

1 Depoe Bay Planning Commission  
2 Regular Meeting  
3 Wednesday, May 11, 2011 – 6:00 P.M.  
4 Depoe Bay City Hall  
5

6 PRESENT: G. Steinke, B. Taunton, R. Hageman, P. Leoni, S. Scopelleti (arrived 6:15 p.m.)  
7 ABSENT: J. Hayes  
8 STAFF: City Planner L. Lewis, Recording Secretary C. Duering  
9

10 I. CALL MEETING TO ORDER

11 Hageman called the Meeting to order and established a Quorum at 6:02 P.M.  
12

13 II. APPROVAL OF MINUTES: March 9, 2011 Regular Meeting.  
14

15 Motion: Steinke moved to approve the Minutes of the March 9, 2011 Regular Meeting as written. Leoni  
16 seconded the Motion.  
17

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

20 Vote: Motion passed.

21 Ayes: Steinke, Taunton, Hageman, Leoni  
22

23 III. ITEMS FROM THE AUDIENCE

24 There were no Items from the Audience.  
25

26 IV. PUBLIC HEARING ITEMS

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

40 A. Case File: #1-CU-PC-11 (Continued)

41 Applicant: Neighbors for Kids

42 Application: Request for Conditional Use – Community Center and Mobile Vending Stands

43 Zone, Map, and Tax Lot: Light Industrial L-1, 09-11-08-CA #07400

44 Location: 630 S.E. Highway 101  
45

46 Hageman asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. Hageman  
47 declared obviously he knows Richard Johnson and Neighbors for Kids as members of this Community (as does  
48 most everyone). Hageman then asked if anyone had objection to any Planning Commissioner hearing the Case.  
49 There was no objection. Lewis summarized the updated May 4, 2011 Staff Report (copy attached to original of  
50 these Minutes). He specifically noted the Applicant has submitted the following (as requested by the Planning

1 Commission at the March 9, 2011 Meeting): Two Letters signed by Sue McBane, Chair, NFK Board, Parking  
2 Agreement for NFK Events (Whistlestop Shell Station and Neighbors for Kids); a Parking License Agreement  
3 (Neighbors for Kids and Flying Dutchman Winery); and Site Plans for each illustrating Parking Spaces (copies  
4 attached to the original of these Minutes). Hageman asked if the Commissioners had any questions to address to  
5 the City Planner. Discussion included: Recommendation in the determination of Parking Spaces Required for the  
6 Community Center Use – the L-Shaped (Lounge Area), Entry Way, and Kitchen should be included with the  
7 Gymnasium in the calculation of square footage; Staff Report Page 11. Item 2. Standards for Mobile Vending  
8 Stands, b. *NFK shall maintain a valid City Business License*; Depoe Bay Zoning Ordinance Article 6. Conditional  
9 Uses, Section 6.070 Standards Governing Conditional Uses, Item 10. Standards for Mobile Vending Stands, a. *No*  
10 *person shall operate a Mobile Vending Stand without having obtained a Business License* (interruption of the  
11 Meeting – Recording Secretary left to obtain a copy of the pertinent Business License Ordinance and  
12 Resolutions); Depoe Bay Zoning Ordinance Article 6. Conditional Uses, Section 6.070 Standards Governing  
13 Conditional Uses, Item 10. Standards for Mobile Vending Stands, j. *...The Conditional Use Approval by the*  
14 *Depoe Bay Planning Commission shall be valid for one (1) year, or such lesser time as the authorization may*  
15 *specify, from the Date of Approval, unless revoked, terminated, or extended*; in her absence Scopelleti declared he  
16 serves as Vice-Chair on the Board of Directors for Neighbors for Kids, and recused himself from the Public  
17 Hearing; Lewis cited City Business License Ordinance No. 243 Section 4., License Required *Any person*  
18 *engaging in any Business within the limits of the City on four or more separate occasions in a calendar year, or*  
19 *on one single occasion for a period exceeding one week is subject to the license requirement unless exempted by*  
20 *this Ordinance or expressly exempted by any other State or Federal Law... .* The Applicant was given an  
21 opportunity to testify and answer questions from Commissioners. Dick Johnson, Neighbors for Kids (NFK)  
22 Board Member, thanked the Planning Commission for the input they provided at the last Meeting; acknowledged  
23 the provision for a Written Parking Agreement (per DBZO). He gave a brief synopsis on how Neighbors for Kids  
24 obtained a Written Parking Agreement with the Hongs, Whistlestop Shell Station and Dick Cutler, Flying  
25 Dutchman Winery; provided a resolution to the Liability Insurance issue; addressed Traffic Flow – Exit Hwy. 101  
26 via School House Road or the South Access to Gas Station; Enter Hwy. 101 via School House Road; mentioned  
27 Scopelleti could explain the agreements with O.D.O.T. and State Highway Patrol (Scopelleti did not comment).  
28 There was lengthy discussion between the Applicant and the Planning Commission regarding Neighbors for Kids  
29 Liability Insurance Coverage and the specific protection against risk/loss (i.e. bodily injury or property damage);  
30 suitability of the Cutler owned Property surface for Parking (unpaved graded gravel, unmarked spaces). Hageman  
31 called for Testimony in favor of the Application. There was none. Hageman called for Testimony in opposition  
32 of the Application. Heekyong Hong, Owner of Whistle Stop-Shell Gas Station, 20 S.E. Schoolhouse Road,  
33 apologized, and stated her intentions to sell or lease the Subject Property and could not agree at this time to allow  
34 Neighbors for Kids use of the Parking Lot (do not want to encumber a possible sale with the Parking Agreement)  
35 and emphasized at a recent NFK event her husband had difficulty with people parking (refusing to move) on their  
36 property. Hageman clarified that she was rescinding the Signed Parking Agreement. Johnson asked again what  
37 she had said. Leoni restated her comments. Johnson felt NFK had provided adequate Parking Lot supervision  
38 during The Children’s Trust of Lincoln County Summit (held May 6<sup>th</sup>) at their facility. Hageman reminded the  
39 Applicant and the Planning Commission that the Written Agreement from the Hongs has been withdrawn and the  
40 Planning Commission now needs to determine whether or not the Cutler Property can be used to satisfy NFK’s  
41 Off-Street Parking Requirements (located 550 feet from the NFK Property). Brief discussion occurred on  
42 whether NFK had considered requesting the Parking around City Hall. Johnson restated that sufficient Parking is  
43 still available on the Cutler Property and asked the Planning Commission to please consider approval of Off-  
44 Street Parking more than 500 ft. from the Subject Lot (additional distance 50 ft.). There was no further  
45 Testimony and no request to keep the Record Open. The Public Hearing was closed and Deliberations began.  
46 Leoni noted that Scopelleti recused himself when the Recording Secretary was out of the Room. Discussion  
47 included: Concern for Pedestrian Safety given the proximity to Highway 101 (no marked pedestrian pathway,  
48 significant number of senior citizen residents, NFK’s mission is to provide an environment for children and their  
49 families); acknowledgement and support for NFK’s effort to find alternative revenue sources; local Merchants  
50 struggle to maintain a year-round presence – allowing on-going temporary vending ventures will change the

1 dynamics of our Community; desire to hear remarks from Local Business Community (perception, today's fragile  
2 economy, impact); NFK's objective – has the organization created a situation of financial deficit; Johnson (from  
3 the audience) asked to speak – Hageman did not allow (Public Testimony was closed); traffic congestion  
4 specifically during Fishing Season and Special Events (i.e. Easter Egg Hunt) in the City Park; traffic  
5 considerations – Extremely high volume of Traffic on Highway 101, this type of activity would increase the risk  
6 of accidents; liability and litigation concerns; existing meeting sites (private enterprise and City of Depoe Bay  
7 Community Hall); concept may be ideal, but not the best location for a Mobile Vending Event/Community Hall  
8 Use; recollection of Planning Commission's Review of the Building Permit and Request for Variance Application  
9 submitted by NFK (Public Hearing Case File #1-VAR-PC-08); unfair to create competition to the members of this  
10 Business Community who have possibly made contributions (volunteer/financial) to NFK; Johnson interjected  
11 (from the audience) a recent event (indoor vending) was sponsored by the Local Business Community (Pro Net, a  
12 professional networking group). Hageman called for a motion.  
13

14 MOTION: Leoni moved to deny Case File #1-CU-PC-11 (Request for Conditional Use – Community Center and  
15 Mobile Vending Stands). Hageman seconded.  
16

17 There was no discussion.

18  
19 Vote: Motion passed.

20 Ayes: Taunton, Hageman, Leoni, Steinke  
21

22 B. Case File: #1-PAR-PC-11

23 Applicant: Antone and Lois Wisniewski

24 Application: Request for 2-Lot Partition

25 Zone, Map and Tax Lot: Retail Commercial C-1, 09-11-05-B #01113

26 Location: 650 and 674 N.E. Highway 101  
27

28 Hageman asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. There was  
29 none. Hageman then asked if anyone had objection to any Planning Commissioner hearing the Case. There was  
30 no objection. Lewis summarized the Staff Report (copy attached to original of these Minutes). No Written  
31 Testimony was received. Lewis asked the Commissioners if they had any questions. Brief discussion ensued  
32 regarding: Way of Necessity and Court Order (filed in the Circuit Court of the State of Oregon for the County of  
33 Lincoln in December 2009) identifies a 60 ft. Right-Of-Way for a Public Road (approximately one half on the  
34 Subject Lot – intention other half on the north side of the Subject Property); Lewis has had discussion with the  
35 Attorney for the Applicant's Agent (The Hills of Depoe Bay Limited Partnership by Oksenholt Asset  
36 Management, L.L.C.) and has viewed documentation identifying a 60 ft. width dedicated as a Public Road (to  
37 date Tax Maps have not been revised); Lewis advised the Planning Commission to view the Application as a  
38 Request for a Partition only, look at the C-1 Standards and ensure that Utility and Vehicular Road Access are  
39 provided to the Properties it currently serves; defined Slope Easement – construction easement used to adjust  
40 elevation, typically temporary; Approach Permit Application has been submitted to O.D.O.T – O.D.O.T. in past  
41 discussion has specified an approximate location (aligned with the southerly entrance to the Worldmark Resort);  
42 identified current access to Property Owners (using Aerial Photograph attached to Staff Report). The Applicant  
43 was given an opportunity to testify and answer questions from Commissioners. The Applicant was not present.  
44 There was no Testimony in support of the Application and no Testimony in opposition. There was no request to  
45 keep the Record Open. The Public Hearing was closed and Deliberations began. The Commission discussed:  
46 Road Improvement concerns – who will be responsible for adhering to DBZO (i.e. Article 14. Land Division,  
47 Section 14.070 Street Width in Subdivisions and Partitions, Section 14.080 Street Improvements in Subdivisions  
48 and Partitions). After lengthy discussion the Commission agreed to review the Application as a 2-Lot Partition in  
49 the Commercial C-1 Zone; Subject Lot has an existing (private driveway) Access Easement.  
50

1 **MOTION:** Hageman moved to approve Case File #1-PAR-PC-11 (Request for 2-Lot Partition) and adopt the  
2 Conditions of Approval Items. 1. Thru 3. (specifically emphasizing that the Findings be amended to include the  
3 Planning Commission is identifying it as a 2-Lot Partition – not recognizing that the northerly Parcel is proposed  
4 to be a Public Road). Leoni seconded.

5  
6 Lewis stated the recommended amendment to the second sentence Item. 2. *The Plat shall identify required*  
7 *easements, including but not necessarily limited to, utility and ~~road~~ vehicular access to the southerly lot, and to*  
8 *Property Owners who currently have utility and ~~road~~ vehicular access through the Subject Property, ~~and to the~~*  
9 *Hills of Depoe Bay Limited Partnership.*

10  
11 Vote: Motion passed.

12 Ayes: Scopelleti, Taunton, Hageman, Leoni, Steinke

13  
14 C. Case File: #2-CU-PC-11

15 Applicant: Loranda Springs

16 Application: Request for Conditional Use – Mobile Vending Stand

17 Zone, Map and Tax Lot: Retail Commercial C-1, 09-11-05-CD #0440

18 Location: 70 N.E. Highway 101

19  
20 Hageman asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. There was  
21 none. Hageman then asked if anyone had objection to any Planning Commissioner hearing the Case. There was  
22 no objection. Lewis summarized the Staff Report (copy attached to original of these Minutes). Written  
23 Testimony was received in opposition to the Application from Harold Hailey (copy attached to the original of  
24 these Minutes) and support of the Application from John Lynch, Property Owner (copy attached to the original of  
25 these Minutes). There were no questions for the City Planner. The Applicant was given an opportunity to testify  
26 and answer questions from Commissioners. Loranda Springs, resides in Fogarty Creek RV Park, business  
27 location, 70 N.E. Highway 101. She reiterated the Application is for a Request for Conditional Use – Mobile  
28 Vending Stand on private property; will adhere to all the terms listed in the Conditions of Approval and will keep  
29 the area neat and clean; offered assurance that it will not become an eyesore; and her intention is to increase  
30 pedestrian traffic at the north end of the Downtown Corridor (a benefit to the other businesses not a detriment).  
31 Discussion included: Primarily selling hot dogs, may expand to other items (i.e. hamburgers); at this time intends  
32 to use a commercial steaming pot plugged into an electrical outlet on exterior of building (Applicant did not want  
33 to purchase a Commercial Vending Cart until Conditional Use was approved); existing nature of the business on  
34 the Subject Lot (Applicant operates a novelty/body piercing company and the other Leasee is an art gallery);  
35 increased burden on City Crew (trash removal from City owned public trash cans); current condition of existing  
36 structure; compliance with Lincoln County Health and Human Resources Department and State of Oregon Public  
37 Health requirements; Stand would be located adjacent to the covered cage (after operating hours it will be  
38 removed off-premise or out of site); Lewis cited portions of the Conditions of Approval Item 4. *...inspected by*  
39 *the Building Official and by the State Fire Marshal (or his Representative, i.e. the Depoe Bay Fire District Chief);*  
40 *Item 5. ...proof is submitted to the City that all Health and Sanitary Permits Required by the State and County*  
41 *have been obtained;* Hageman cited per DBZO Article 6. Conditional Uses Section 6.010 Purpose *Location and*  
42 *operation of designated Conditional Uses shall be reasonably compatible with adjacent uses and authorized only*  
43 *by issuance of a Conditional Use Permit;* Section 6.020 *Authorization to Grant or Deny Conditional Use Permit*  
44 *Conditional Uses may be permitted, enlarged or altered upon authorization by the Planning Commission in*  
45 *accordance with the standards and procedures set herein.* Item 1. *In taking action on a Conditional Use Permit*  
46 *Application, the Planning Commission may Permit or Deny the Application.* There was no Testimony in support  
47 of the Application and no Testimony in opposition. There was no request to keep the Record Open. The Public  
48 Hearing was closed and Deliberations began. The Planning Commission discussed: Inspection by the Building  
49 Official and State Fire Marshall, Health and Sanitary Permits; there are no DBZO Parking Requirements for a  
50 Single Mobile Vending Stand; Written Testimony received in opposition to the Application; multiple locations

1 outside of the limited Downtown Corridor where Mobile Vending could occur per Depoe Bay Zoning Ordinance  
2 Article 6. Conditional Uses, Section 6.070 Standards Governing Conditional Uses, Item 10. Standards for Mobile  
3 Vending Stands, b. ...*The selling of merchandise or conducting of business from a Mobile Vending Stand shall*  
4 *only be done upon Private Property*; Lincoln County licensed Restaurants/Food Establishments are required to  
5 provide patron Toilet and Handwashing Facilities; Conditional Use is specific to the Tax Lot not the  
6 Applicant/Property Owner; Conditional Use Permit is for a Mobile Vending Stand (doesn't allow operation to  
7 move inside of existing structure due to inclement weather).

8  
9 MOTION: Hageman moved to approve Case File #2-CU-PC-11 (Request for Conditional Use – Mobile Vending  
10 Stand) and adopt the Conditions of Approval Items. 1. Thru 11. with the following amendments: *Restrooms will*  
11 *be open to the Public (Customers); Applicant will provide additional trash cans (dumped daily); insert **Outdoor***  
12 *Mobile Vending Stand*. Scopelleti seconded.

13  
14 There was no discussion.

15  
16 Vote: Motion passed.

17 Ayes: Hageman, Leoni, Steinke, Taunton, Scopelleti  
18

19 The Planning Commission directed Lewis to prepare the Findings, Conclusions, and Final Order (Case File #1-  
20 CU-PC-11, Case File #1-PAR-PC-11, and Case File #2-CU-PC-11) for Hageman's signature.

21  
22 V. NEW BUSINESS

23  
24 A. Case File: #2-CS-PC-10

25 Applicant: Ronald and Mary Gilliam

26 Application: Request for One-Year Extension of Variance Approval

27 Zone, Map and Tax Lot: Residential R-4, 09-11-05-CA #08100 (Parcel 2)

28 Location: East of 125 Vista Street  
29

30 Lewis reviewed his Memo (copy attached to original of these Minutes). There was brief discussion regarding the  
31 Applicant's circumstances.

32  
33 MOTION: Leoni moved to approve Case File #2-CS-PC-10 (One-Year Extension of Variance Approval).  
34 Taunton seconded.

35  
36 There was no discussion.

37  
38 Vote: Motion passed.

39 Ayes: Leoni, Steinke, Taunton, Scopelleti, Hageman  
40

41 VI. UNFINISHED BUSINESS

42 A. Depoe Bay Disaster Warning System  
43

44 Hageman reported: Budget Committee has designated \$150,000 of the Public Safety Fund towards the purchase  
45 and installation of a Tsunami/Disaster Warning System; he summarized his Draft Preliminary Request for  
46 Proposal (RFP) and Bid for an Outdoor Warning and Public Alert System (presented to the City Superintendent,  
47 City Recorder, and City Attorney for review and comments); Evaluation of Proposals (establishment of an  
48 Evaluation Committee). Lengthy discussion followed.

49  
50 VII. CITY COUNCIL LIAISON REPORT

1 Leoni reported discussion at the City Council/Harbor Commission Joint Meeting included Port Leases; suggested  
2 Urban Renewal Agency hire a Surveyor (determine Property Ownership surrounding the Harbor); possible Zone  
3 Changes (Planned Marine and Recreation Zone M-P, Marine Commercial Zone M-C, and Marine Waterway  
4 Zone M-W to Light Industrial Zone L-1) to increase the number of Permitted Uses. Discussion ensued.  
5 Hageman reported Lt. Landers, Lincoln County Emergency Management, addressed the City Council regarding a  
6 county-wide mass notification system; City Council is also considering purchasing an alternative automated  
7 messaging service (Call-Em-All); correspondence was received regarding: Leasing the Fish Plant for exporting  
8 live slime eels; and regarding purchasing the Fish Plant.

9  
10 VIII. PLANNER'S REPORT

11 Lewis reviewed the Planners Report (copy attached to the original of these Minutes). There was brief discussion  
12 regarding the Land Use Compatibility Statement (LUCS) for Hwy. 101 Approach Permit (Applicant Oksenholt  
13 Asset Management).

14  
15 IX. PLANNING COMMISSION CONCERNS

16 There was none.

17  
18 X. ADJOURN

19 There being no further business, the Meeting was adjourned at 8:36 P.M.  
20  
21  
22

23  
24 \_\_\_\_\_  
Roy Hageman, President

25  
26  
27  
28 \_\_\_\_\_  
29 Carla Duering, Recording Secretary