

1 Depoe Bay Planning Commission
2 Regular Meeting
3 Wednesday, August 9, 2023 – 6:00 PM
4 Depoe Bay City Hall

5
6 PRESENT: G. Steinke, E. Sherman, J. Faucett, J. Imbrie
7 ABSENT: R. Moreland
8 STAFF: City Planner K. Fox, Deputy City Recorder C. Duering

9
10 I. CALL MEETING TO ORDER

11
12 Faucett called the meeting to order and established a quorum at 6:00 PM.

13
14 II. ANNOUNCEMENTS

15
16 The City Planner announced 1) There are two (2) vacancies on the Planning Commission and
17 explained how to apply. He encouraged anyone who has an interest to contact him if they
18 have any questions; 2) A Joint City Council, Salmon Enhancement, and Planning Commission
19 Work Session will be held on September 21st, 6:00 PM. Attendees can participate in person or
20 via Zoom.

21
22 Sherman, Faucett, and Steinke confirmed that they will be available to attend the Work Session.

23
24 III. APPROVAL OF MINUTES

25
26 There were no minutes to approve.

27
28 IV. PUBLIC HEARINGS

29
30 Faucett announced that the following statement applies to the following public hearings.

31
32 The testimony and evidence must be directed toward the code sections, citations, and criteria
33 established by the Depoe Bay City Staff Report or other criteria in the code the party believes
34 to apply to the subject request. The failure to raise an issue accompanied by statements or
35 evidence sufficient to afford the Commission and the parties an opportunity to respond to the
36 issue precludes an appeal to the State Land Use Board of Appeals on that issue. Application
37 materials and other evidence relied upon by the applicant have been provided to the City and
38 have been made available to the public.

39
40 Faucett stated the procedures used for the public hearings heard tonight will be as follows: First,
41 there will be a Staff Report. The applicant will present his or her testimony. There will be testimony
42 from those in favor of the application. There will be testimony from those in opposition to the
43 application. There will be a rebuttal from the applicant. She will then ask if there is anyone
44 who would request that the record remain open for final additional written testimony. If none,
45 at that time the public hearing will be closed. There will be Commission deliberation and
46 decision. There will be no further input from the public during deliberations.
47

1 A. Case File: #2-GEO-PC-23

2 Applicants: Howard Sparks and Suzanne Cerven

3 Owners: Same as Applicants

4 Application: Geotechnical Report Review

5 Zone, Map, and Tax Lot: Residential R-2, 09-11-05-CD Tax Lot #09100

6 Location: Approximately 230 NE Williams Avenue

7
8 Faucett asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare.
9 There was none.

10
11 Faucett asked if there was any objection to any Planning Commissioner hearing the case. There
12 was none.

13
14 The City Planner summarized the Staff Report (copy attached to original of these minutes). No
15 written testimony was received.

16
17 There was no discussion.

18
19 Applicant Howard Sparks stated that he had nothing to add.

20
21 There were no questions for the applicant.

22
23 There was no testimony in favor or opposition to the application.

24
25 There was no rebuttal from the applicant.

26
27 There was no request to keep the record open.

28
29 The public hearing was closed, and the Commission entered deliberations.

30
31 Commissioner Imbrie apologized for what he was about to say. He read into the record the
32 following statement: *The Rapid Solid Solution (RSS) report for Williams Avenue is long on regional*
33 *information that is readily available to all and short on site-specific information. The landslide*
34 *hazard is probably the most important hazard to assess, and Rapid Soil Solution just states much*
35 *of the mountainous uplands contain near ubiquitous topography indicative of historic slope*
36 *failures. They further state that detailed landslide susceptibility mapping has not been*
37 *conducted within the local slopes. I don't believe that RSS conclusions are well supported*
38 *based on a sufficient subsurface study. The Plateau Geoscience Group (PGG) review does not*
39 *make conclusions regarding the accuracy of the RSS Report but rather makes their own*
40 *conclusions based on a site visit. This shows a lack of understanding of what their role is here,*
41 *and I am disappointed with both reports.*

42
43 Discussion followed regarding 1) Not accepting the reports as presented; 2) The City did not hire
44 an engineer to perform a peer review; 3) The report by RSS is over a year old and was not
45 prepared by a licensed geologist or certified engineering geologist; the applicant was advised
46 to provide a supplemental analysis; 4) City Staff has not implemented the peer review process;
47 5) Condition of Approval 3. *Geologist Certification, Inspection, and Monitoring Prior to issuance*
48 *of a building permit a certified engineering geologist shall provide a letter to the City stating*
49 *that final plans for site development are in conformance with the recommendations described*

1 in the May 9, 2022, Geotechnical Report and June 21, 2023, Engineering Geologic Review: 5)
2 The City Planner is trying to accommodate property owners by avoiding the necessity that new
3 reports be prepared by a different professional to meet the code requirements by offering them
4 the option to submit a supplemental peer review; 6) The PGG supplemental report addresses
5 the site-specific landslide hazard; 7) Amending Conditions of Approval 5. a. Please allow for up
6 to 48 hours notice for foundation inspections by a phone call to ~~RSS~~ PGG; Please allow up to 48
7 hours notice to call ~~RSS~~ for excavation inspection 5. e. Please allow 48-hour notice to call PGG
8 for subgrade inspections.

9
10 **Motion:** Imbrie moved to approve Case File #2-GEO-PC-23 (Geotechnical Report Review) and
11 adopt the Conditions of Approval (Items 1 thru 8) as prepared by the City Planner and amended
12 by the Planning Commission. Sherman seconded.

13
14 The City Planner clarified the Conditions of Approval 5. a., 5 b. and 5 e. will be amended as
15 discussed.

16
17 **Vote:** Motion passed.

18 **Ayes:** Steinke, Sherman, Faucett, Imbrie

19
20 B. Case File: #3-GEO-PC-23

21 Applicants: Cameron and Megan Vasquez

22 Owner: Same as Applicants

23 Application: Geotechnical Report Review

24 Zone, Map, and Tax Lot: Residential R-5PD, 09-11-05-DC Tax Lot #05400

25 Location: 173 NE Spring Avenue
26

27 There was no ex-parte contact, conflict of interest, or bias declared.

28
29 There was no objection to any Planning Commissioner hearing the case.

30
31 The City Planner summarized the Staff Report (copy attached to original of these minutes). No
32 written testimony was received. He noted that Plateau Geoscience Group provided a
33 supplemental review. The Commission may want to incorporate similar revisions to the
34 Conditions of Approval as discussed in the previous public hearing.

35
36 Applicant Cameron Vasquez stated that he had no comments.

37
38 There were no questions for the applicant.

39
40 There was no testimony in favor or opposition to the application.

41
42 There was no rebuttal from the applicant.

43
44 There was no request to keep the record open.

45
46 The public hearing was closed, and the Commission entered deliberations.

47
48 Discussion included 1) The Rapid Soil Solutions (RSS) report does not make any conclusions; 2)
49 The Plateau Geoscience Group (PGG) Report is adequate; 3) Preference for additional borings;

4) Deferring approval until conclusions are provided; 5) RSS report was prepared on February 1, 2023; 6) The 120-decision day is October 26, 2023.

Motion: Sherman moved to continue the Public Hearing to September 13, 2023. The applicant needs to address the omissions in the geotechnical report. The engineering firm needs to provide conclusions and construction observations. Imbrie seconded.

Vote: Motion passed.

Ayes: Sherman, Faucett, Imbrie, Steinke.

C. Case File: #1-PAR-PC-23

Applicant: Hills of Depoe Bay, LLC

Owner: Same as Applicant

Application: Partition

Zone, Map, and Tax Lot: Residential R-2PD, 09-11-05-00 Tax Lot #00100

Location: Northerly Terminus of NE Lillian Lane

Faucett asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare. There was none.

Faucett asked if there was any objection to any Planning Commissioner hearing the case. There was none.

The City Planner summarized the Staff Report (copy attached to original of these minutes). No written testimony was received.

Discussion followed regarding 1) The State permit requires that the future water tank be located on a single lot; 2) The other parcel will be for the development of future phases of the Depoe Hills Planned Development.

Chris van der Velde, Managing Partner of Depoe Hills, LLC testified that 1) The water reservoir is necessary for fire suppression; 2) They have been working with Brady Weidner Public Works Director and several engineering firms to confirm that the required storage capacity and gravity flows will be met; 3) Upon completion the reservoir will be dedicated to the City; 4) It will serve their development as well as future development at the north end of town.

There was no testimony in favor or opposition to the application.

There was no rebuttal from the applicant.

There was no request to keep the record open.

Motion: Sherman moved to approve Case File #1-PAR-PC-23 (Partition) and adopt the Conditions of Approval (Items 1 thru 4) as prepared by the City Planner. Steinke seconded.

Vote: Motion passed.

Ayes: Faucett, Imbrie, Steinke, Sherman

1 D. Case File: #1-PD-PC-23

2 Applicant: Hills of Depoe Bay, LLC

3 Owner: Same as Applicant

4 Application: Amendment to Planned Development

5 Zone, Map, and Tax Lot: Retail Commercial C-1PD, 09-11-05-BD Tax Lot #01200

6 Location: 1032 N Highway 101

7
8 Faucett asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare.
9 Imbrie declared bias.

10
11 Discussion followed regarding the rule of necessity.

12
13 Sherman read from the League of Oregon Cities Website the following: *Though rare, if a public*
14 *official is met with an actual conflict of interest and the public official's vote is necessary to meet*
15 *the minimum number of votes required for official action, the public official may vote. This is*
16 *known as the "Rule of Necessity." The public official must still announce the conflict and refrain*
17 *from any discussion but may participate in the vote required for official action by the governing*
18 *body. This provision does not apply in situations where there are insufficient votes because of a*
19 *member's absence. Rather, it applies where a quorum is lacking solely because members must*
20 *refrain from voting due to actual conflicts of interest. Members with actual conflicts may vote*
21 *only when it is impossible for the governing body to take official action, even if all members are*
22 *present. Public officials who wish to vote under the Rule of Necessity should discuss this issue with*
23 *their legal counsel prior to taking any action.*

24
25 In conclusion, it was determined that Imbrie would refrain from any discussion but would
26 participate in the vote.

27
28 Faucett asked if there was any objection to any Planning Commissioner hearing the case. There
29 was none.

30
31 The City Planner summarized the Staff Report (copy attached to original of these minutes). No
32 written testimony was received. He noted that a copy of his email exchange with the Planning
33 Commission President Judy Faucett has been distributed (copy attached to original of these
34 minutes).

35
36 Chris van der Velde, Managing Partner of Depoe Hills, LLC and Zach Garrard, Parametrix
37 Engineering testified 1) Purchased the property in February 2021; 2) The revised plan is designed
38 to preserve the wetland and heritage sites while keeping in mind the original approval; 3) The
39 proposed plan utilizes existing logging roads; 4) The northwest entry from Highway 101 and the
40 northeast entry from Lillian Lane have been slightly realigned; 5) Proposing to change the hotel
41 area to cottage/cabin style of lodging; 6) Proposing a traditional neighborhood; Creating a
42 cozy, fun, walkable community that would be a better fit in beautiful Depoe Bay; 7) Garrard is
43 working diligently with the Department of Environmental Quality (DEQ), U.S. Army Corps of
44 Engineers (USACE), and Oregon Department of State Lands (DSL); 8) The DSL permit approval
45 is anticipated to be within the October 2023 to February 2024 timeframe.

46
47 Discussion followed regarding 1) The Water Management and Wetland Study Plan (page 16 of
48 the applicant's submittal); 2) The 2018 Approved Master Plan – Reece and Associates (page 8
49 of the applicant's submittal).

1 Faucett called for testimony in favor of the application. There was none.

3 Faucett called for testimony in opposition to the application.

5 Fran Recht testified that 1) Very pleased to see the revised plan; 2) Significant improvement to
6 avoid the archeological and wetland sites; disappointed that more can't be done; 3) Parking
7 lots are proposed to be over natural wetlands; 4) Concerned about tree retention and
8 preservation of natural vegetation; 5) The development is too dense; 6) The proposed open
9 space is still pretty minimal and includes roadways; 7) Planned developments are supposed to
10 provide additional benefits and that wasn't applied at the time the original Master Plan was
11 approved; 8) Recommended the applicant create physical barriers or relocate detention
12 ponds to deter pedestrian crossing.

14 In conclusion, she stated it is a nicer, more attractive design, however, more could be done: 1)
15 Retention of trees along Highway 101; 2) Screening some of the commercial development to
16 lessen the impact, 3) Reducing the number of units to not impact the wetlands north of Baline
17 Drive and possibly relocating Shoreline Drive unless due to topography the grade would be too
18 steep; 4) Prefer natural vegetated stormwater gardens versus stormwater detention ponds. 5)
19 They have a creative team, and they can do better at avoiding wetlands; 6) Would rather have
20 wetlands here, not in some mitigation bank in some other community.

22 Chris van der Velde and Zach Garrard addressed Recht's concerns regarding trees, wetland
23 preservation and enhancement, and parking 1) The water tower partition plat has identified the
24 utilities to be placed in two (2) trenches instead of three (3); 2) 30-40 feet of the standing trees
25 at the top (600 feet) of the property have been retained; 3) They value trees and will maintain
26 as many trees as feasible along Highway 101; 4) Wetlands are a natural water filtration and
27 detention pond; 5) As the property is developed stormwater runoff needs to be released in a
28 way that will not adversely affect the existing wetlands and surrounding vegetation; 6) Those
29 areas can be replanted with natural vegetation designed to be an aesthetically pleasing
30 feature and not just a facility; 7) Ultimately, they need to be constructed to contain the water
31 and release it at a flow rate that is equal or less than what is existing; 8) Enhance those areas
32 with a viewing section or meandering path; 9) Use of non-toxic pesticides; 10) Collaborated with
33 WinterCreek Restoration and the National Audubon Society when developing Tetherow in Bend;
34 11) Parking is designed to be the least obtrusive as possible while still meeting the Depoe Bay
35 Zoning requirements,

37 In conclusion, they stated 1) The goal is to include more affordable long-term rental housing in
38 the form of attached or detached smaller cottages; 2) As part of their mitigation with USACE
39 they will be removing invasive species and replanting with native species so the transition from
40 urban to rural is reestablished.

42 Discussion followed regarding 1) The Water Management and Wetland Study Plan (page 16 of
43 the applicant's submittal); 2) The wetlands mitigation bank; 3) The proposed design addresses
44 stormwater management while still providing an open space vegetated area.

46 There was no request to keep the record open.

48 Discussion included 1) The revised plan is a substantial improvement over the 2018 plan; 2)
49 Concern regarding paving over wetlands; 3) Would like to see photographs of the other

1 stormwater management areas as described by the developer; 4) Preservation of trees,
2 restoration of native vegetation, and removal of invasive species; 5) Finding a balance
3 between development, meeting zoning requirements, and reduction of adverse impacts; 6)
4 Broadband and wireless utilities; 7) The riparian mitigation report.

5
6 **Motion:** Sherman moved to approve Case File #1-PD-PC-23 (Amendment to Planned
7 Development) and adopt the Conditions of Approval (Items 1 thru 16) as prepared by the City
8 Planner and including the typographical corrections and issues noted in the email exchange
9 between the Council President and City Planner. Faucett seconded.

10
11 **Vote:** Motion passed.

12 **Ayes:** Steinke, Sherman, Faucett

13 **Abstain:** Imbrie
14

15 Discussion followed regarding distributing the applicant's photographs of other stormwater
16 management areas at the next Planning Commission meeting.
17

18 Fran Recht suggested that the sensitive archeological site(s) not be labeled but rather be
19 identified as dedicated open space(s).
20

21 The City Planner stated that 1) He will work with the applicant to get revised exhibits for the
22 public record; 2) These types of resources are not typically public information.
23

24 The applicant will work with the University of Oregon regarding revised language. The City
25 Planner will contact the State Historic Preservation Office regarding their suggestions.
26

27 V. UNFINISHED BUSINESS
28

29 There was none.
30

31 VI. NEW BUSINESS
32

33 A. Case File: #4-C1-PC-23

34 Applicant: Harry Napier

35 Owner: Same as Applicant

36 Application: Building Permit/Change of Use

37 Zone: Retail Commercial C-1

38 Map, Tax Lot: 09-11-08-BD Tax Lots #00900 and #01000

39 Location: 411 S Highway 101
40

41 The City Planner summarized the Staff Report (copy attached to original of these minutes). No
42 written testimony was received.
43

44 Discussion followed regarding 1) Retail is an outright use in the C-1 Zone; 2) Some modifications
45 have been made to the structure before the applicant's ownership i.e., pump canopy; the
46 applicant can speak to any demolition/improvements since their purchase of the property; 3)
47 The primary improvements will be adding exterior fencing, two (2) parking spaces; 4) Removal
48 of the former underground fuel tanks deferred to the applicant.
49

1 The applicant Harry Napier provided comments including 1) He moved to Depoe Bay in
2 October of last year and loves the area; 2) In researching the property he found that the building
3 was built in 1930 and is made of tabby block which is mortar mixed with seashells; it is the only
4 structure of this kind left on the west coast and he wants to preserve it; 3) He plans to restore it
5 to a 1930's Richfield gas station; install three (3) blue and yellow Richfield pumps; and rebuild
6 the canopy; 4) The three (3) feet high fence with two (2) gates is necessary to prevent someone
7 from stealing the expensive 1930's retrofit pumps; 5) There will be no employees; 6) As a former
8 California auto repair shop owner for over 30-years he intends to offer his services to help out
9 folks who are financially challenged and can't afford minor auto repair work.

10
11 Discussion followed regarding 1) In 1988 the fuel tanks were sealed and contained, and the soil
12 tested and certified; 2) No fuel will be dispensed from the antique pumps; 3) There will be a
13 concrete pad in the front of the building with an island for the three (3) pumps; The remainder
14 of the property will be asphalt; 4) At the rear of the property shore pine trees have been
15 removed and a retaining wall will be constructed.

16
17 There were no comments in favor of or in opposition to the application.

18
19 Discussion included 1) It's nice to see the restoration of an old building; 2) Unfamiliarity with the
20 practice of mixing mortar with seashells.

21
22 **Motion:** Steinke moved to approve Case File #4-C1-PC-23 (Building Permit/Change of Use) and
23 adopt the Conditions of Approval (Items 1 thru 6) as prepared by the City Planner. Sherman
24 seconded.

25
26 **Vote:** Motion passed.

27 **Ayes:** Steinke, Sherman, Faucett, Imbrie

28
29 B. "Quality of Life" Code Amendment: Signs

30
31 The City Planner summarized his memorandum (copy attached to original of these minutes).

32
33 Discussion followed regarding 1) The difference between viewshed versus view; 2) Per Wikipedia,
34 a *viewshed is the geographical area that is visible from a location. It includes all surrounding*
35 *points that are in line-of-sight with that location and excludes points that are beyond the horizon*
36 *or obstructed by terrain and other features (e.g., buildings, trees); 3) Primary changes would*
37 *include: Prohibiting A-frame, banner, and feather signs in non-residential zones and eliminating*
38 *any cross-references; City Planner's action on sign permit applications is appealable directly to*
39 *the Planning Commission; and adding the language addressing view shed in the harbor area.*

40
41 Faucett encouraged the Commissioners and the public to contact the City Planner if they have
42 any questions or additional comments.

VII. PUBLIC COMMENTS – ITEMS NOT ON TONIGHT'S AGENDA

Chris van der Velde stated that he was a little bit taken aback by an internet company that recently insisted rather aggressively that they be allowed to install conduits in the streets because they would be turned over to the City in the future. Five (5) years ago when the infrastructure was being constructed WAVE was the only franchise. Is this a requirement?

The City Planner responded that he needed to discuss the matter with the Public Works Director Brady Weidner.

City staff offered to provide a copy of the City's franchise agreement with Spectrum.

VIII. CITY COUNCIL LIAISON REPORT

Sherman reported on the August 8, 2023, City Council meeting: 1) Depoe Bay Salmon Bake (Valerie Sovern); 2) First Reading - Harbor Ordinance Amendment – Ordinance 340-23; 3) First Reading – Harbor Commission Ordinance – Ordinance 341-23.

IX. CITY PLANNER AND CITY RECORDER REPORTS

The City Planner summarized the August 2023, Land Use and Building Permit Activity Report (copy attached to the original of these minutes). He announced that the Planning Commission's decision on the Inn at Arch Rock Sign Permit and Variance Request was appealed today, and the public hearing will be at the City Council September 5, 2023, meeting. He anticipates one (1) or two (2) public hearings, and Lighting and Noise "Quality of Life" Code Amendments to be on the September 13, 2023, Planning Commission agenda.

X. PLANNING COMMISSION CONCERNS

Steinke: I am frustrated with the issue of how Spectrum came into the community and the way the City Council handled the matter. It is my understanding that Spectrum approached the City Council a couple of years ago. I am disappointed that there was no contact with the Planning Commission if only to get our thoughts on the matter and the implications it has had on the community at large. Furthermore, a private community like Little Whale Cove (LWC) was never alerted until Spectrum came to us directly. It has not been a pleasant experience. Spectrum refused to meet with the community, to make any kind of presentation, to provide rates, or any other details. No time to consult with our lawyers about their proposal and any implications. Can we as a Planning Commission address this? I want to express that there needs to be better communication in the future. The whole community needs to be apprised and there should be a public hearing so the Council can receive public input. We have been so long with single providers and that is going to change in the future. I am concerned. The situation created a lot of discomfort in LWC and has not been a pleasant experience. I'm not sure that the result will be any better service.

Discussion followed regarding 1) Internet speeds; 2) Fiber optic; and 3) LWC expressing their displeasure and concerns directly to the City Council.

Sherman: None. Not a fan of Spectrum as a representative of organized labor.

Faucett: I have a concern about the Bay Street parking lot. If the fence is permanent the entrance needs to be reconfigured.

The City Planner responded that a survey was done by an adjacent property owner, and they chose to fence their property. The City has recently restriped the remaining parking lot which may not be in conformance with the Depoe Bay Zoning Code or Oregon Fire Code.

Discussion followed regarding the Oregon Department of Transportation Small Cities Allotment (SCA) and Oregon Department of State Lands (DLCD) grant programs.

Imbrie: I am going to weigh in on the non-jurisdictional debate on internet companies. I have a building in Garibaldi, and I think Spectrum has been very good. I have a CenturyLink hub 10 feet away and was quoted thousands of dollars to connect. It is a mystery to me all these internet and cable companies. My personal preference is Starlink.

The City Planner stated he has Pioneer Connect and he loves it.

Steinke: In our community, we have a lot of people that come from other parts of the country, and they have dealt with Spectrum before, and they have nothing good to say about them. Very poor service, poor customer relations, nothing positive. It was Spectrum's attitude that we should be all gung-ho that they are here and their unwillingness to even engage with our community. They didn't want to "meet with a bunch of angry homeowners."

XI. ADJOURN

There being no further business, the meeting was adjourned at 8:27 PM.


Judy Faucett, President


Carla Duering, Deputy City Recorder