal Shorelands Overlay Zone (Case File #3-CSPC-09) and we (the Planning Commission) have
38 established that the proposed Building does not encroach into the Area of Visual Concern. McGavock
39 seconded the Motion. Lewis noted the Conditions of Approval need to be updated and amended to address
40 the revised information submitted by the Applicant. He proposed if the Planning Commission moves
41 forward with approval then he would draft the Findings, Conclusions, and Final Order for their review and
42 approval at the next Planning Commission Meeting (October 14, 2009). Scopelleti and McGavock agreed
43 to amend the Motion to direct Lewis to prepare the Findings, Conclusions, and Final Order for review and
44 approval at the next Planning Commission Meeting (based on the Revised Plans and the Geologist's
45 Recommendations).

46
47 Goddard said it was moved and seconded, and called for discussion.

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2 Vote: Motion, as amended, passed.
3 Ayes: Taunton, Goddard, Leoni, McGavock, Scopelleti
4

5 Hageman and Hayes returned to their seats.
6

7 C. Case File: #1-PAR-PC-09 (Findings, Conclusions, and Final Order)
8 Applicant: Steven J. Taylor, C. Gene Whisnant and Josie C. Whisnant
9 Application: Request for Partition and Variance
10 Map and Tax Lot: 09-11-08-BD #90000, #90001, and #90002
11 Location: 420 and 422 S.W. Coast Avenue
12

13 Goddard announced that the Findings, Conclusions and Final Order has been postponed to the October 14,
14 2009 Planning Commission Meeting per the Applicant's Request.
15

16 Recess: 6:41 P.M. – 6:43 P.M.
17

18 D. Proposed Depoe Bay Zoning Ordinance Text Amendments
19

20 Written Testimony was received from Jon Lynch, Bette Silver, Bruce Silver, and Katherine Pyle. Lewis
21 identified the Items the Written Testimony addressed: Item B. *The Definition of Fractional Ownership*,
22 Item D. *The Coastal Shorelands Overlay Zone*; Item F. *Survey Requirements*; Item H. *Conduct of Quasi-*
23 *Judicial Public Hearings*; Item I. *Development Guidelines*; Item J. *General Requirements and Minimum*
24 *Standards of Development Design for Public Streets*; Item K. *Requirements and Minimum Standards of*
25 *Development Design – Private Streets*; Item L. *Definition of Building Height*; Item M. *Standards and*
26 *Procedures for Property Line Adjustments*; and N. *The Performance Agreements for Subdivisions and*
27 *Planned Developments*. He encouraged the Planning Commission to receive as much Oral Testimony as
28 possible (time allotted) and then make a decision on whether to continue the Public Hearing for additional
29 Public Input or close the Public Hearing and move into Deliberations. He reminded the Planning
30 Commission that they may want to move forward with a recommendation on the Amendments to the Flood
31 Hazard Ordinance (Per FEMA City Council must adopt the Amendments prior to December 18, 2009).
32 Goddard called for Public Testimony. Patricia Neal, 1075 Walking Wood, expressed her concerns
33 regarding Fractional Ownership, Building Height, and Planned Development Regulations. She cautioned
34 the Planning Commission to be conscientious and thorough when modifying definitions and changing
35 regulations that would affect our Community (specifically Little Whale Cove Planned Development). A
36 Commissioner asked if she was opposed to the proposed definition of Fractional Ownership. She replied no
37 (wants assurance that Fractional Ownership is not allowed in a Residential Zone). Terry Wideman, 325
38 Cliff Street, testified it would be beneficial for the Public if the Planning Commission and/or Staff prepare a
39 brief outline as to how the Planning Commission came to these conclusions. He voiced his appreciation for
40 the time and effort the Planning Commission has spent preparing the Text Amendments and reiterated the
41 importance of the Public understanding the how and why since the general Public is naive to the issues that
42 are familiar to the Planning Commission.
43

44 MOTION: McGavock moved to continue the Public Hearing to the next Planning Commission Meeting
45 (October 14, 2009) for additional Verbal and Written Testimony with the exception of the Flood Hazard
46 Amendments. A Commissioner recalled that the Proposed Schedule (dated July 2, 2009) Lewis prepared
47 allowed for the Planning Commission (if necessary) to conclude their Public Hearing in October for both

1 the Flood Hazard and Text Amendments. Lewis verified with the exception of the Flood Hazard
2 Amendments there is no time limit; the proposed Flood Hazard Amendments are identical to the Oregon
3 Model Flood Hazard Ordinance (in accordance with the FEMA Standards); and the only written comment
4 received to date was from DLCDD (State of Oregon Department of Land Conservation and Development)
5 making sure the City fills in the date where noted. Lewis reiterated that if there are no further comments
6 concerning the Flood Hazard Amendments he would recommend that the Planning Commission proceed
7 with a recommendation to City Council. Hageman seconded.

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9 Goddard said it was moved and seconded, and called for discussion.

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11 Vote: Motion passed.

12 Ayes: Hageman, Goddard, Hayes, Leoni, McGavock, Scopelleti, Taunton

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14 Lewis will prepare a revised packet of the proposed Text Amendments derived from the prior Planning
15 Commission Meetings as well as the recent Public Written and Oral Testimony. A Commissioner asked if
16 FEMA is addressing a Tsunami Warning System. Lewis answered it seems to be specifically separated
17 from the Flood Hazard Amendments. The Commissioners ensued in a short discussion regarding
18 Emergency Preparedness in Depoe Bay. Patricia Neal (from the Audience) stated there are 10 CERT
19 members in the Depoe Bay Community. Goddard said she trained as well through Lincoln County.

20
21 Lewis recommended that the Planning Commission make a motion that the Flood Hazard Amendments be
22 forwarded to City Council for consideration and adoption.

23
24 MOTION: Hageman moved to approve the Flood Hazard Amendments and forward them to City Council
25 for consideration and adoption. McGavock seconded.

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27 Vote: Motion passed.

28 Ayes: Leoni, Hayes, McGavock, Scopelleti, Taunton, Hageman, Goddard

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30 VII. CITY COUNCIL LIAISON REPORT

31 Hageman reported that it was the consensus of the Council to take no action on the Local Fuel Tax matter.

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33 VIII. PLANNER'S REPORT

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

35
36 IX. PLANNING COMMISSION CONCERNS

37 McGavock announced his resignation and stated it has been an enjoyable fourteen some odd years. He will
38 be bringing to City Hall the valuable educational materials he has acquired over the years (attending various
39 Planning Commission Workshops). He wished the Planning Commissioners all well. He will be working
40 volunteering with the State of Oregon Senior Health Insurance Benefits Assistance Program (SHIBA)
41 (provides free counseling to people with Medicare and Medicaid). Hageman reiterated his desire to move
42 forward without delay the DBZO Text Amendments. He intends to review and rephrase some of the
43 Amendments (attempt to eliminate the confusion factor). He wished Steve good luck; he would be missed;
44 and enjoyed serving with him on the Planning Commission. He feels it would be beneficial to have a
45 member on the Planning Commission from the Little Whale Cove Planned Development and extended the
46 invitation to Patricia Neal to apply and/or increase the awareness that there will be a vacancy. Goddard
47 thanked Steve for his long-standing tenure on the Planning Commission; expressed her appreciation for his

1 valuable experience and knowledge; and wished him the best with his new endeavor. She agreed with
2 Hageman that the Planning Commission needs to move along with the Text Amendments, however she
3 really wants to answer the Public's questions (explicitly why). Goddard welcomed Hayes to the Planning
4 Commission. Hayes thanked Lewis for his guidance; said he has attended Meetings in the past but this is a
5 different perspective; and will do his best. Leoni clarified for the Record 405 Coast is more than 12' back
6 from the edge of the Bluff; she spoke to McGavock - Always a gentleman (her father's highest compliment)
7 and thank you. McGavock mentioned the Planning Commission should consider scheduling Special
8 Meetings for the DBZO Text Amendments (as done in the past, beneficial, primary focus).

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10 X. ADJOURN

11 There being no further business, the Meeting was adjourned at 7:15 P.M.

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Dorinda Goddard, President

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21 Carla Duering, Recording Secretary