

1 Depoe Bay Planning Commission  
2 Regular Meeting  
3 Wednesday, May 9, 2012 – 6:00 P.M.  
4 Depoe Bay City Hall  
5

6 PRESENT: G. Steinke, B. Taunton, S. Scopelleti, R. Hageman, P. Leoni  
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 6:00 P.M.  
12

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

15 Motion: Steinke moved to approve the Minutes of the December 14, 2011 Regular Meeting as written. Taunton  
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, Scopelleti, 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. and B.) 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-PAR-PC-12

41 Applicant: Bonita Faye Chavez

42 Application: 2-Lot Partition

43 Zone, Map and Tax Lot: Residential R-3, 09-11-08-AC #00942

44 Location: South End of S.E. Hazelton Place  
45

46 There was no ex-parte contact, conflict of interest, or bias declared. There was no objection to any Planning  
47 Commissioner hearing the Case. Lewis summarized the Staff Report (copy attached to original of these Minutes).  
48 No Written Testimony was received. Lewis asked the Commissioners if they had any questions. Brief  
49 discussion ensued regarding the location of the Access/Utility Easement identified on the Proposed Partition Plat;  
50 Planning Commission approved with Conditions a 3-Lot Partition on the Subject Lot in 2007 (Final Approval

1 required submittal (to the City of Depoe Bay) of a copy of the Partition Plat that has been recorded with the  
2 Lincoln County Surveyor – never received); Building Permit was never issued on the east Lot (System  
3 Development Charges/Connection Fees not paid - Lincoln County Building Department “Red Tagged” the  
4 Structure). The Applicant was given an opportunity to testify and answer questions from Commissioners. Dave  
5 Rasmussen, American Vault and Shelter, Salem, spoke on behalf of the Applicant. He intends to purchase the  
6 proposed east Lot. Applicant chose to simplify/reduce the Partition to 2-Lots (slope, Access, adequate buildable  
7 Lot Area). There were no comments from the Planning Commission. There was no Testimony in support of the  
8 Application and no Testimony in opposition. There was no request to keep the Record Open. The Public Hearing  
9 was closed and Deliberations began. Hageman called for a Motion.

10  
11 Motion: Leoni moved to approve Case File #2-PAR-PC-12 (2-Lot Partition) and adopt the Conditions of  
12 Approval (Items. 1. Thru 4.) as recommended by the City Planner. Steinke seconded.

13  
14 Hageman said it was moved and seconded, and called for discussion. There was none.

15  
16 Vote: Motion passed.

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

18  
19 B. Case File: #1-CS-PC-12

20 Applicant: Glenn Petry for G&M Arch Rock, L.L.C.

21 Application: Coastal Shorelands, Geologic Hazard Report and Planning Commission  
22 Review of New or Substantial Development in the Commercial Zone

23 Zone, Map and Tax Lot: Commercial C-1, 09-11-05-CA #16400

24 Location: East Side of 70 N.W. Sunset Street

25  
26 Hageman asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. Leoni declared  
27 that she and her husband were contacted at their Motel, Trollers Lodge, by a Harbor at Depoe Bay Condominium  
28 Owner (gave a brief synopsis of their conversation); and her on-going relationship with Inn at Arch Rock (guest  
29 referral). Taunton declared that she drove around North Point today. Lewis summarized the Staff Report (copy  
30 attached to original of these Minutes). Written Testimony in opposition to the Application was received (149  
31 letters – copies attached to original of these Minutes); 147 from Owners of the Harbor at Depoe Bay  
32 Condominiums (majority a signed form letter – approximately 35 with handwritten notes or separate letters).  
33 Lewis summarized the letters and comments and reiterated that the Applicant is requesting an Exception to the  
34 Area of Visual Concern Setback Standards not a Request for a Variance. Hageman asked if anyone had objection  
35 to any Planning Commissioner hearing the Case. There was no objection. Hageman stated the Applicant has not  
36 submitted sufficient information (sketches – no Engineered or Architectural Drawings, or Engineering Geologist’s  
37 approval of Final Plan) for the Planning Commission to complete a Review (not a Public Hearing) of the  
38 proposed development in the Commercial Zone. The Planning Commission agreed. Hageman asked the  
39 Commissioners if they had any questions. Brief discussion ensued regarding: Floral Avenue is Public Right-of-  
40 Way (identified in the Draft Parks Master Plan Update to maintain Public Pedestrian Access to the end of the  
41 Bluff; existing grass terrain); Inn at Arch Rock Courtyard illustrated on the Drawing; memories of North Point  
42 development; Inn at Arch Rock and Harbor Condos are both a real compliment to Depoe Bay. The Applicant was  
43 given an opportunity to testify and answer questions from Commissioners. Glenn Petry, 64420 Old Bend  
44 Redmond Highway, Bend, Owner of Inn at Arch Rock, spoke of his experience with a fair number of projects  
45 over the years and encounters with opposition (not in my backyard); environmentally sensible general contractor,  
46 who believes in responsible development and has submitted a responsible Plan (align with other structures,  
47 quality Building, similar architecture to the existing Inn, approximately 1,200 sq. ft. of undeveloped land,  
48 preserve integrity of the Cliff; minimal impact on the View of the majority of Harbor Condo Units); intention to  
49 be a long-term Owner (son is in management; operates a well maintained facility); referenced photographs  
50 illustrating minimal impact of Ocean View to the Harbor at Depoe Bay Condominiums (copies attached to

1 original of these Minutes); acknowledged the value of Rooms with an Ocean View; revenues generated (benefits  
2 to him as well as the City of Depoe Bay and Depoe Bay Business Community); hopes to attract more weddings  
3 and conferences; alternative to submitted Plan would be to have Parking along the Coastal Bluff; calculation of  
4 the traffic impact (Commercial Zone, considers to be miniscule and a non-issue); stressed his desire for fairness.  
5 The Planning Commission and Applicant discussed: Parking Diagram (copy attached to Staff Report); Floral  
6 Avenue is a 20 ft. wide Public Right-of-Way; Hageman cited Section 4.030 Off Street Parking and Off-Street  
7 Loading Requirements Item 12. *Groups of more than four Parking Spaces shall be served by a Driveway so that*  
8 *no backing movements or other maneuvering within a Street, other than an Alley, will be required.* There was no  
9 Testimony in favor of the Application. Hageman called for Testimony in opposition to the Application. Brook  
10 Douglas, Owner of 75 Sunset St., and the 3 opposing Lots directly across the Street from the Subject Lot(s),  
11 vested in the Community (annual moorage holder, friendships, etc.). He testified that there are on-going  
12 unresolved issues (i.e. his vacant Lots are being used as overflow guest/wedding/event parking; dog feces);  
13 Subject Lot is probably unbuildable; negative visual impact (force him to sell his beautiful, future retirement  
14 Home); inadequate Parking for Existing Use – adding more Rooms escalates the problem; comparison of North  
15 Point Residents use of Floral Ave. Access to bench today versus after development; is decision making based on  
16 generating income for the City. Hageman clarified that the Planning Commission is required to follow the  
17 DBZO. Tricia Chandler, lives at the Harbor at Depoe Bay Condominiums, she and her husband are full-time  
18 residents (employed), local patrons, taxpayers, and registered voters. She stated her concerns for preservation of  
19 the Coastal Shoreline, an area of exceptional beauty; unknown visual impact from Hwy. 101 to the Bay -  
20 Applicant has provided a footprint only; height - Applicant's Narrative indicates 35 ft. plus a gabled roof;  
21 applauded the recently presented City of Depoe Bay Draft Parks Master Plan Update; insufficient  
22 accommodations/parking for wedding and convention of any size (inadequate area for outdoor reception tents;  
23 amenities - i.e. adjoining restaurant, etc.); Developer (Applicant) objects on the grounds of economic hardship -  
24 block of Ocean Views (in response to satisfying the *Exception - Request is the Minimum Necessary*) - allow the  
25 same consideration to the Harbor Condominium Owners too (Residence and Vacation Rentals); Developer's  
26 (Applicant's) comparison to existing Non-Conforming Structures (response to satisfying the *Exception -*  
27 *Disruption of the Visual Character of the Area has been Minimized*) - two wrongs do not make a right. She  
28 concluded with a Joni Mitchell song lyric "Don't it always seem to go that you don't know what you've got till it's  
29 gone." Hageman reiterated that per DBZO *No Building in the C-1 Zone shall exceed a height of 35 feet*  
30 (including the gabled roof). Mike Martin, residency in Minneapolis, Owner of Mariner 3, Harbor at Depoe Bay  
31 Condominiums, thanked Leoni for her comments. He cited portions of the following relevant criteria and  
32 justified why he believes the Applicant does not satisfy the applicable criteria: The Depoe Bay Comprehensive  
33 Plan Goal 5 – Natural and Aesthetic Resources; Depoe Bay Zoning Ordinance Article 4, Supplementary  
34 Regulations, Section 4.820 Protection of Coastal Headlands, Areas of Exceptional Aesthetic Resources, Item 2.  
35 Standards a. For Coastal Headlands, Coastal Scenic Areas and the Harbor Area; Item (2) b. For Scenic View  
36 Corridors; Article 7. Non-Conforming Uses; Section 7.010. Purpose and Section 7.050. Extension, Expansion,  
37 Enlargement, or Renovation of Non-Conforming Structures; Article 13. Development Guidelines, Section 13.080  
38 Calculations of Coastal Setbacks. He specifically addressed safety concerns with proposed Parking off of Floral  
39 Avenue and Coastal Erosion - disagreed with the Geological Project Summary (prepared by Oregon Geotechnical  
40 Services) (copy attached to the Staff Report). He urged the Planning Commission to deny the Application. Betty  
41 Folmsbee, 20616 Noble Ln., West Linn, roots in Lincoln County, purchased 2 Units at Harbor Condominiums for  
42 the very same reasons as full-time residents. She believes, Flagship 4 (on the west end top floor, 52 shared  
43 Owners) is probably the Unit that will be negatively impacted visually the most; year-round occupancy at Harbor  
44 Condominiums; agreed with prior Testimony that two wrongs do not make a right; Planning Commission has a  
45 responsibility to protect our aesthetic resources. Hageman asked if the Building was moved back 40 ft.,  
46 maintaining 35 ft. height, how that would affect her View. Folmsbee answered she would lose her View of the  
47 colorful northern sunsets either way. Audience Member interjected there are fifteen (15) Harbor at Depoe Bay  
48 Condominium Units (9 Units Whole Ownership, 6 Units Time Share Ownership with approximately 245  
49 Fractional Owners). Nelson Maler, Whole Owner, Harbor at Depoe Bay Condominiums, resides in Grants Pass,  
50 disagreed with Mr. Lewis' interpretation of this request with respect of the use of "Exceptions" versus

1 “Variances” to resolve differences in the Zoning Code. He cited from Article 8. Variances and submitted that the  
2 Applicant’s Request does not satisfy any of the Five Circumstances for Granting a Variance Approval  
3 (emphasizing the reasons) and asked the Planning Commission to deny the Application on the grounds of failing  
4 to satisfy the City of Depoe Bay Zoning Ordinances Article 8. Variances (copy of his Narrative submitted in  
5 writing on May 9, 2012). Carolyn Douglas, Milwaukie, she and her husband have owned their property for 11  
6 years. She spoke in regards to the management practices at Inn at Arch Rock (issues include Parking, dog  
7 control, etc.); stressed the importance of Floral Avenue in coastal search and rescue emergency efforts (shared the  
8 circumstances of an incident that had occurred); denied Access to her Property (obstructed by vehicles);  
9 aesthetically the proposed plan is unappealing - 3-Story, 2-Story, and 1-Story Structures. Petry spoke in rebuttal -  
10 a number of residents walk their dogs in the neighborhood; neighbor’s (Douglas) yard extends 10 ft. into the  
11 Public Right-of-Way (presume on the rare occasion that the Inn’s guests could park in Right-of-Way) and  
12 suggested to clearly identify and preserve Access - construct a driveway and curb; proposed improvements to  
13 Floral Ave. maintains 60 feet of grass trail (1,200 square feet) – ample room for emergency vehicles; encouraged  
14 Commission to visit location; traffic impact will be minimal; no guarantee of View Protection (Testimony in  
15 opposition – unrealistic to expect Subject Lot remain undeveloped); questioned the legitimacy of the form letter  
16 (knowledge and understanding of the Project by Signees); and believes Floral Avenue Scenic View Area usage  
17 will increase. He concluded his proposed project is consistent with other Buildings in the area and encroachment  
18 into the Area of Visual Concern is similar as well (very little impact to the area). There was brief discussion with  
19 the Applicant reiterating DBZO Article 7. Non-Conforming Uses and confirming the proposed Building would be  
20 a separate Structure. Audience confirmed the location of his Property Lines (located Surveyor Stakes – Street  
21 encroaches onto his Property). Audience disagreed (based on his Survey). Hageman asked if anyone would like  
22 to request to hold the Record Open. Audience answered yes. Discussion ensued between the Audience and City  
23 Planner in regards to the Public Hearing procedure. Hageman closed the Public Hearing and deliberations began.  
24 Discussion subjects included the following: identified and restated items presented in opposition; a compromise  
25 between Applicant and opposition (value of a good relationship with local Community/Neighbors); protection of  
26 View Corridors; Property Owners Rights; Planning Commission must determine compliance to DBZO applicable  
27 Setback and Parking Standards (especially during events); past practice/precedence – the Planning Commission  
28 has determined/allowed numerous Exceptions to the Area of Visual Concern Setback; economics is not a  
29 pertinent criteria; Article 8. Variances (not applicable/relevant criteria) the Request is an Exception to the Area of  
30 Visual Concern; other comparable Buildings are existing lawful Non-Conforming Structures (prior to provisions  
31 in the DBZO) - the Proposed Structure will not be considered Non-Conforming if approved (determined that the  
32 Area of Visual Concern Exceptions have been met); a concern regarding the accuracy of the Coastal Setback for  
33 Erosion Standard as identified by the Certified Engineering Geologist (minimum 15 feet from the Top of the Sea  
34 Cliffs); vehicular parking on the grass within the Area of Visual Concern is allowed per DBZO; Commercial C-1  
35 Standard allows for no Yard Setbacks (i.e. Side, Front, Rear) unless Yard is abutting a Lot in the Residential Zone  
36 (proposed maximum Floor Area is 4,810 square feet - Lot is 5,000 square feet); compliance to Parking Standards  
37 if Area of Visual Concern were to be 25 or 40 feet (eliminate Rooms or Parking along Coastal Bluff). A  
38 Commissioner asked if Applicant could respond. Hageman re-opened the Hearing for Public input. Petry  
39 indicated an option would be to use the Subject Lot as Parking and replace the adjacent existing 1-Story Complex  
40 (Units 6 thru 9) with a 3-Story Complex. Comments from Members of the Audience and Responses from City  
41 Planner and Hageman included: Audience asked the Planning Commission to clarify the Off Street Parking  
42 Requirements; Hageman responded per DBZO *one (1) Parking Space for each Guest Accommodation* not based  
43 on number of Guests per Room; Audience Applicant has stated their intention to host weddings/conventions,  
44 etc. is that being taken into consideration when calculating required Parking Spaces; City Planner responded Uses  
45 in the Building are basis for determining Parking Requirements (i.e. Uses identified - 24 Units and Manager’s Full  
46 Time Residence equals 26 Parking Spaces) and gave further explanation; Petry anticipating only an occasional  
47 such event (generally attendees are guests at the Inn); Audience believes the Planning Commission is in violation  
48 of the Code if development is allowed in the Area of Visual Concern (*40 feet landward from the Top of the*  
49 *Coastal Bluff*); Petry restated desire to be closer to the Coastal Bluff - own Building would block the potential  
50 Ocean Views. Hageman reiterated the DBZO allows for the Applicant to ask for an Exception to the Standard

1 and closed the Public Hearing. The Planning Commission further discussed: fearful of what Applicant would  
2 propose if not granted approval of 15 feet Setback from the Top of the Bluff; Ocean Views will be impacted  
3 either way; difficult to perceive visual impact without Engineered Drawings; justification of granting an  
4 Exception to the DBZO Area of Visual Concern Standard (15 feet versus 20-25 feet versus 40 feet); minimizing  
5 the disruption of the visual character is key; proud of North Point and how it has been developed; impossible to  
6 manage the general population's actions; establishing the point of measurement (Vegetation Line is essentially the  
7 Top of the Bluff); perhaps the Applicant would be willing to redesign/reconsider his request (based on all the  
8 aspects/viewpoints, beneficial to the Community/affected Property Owners, substantial amount of Testimony in  
9 Opposition). Hageman emphasized the Planning Commission needs to determine if Applicant has met the DBZO  
10 Criteria. Hageman re-opened the Public Hearing. Petry directed the Planning Commission to view the  
11 photographs illustrating minimal impact of Ocean View to the Harbor at Depoe Bay Condominiums (copies  
12 attached to original of these Minutes). Audience commented the reason the Applicant wants to build closer to the  
13 Bluff - if he builds further back his proposed Units will not have an Ocean View (referred to Applicant's  
14 Narrative/Testimony) why would he build the Units if he is unable to have an Ocean View. Audience countered  
15 he would replace the adjacent existing 1-Story Complex (Units 6 thru 9) with a 3-Story Complex and the Subject  
16 Lot would provide the necessary Parking. Audience offered a point of clarification (exception to Area of Visual  
17 Concern versus Request for Variance to Setback Concerns and the interpretation of the DBZO as presented by  
18 Lewis). He re-stated that Article 8. Variances, needs to be applied with respect to Setback issues. Lewis  
19 reiterated Article 8. Variances absolutely does not apply to this Case. The Applicant is requesting an Exception to  
20 the Area of Visual Concern not a Variance from the Yard Setback Standards. Audience questioned how the  
21 Planning Commission can make a responsible decision by making assumptions. Hageman answered he is  
22 estimating the worse – Applicant is going to build a 35 feet high x 50 feet wide Building (Property Line to  
23 Property Line); Audience reiterated the Planning Commission decision needs to be based on the Site Plan and  
24 Narrative provided by the Applicant. Audience interjected he has submitted the proposed maximum Footprint.  
25 Audience asked the Planning Commission if the Applicant decided to replace Units 6-9 with a 3-Story Complex  
26 wouldn't the Application need to come back for Planning Commission review. Lewis answered yes. Audience  
27 questioned if you allow exceptions to the DBZO then how is Protection of Coastal Headlines Area of Exceptional  
28 Resources achieved. Audience referred to the Geological Setback Recommendation for Setback (Cliff recession  
29 for the Subject Site, an average annual recession rate of 2.4 inches/year). Hageman closed the Public Hearing and  
30 called for a Motion.

31

32 Motion: Steinke moved to approve the Coastal Setback of 15 feet. Taunton seconded.

33

34 There was no discussion.

35

36 Vote: Motion passed.

37 Ayes: Hageman, Steinke, Taunton

38 Noes: Scopelleti, Leoni

39

40 The Planning Commission continued deliberations: Calculation of the Off-Street Parking Space Requirements for  
41 multiple Uses (i.e. tourist accommodation, wedding, convention, etc.). The Planning Commission concluded  
42 there needs to be a dedicated space with a dedicated purpose to be considered part of the equation. There was  
43 input from the Audience. Audience asked if the Record was Closed or Open. Hageman responded closed.  
44 Audience asked if the Record is going to remain Open (requested earlier in the Hearing). Hageman answered no  
45 and in addition explained the current stage of the Public Hearing. Hageman called for a Motion of approval.  
46 There was brief discussion regarding: Commercial C-1 Yard Setback Standards, 50 ft. is the maximum width of  
47 proposed Building Footprint, Floral Avenue width meets Fire District's typical 20 ft. requirement. Lewis  
48 recommended the following amendments to the Conditions of Approval: *Item 1. Building Permit (adding*  
49 *sentence) The Planning Commission shall review and approve the Final Design prior to the issuance of a*  
50 *Building Permit; (adding a new condition) Item 9. Parking A minimum of one Parking Space shall be provided for*

1 *each Guest Accommodation plus two Parking Spaces shall be provided for the Existing Manager's Unit.*  
2 Hageman called for a Motion.

3  
4 Motion: Steinke moved to approve Case File #1-CS-PC-12 (Coastal Shorelands, Geologic Hazard Report) and  
5 adopt the Conditions of Approval (Items 1. Thru 9.) as recommended and amended by the City Planner. Taunton  
6 seconded. Lewis confirmed the Motion included the amendments as he suggested. Hageman concurred and  
7 mentioned it does not include the design review.

8  
9 There was no discussion.

10  
11 Vote: Motion passed.

12 Ayes: Scopelleti, Hageman, Steinke, Taunton

13 Noes: Leoni

14  
15 It was the consensus of the Commission to direct Lewis to prepare the Findings, Conclusion and Final Order for  
16 Hageman's signature.

17  
18 RECESS: Hageman called for a short recess.

19  
20 Lewis explained Appeals of a Decision of the Planning Commission to an Audience Member (procedure, costs,  
21 etc). Discussion followed between the Audience Member and the Planning Commission.

22  
23 V. NEW BUSINESS

24 There was none.

25  
26 VI. UNFINISHED BUSINESS

27 Hageman reported on the Outdoor Warning and Public Alert System Project. Discussion ensued.

28  
29 VII. CITY COUNCIL LIAISON REPORT

30 There was none.

31  
32 VIII. PLANNER'S REPORT

33 Lewis reviewed the Planners Report (copy attached to the original of these Minutes). There was discussion  
34 regarding: Planning Commission Approval of the Stonebridge Planned Development and the new 2<sup>nd</sup> and 3<sup>rd</sup>  
35 level decks on Bay St. have been "Red Tagged" by the Lincoln County Building Official (no Building Permit;  
36 Setback issue).

37  
38 IX. PLANNING COMMISSION CONCERNS

39 The Planning Commission discussed the Public Hearing decision and re-appointed Roy Hageman as President  
40 and Steve Scopelleti as Vice-President.

41  
42 X. ADJOURN

43 There being no further business, the Meeting was adjourned at 9:30 P.M.

44  
45  
46  
47 \_\_\_\_\_  
48 Roy Hageman, President

49 \_\_\_\_\_  
50 Carla Duering, Recording Secretary