

MINUTES

**CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444
MONDAY, DECEMBER 11, 2006
REGULAR MEETING: 6:30 P.M.
PUBLIC HEARING: 6:45 P.M.**

CALLED TO ORDER BY MAYOR POPOFF AT 6:30 P.M.

THE PLEDGE OF ALLEGIANCE:

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
Mayor Karl Popoff	<u> X </u>	<u> </u>
Council Position #1 Sue Johnson	<u> X </u>	<u> </u>
Council Position #2 Don Flynn	<u> X </u>	<u> </u>
Council Position #3 Mark Coltrane	<u> X </u>	<u> </u>
Council Position #4 Michele Martin	<u> X </u>	<u> </u>
Council Position #5 David Alexander	<u> X </u>	<u> </u>
City Administrator Bob Bare	<u> X </u>	<u> </u>
City Planner Jodi Ferrin	<u> X </u>	<u> </u>

****NOTE:** Comments and participation from the audience shall be limited to 5 minutes without redundancy.

SPECIAL ORDERS OF BUSINESS:

MAYOR AND COUNCIL AWARD - Margie Roberts for her volunteerism. Due to a family emergency, Roberts was unable to attend-it will be presented at the next Council meeting.

CONSENT CALENDAR: (A)

- A. Approval of Council Minutes of 11/13/06 & 12/4/06.
- B. Review of bills paid in the amount of \$104,184.89.

MOTION: Johnson moved to approve the Consent Calendar as presented, second by Flynn. VOTE: All Ayes Johnson, Flynn, Coltrane, Martin and Alexander voted "AYE".

PUBLIC HEARINGS:

HEAR AN APPEAL OF A PLANNING COMMISSION DENIAL (B)

CONDITIONAL USE PERMIT TO OPERATE A VACATION RENTAL DWELLING WITHIN AN EXISTING SING-FAMILY DWELLING. The subject parcel is assessor map: 36-14-31 BB Tax Lot # 1603. John Upshur owns the subject property.

OPEN PUBLIC HEARING: Popoff stated: I will now open the public hearing at 6:33 p.m. Jodi Ferrin, our city planner, will give a brief synopsis regarding the history of this matter. David Pratt, County Planning Director is also present. Public Comments, limited to 5 minutes per person, will be taken following the synopsis and any questions the council may have.

PLANNER: Ferrin gave the synopsis regarding the background of the Upshur Dwelling from 7/03 through 11/06 (B). (NOTE: The entire bound document is an inch thick and is secured to the back of the minutes book)

THE OFFICIAL PUBLIC HEARING MINUTES ARE ATTACHED TO THESE MINUTES AS EXHIBIT C AND ARE CONSIDERED A PART OF THESE MINUTES

POPOFF CLOSED THE PUBLIC HEARING AT:7:25 P.M.

COUNCIL DECISION ON APPEAL:

MOTION: Johnson moved to deny the Upshur appeal # GBA-0601, second by Flynn. VOTE: All Ayes Johnson, Flynn, Coltrane, Martin and Alexander voted "AYE".`

Break called until 7:33 P.M.

ORDINANCES AND RESOLUTIONS:

RESOLUTION R0607-6 (D)

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO SIGN ALL DOCUMENTS RELATED TO THE FUNDING OF THE WASTEWATER FACILITIES PLANNING PROJECT, AUTHORIZING A LOAN UP TO \$218,500 FROM DEQ AND AUTHORIZING A REQUIRED LOAN RESERVE

MOTION: Johnson moved to approve Resolution R0607-6, second by Flynn. VOTE: 5 AYES Johnson, Flynn, Coltrane, Martin and Alexander voted "AYE".

RESOLUTION R0607-7 (E)

A RESOLUTION ACCEPTING \$24,935. IN GRANT FUNDS FROM THE JOHN G. ATKINS FOUNDATION INC., AND AUTHORIZING THE APPROPRIATIONS IN THE SAME AMOUNT

MOTION: Alexander moved to approve Resolution R0607-7, second by Martin.

Johnson-Yes, I will vote to accept it because we have to do so to get our books straightened out. I'm qualifying my vote and I want it on record that I am opposed to accepting the money because of the way it was obtained, but my vote will be YES.

Flynn-My feelings in this matter are very strong (couldn't hear) for everything I stand for, everything I felt as a law enforcement officer over the years comes to the forefront. I have some very serious, very heartfelt concerns about the way this whole situation was handled and my vote will be No.

Coltrane-I would have to agree with Don (Flynn). I've gone through this several times and the more I go through it, the more anxiety it actually causes me, from almost every aspect of the proposal. If what I have heard and read here is accurate, I am just really dismayed by the entire thing. I also agree with Sue (Johnson), when something like this comes about, it's "danged if you do and dangd if you don't". On one hand, the future is important to me, what is going to be happening here probably long after I had gone is important to me. Maybe this issue will be relevant then and maybe it won't but I have to make a decision tonight that serves today and also the future. I'm not inclined to make a decision that will prohibit something from occurring in the future that may be good for the city and also, at the same time, I feel just a touch of blackmail tonight about what is going on and I just don't like that at all. If I can leave any kind of legacy for doing this job, it would be that I did carefully consider both now and the future for this city. I would be inclined to vote for it, simply based on the future and to swallow one bitter pill about the present. I think I'm big enough to do that. My ears are turning red, I can tell because I'm angry.

Johnson-You said it like I really believe it. I feel like to get our books in order, we kind of have to do it.

Martin-I'd like to say thank you very much to our city administrator for getting this grant to help our police department in a time of need. The ATV will be a very helpful tool when there are beach fires and things that go on down there that a lot of us are unaware of. This may save a life someday. I'd just like to thank our city administrator for the work that he did in getting this grant and our police chief and all of our police force. I thank you very much and my vote will be yes.

Alexander-As with Councilors Johnson, Flynn and Coltrane, I too have some problems with the way this particular grant application was put forth and the way it was handled. However, when I was in Portland over the weekend, I did speak with 3 persons of my acquaintance who have extensive grant writing experience and consistently, they informed me that the absolute worst thing we could do, in terms of getting any future grants from almost anybody, would be to refuse to accept, or re-direct this particular grant. I think there are some things we need to do with our policy to see if we can't systemically prevent the kinds of problems that this particular grant had from occurring again and we will address that a little later. On this particular grant, for the reasons that I have stated, I will be voting for it.

VOTE ON ALEXANDER'S MOTION: 4 AYES 1 NAY Councilors Johnson, Coltrane, Martin and Alexander voted "AYE". Councilor Flynn voted "NAY".

Arlene DuMond-From the audience-29800 Hound Dog Road-I am a member of the budget committee. I received a communication about this matter and replied to the communication, to every member of the budget committee and also to members of the city council. This came up at our budget committee meeting and we knew this grant was available and we voted it down 9-1 because it seemed to be a frill kind of equipment when there were so many other things that had been requested by the police department that had to do with equipment, overtime, etc. (tape was turned over and some of her testimony was lost) ...The money being used for this grant. I don't think you've given due consideration to the fact that it had been denied once, was re-instated and the delegation of funds was at the discretion and direction of the chief of police, rather than having it be a matter of consensus for the budget committee. That's what I wanted to be on record as stating. (Popoff asked for a repeat of the last part of DuMond's testimony) I'm stating that it would appear that the chief of police, in conjunction with the donor gave a list of things that would be desirable, without consideration to the extended costs and to the fact that it had been voted down by the budget committee on a 9-1 basis in the previous 9 months.

MISCELLANEOUS ITEMS: (Includes policy discussion & determination.

ACCEPT OFFICIAL CANVASS OF VOTES CAST IN THE 11/7/06 GENERAL ELECTION (F)

Popoff read the number of votes received for Council position # 1-Johnson 580 votes: Council position # 3-Coltrane 615 votes: Council position # 5-Alexander 574 votes.

MOTION: Johnson moved to accept the official canvass of votes cast in the 11/7/06 general election, second by Flynn, VOTE: 5 AYES Johnson, Flynn, Coltrane, Martin and Alexander voted "AYE".

POLICY - APPLYING FOR GRANTS (G)

Popoff stated: On March 12, 2001, the following motion setting policy was adopted: BEFORE ANYONE IN THE CITY APPLIES FOR A GRANT, IT IS TO COME BEFORE THE COUNCIL FOR APPROVAL. This motion passed with 4 AYES and 1 ABSENT. This policy was put into place as a result of "strings" and "costs" associated with some grants. The administrator is requesting a change in this policy.

Bare-Quite frankly, it wasn't me that had this placed on the agenda-there were a couple of council members that discussed this with me. After what happened with the situation where you just passed the grant for \$24,935, I did have discussions with several council members, if not all of them, about the policy that I was unaware of. Actually, to my surprise, several council members were unaware of it. There was a discussion that took place about whether it was feasible to continue with that policy or not feasible or changing it so that if there were matching funds involved or something that would cost the city some money, to have that just focused upon. That's why this is on the agenda.

Popoff-stated Alexander has given everyone a copy of his proposal (G-1) for the applying of grants.

MOTION: Flynn moved to uphold and continue with the policy we currently have in place, second by Johnson.

Discussion:

Martin: There is a huge discussion because it's the "beat" to who wants to make the motion first. So what if I would say "I move to change the current policy" if I could have said the motion prior to Sue (Johnson) making her motion to leave it the same.

Johnson: I didn't make the motion to leave it the same Michele.

Martin: OK, I apologize then. So, can you tell me again what???? (couldn't hear) I thought you had made the motion to continue with the policy the way it is right now.

Popoff-She (Johnson) seconded it, Councilor Flynn made the motion.

Martin-Ok, excuse me. So say that I didn't quite get my motion in before Councilor Flynn got his motion in there because my motion would be to move to change the current policy to the one that David (Alexander) has, so we have definitely mixed emotions on where we want this policy to go.

Popoff-Before we go any further on that-once again, that motion takes precedence. If it fails, then of course another motion can be made, because you can't have 2 motions on the table at the exactly the same time.

Martin-I know, but you've kind of put us in a spot here. It's a matter of who is going to beat who to the motion first.

Popoff-Councilor Flynn made the motion first and that's what I have to accept.

Martin-OK, I just want to make that for the record then.

Alexander-The mayor's ruling is within Roberts Rules of Order and it is the correct ruling.

Johnson-I would be happy to discuss why I would vote for that instead of yours, David. I think you've given this some good thought and a good idea but it comes right down to almost the same that as we have. To me, because you use the word "significant" for instance-maybe significant doesn't mean the same to you as it does to me. Why muddy the waters? Why not leave it a straight policy with no loopholes? That would be my question to your proposal.

Alexander-What I seek in this motion, is to provide some oversight to the policy. One of the things that I noticed and I want to address this systemically to avoid any emotional baggage. One of the problems that I noted in this entire situation was that there was a lack of understanding of what the policy was, not only with our city administrator, who is still relatively new to the position, but myself and several other councilors. The policy was there, but I was unaware of

it. What I am seeking to do with this motion is to centralize oversight to a single individual. If you will note - in the motion I've designated that particular individual to be the city administrator, whoever he or she may be at the time. And even those that do not require matching funds or entail significant costs, need to be brought to the attention of the council to basically keep us in the loop. If it does require significant costs, which is something that can be determined in the first part of the motion when it is brought to us for informal review, we can say at that point "no, this entails significant costs, in our opinion" and bring it to a vote. If it provides for matching funds, it is an automatic vote. But it gives us a single individual to provide the oversight and consistent focal point of any of the grant processes in the future. That's what I was trying to address. I was trying to look at how this system could be tightened up to provide a central entity that we can go to with any grant that the city or any city department head or city ???? (couldn't hear) seeks to apply for and say "Mr. or Mrs. Administrator - what is going on here?"

Johnson-What has happened here, the grant of which we are speaking-there is no match. What has just happened, tells me exactly what is wrong with your proposal. There are, to me, significant expenses. Maybe not this year, but next year and following years, that are not going to be handled by a grant, as we know right now. And there will be expenses on this one, even this year, that aren't handled by a grant, the training, insurance, maintenance, gas, tires, everything else. So why are you putting loopholes in there? That's what it looks like to me. Why not have one policy for all grants, it's that simple. I've seen it both ways. This has been working fine.

Alexander-I didn't see this as a loophole as much as I saw it as a "tightening". In the grant for \$24K, I didn't hear about it until after it had been applied for, accepted and received. With this policy in place, any proposal that comes to the city administrator, we're automatically informed of at that time. (Johnson said that is already the way it is supposed to be) The policy, as it exists, let it slip through the cracks.

Johnson-No, the policy didn't let it slip, David. The policy is very short and sweet. It says "any grants by any department" - that's pretty tight. Our policy was ignored.

Martin-It wasn't ignored. It wasn't even in the handbook. That was not in our handbook that was given out to us. I've read it-it isn't in there.

Popoff-It was an oversight, it was part of policy, unfortunately, and I'll be the first to admit this myself-I had forgotten about it as well. It was five years ago, many things have passed this desk and around this council during that time. We've had considerable council change. I am not going to make any excuses for my ignorance or my forgetfulness but nevertheless, I forgot as well. The point is this-we have a motion on the table and if the discussion is through, let's go ahead and vote on it.

Coltrane asked for the motion to be re-read.

Flynn-I move to uphold and continue with the policy we currently have in place.

Johnson, Flynn, Coltrane and Alexander voted "AYE", Martin voted "NAY". VOTE 4 AYES 1 NAY

Alexander-I move this policy be made a part of the handbook and also be given to each councilor and the city administrator and every department head, second by Johnson. Johnson, Flynn, Coltrane, Martin and Alexander voted "AYE". VOTE 5 AYES

ALTERNATIVE ENERGY SOURCES (wind power) GRANT (H)
Approval for Administrator to proceed with grant application
Administrator Bare will give a report

BARE-I was fascinated at the potential of having an alternative energy becoming a part of our new wastewater treatment facility. This is something that I happen to have seen at another community that I once managed, and also have seen in California where a business has actually operated 24/7 on wind power in lieu of electricity. I know I have talked to each one of the councilors here and gone over my thoughts on it and I've received your input. With the potential of the new wastewater treatment facility coming on board - and I know I just signed a check last week for about \$7,500 to Coos Curry Electric. Over the entire useful life of the new facility, this could save this city hundreds of thousands of dollars in energy costs. What makes it feasible to me is that I've talked to Senator Smith's office, Department of Energy, and other entities that are overwhelming in support of something of this nature here in Gold Beach and actually on the coast.

I think it is a feasible thing and I would like the council to let me know if they support it and if so, I'm going to pursue it as aggressively as I can.

Johnson-I would like to say that I am in full support of it. I still expect our grant policy to be followed. We can get three people here in an hour if we have to. I'm fully confident of your doing whatever needs to be done to get this going.

MOTION: Alexander-I move to grant approval for the administrator to proceed with the grant application for alternative energy sources, second by Martin.

Johnson-Now, is this a blanket approval for all grants involved with this?

Popoff-This would, once again, fall under the auspicious of the council approving those grants.

Johnson-That's what I wanted to be sure of because the motion says "move to grant approval for the administrator to proceed with the grant application for alternative energy sources". To me, that could be tens of grants. There's probably all kinds of money out there.

Alexander-Should we amend the motion? What do you need to get going with?

Popoff-I don't think that we need to do that. To tell you the truth, we are already covered by the last vote that was taken. What we are doing is basically giving the city administrator our blessings to go out and pursue this aggressively with our oversight and that would be considered as far as grants or anything along those lines.

Johnson-Yes, I want him to be able to look for the grants but before one is applied for, or as it is, I think we need to know about it. I want to know what is going on in this city. That's another thing-I had no idea what was going on-it was done all wrong. It was done against policy, there were all kinds of things wrong. The money came in and it was spent, it never even went through our books, now we're having to do things to get that fixed. I don't want that happening.

Popoff-We have taken a vote to leave the policy as it currently stands, that vote was upheld. Now we've also had

another motion that it be a part of the manual and whatever, so we have that taken care of. That motion was also unanimously voted upon. As far as I can see, we are pretty much covered. We shouldn't have any problems with that. That is policy.

Johnson-My question still is: we are motioning to grant approval for our administrator to proceed with the grant application for alternative energy. I want to know what is in that grant application before we give him permission to apply. That's what I'm trying to say, such as our policy demands. We're granting him permission to do it, in this motion, the way it reads, and I don't want to do that without knowing what's in the grant, what it's for, there could be a match, there could be all kinds of things. I want to see it before we give him approval for the grant, not for the project. I want to give him permission to go for the project hard and heavy, but before any grants are applied for, I want to know what they are, just like our policy demands. Am I being clear on what I am saying and what I think the motion is saying?

Popoff-Yes I do and I'm going to ask the administrator-you fully understand what Councilor Johnson is getting across, correct (Bare-yes, I do) and you also understand that any grant applicants and what have you, the council must see and approve before actually being submitted (Bare-yes).

Johnson-We'll be glad, I'm sure, to OK them if they don't require great big match. That's what our policy demands and that's what I want to see.

Alexander-I just want to say, for the record, that this is the right thing to do at the right moment in time to do it. I am unequivocally supportive of this.

VOTE: Johnson, Flynn, Coltrane, Martin and Alexander voted "AYE". VOTE 5 AYES

CITY ADMINISTRATOR'S REPORT:

Bare-Thanked Luan Merkley for all the work she did in decorating the lobby. It's beautiful. It's the prettiest office environment I've worked in for the Christmas Holidays. All agreed.

As far as the alternative energy aspects of our wastewater treatment project, I think I've already got letters of support pending and it was based on the vote of this council. Senator

Smith's office, League of Oregon Cities, hopefully, the Curry County Economic Development Department, Department of Energy, the renewable energy office and the Bonneville Environmental Foundation. Since there was an affirmative vote here, I'll get right on it to get support from the governor's office, Congressman DeFazio and the Department of Environmental Quality. I think we'll have them all on board. It's an exciting project.

MAYOR AND COUNCIL COMMENTS:

COUNCILORS:

Sue Johnson-Take notice of the very unique special Christmas decoration in our town-it's that old truck sitting down there by the old apartments that were recently remodeled. It has Christmas lights all over it.

Mark Coltrane-Encouraged people to shop local-it's amazing what you'll find right here. I'd like each of us to reflect not just on Gold Beach but those people that are serving overseas on our behalf, to give them some consideration and thoughts during the holidays. Not to depress but to lift the spirits a little. Council all agreed.

Michele Martin-Thanked again, our city administrator for doing such an outstanding job on such short hours that he has during the week to work with. I echo what Mark just said. I wish everyone a Merry Christmas, drive safely, eat a lot and be merry, don't drink and drive.

David Alexander-Echoed the best wishes for a holiday season to everyone. Please don't drink and drive.

MAYOR-Karl Popoff-Thanked Milt Walker for operating the video camera. It is greatly appreciated. Popoff also stated "I want to thank each and every councilor for the professional way you conducted yourselves, which I come to expect each and every time from you and you've never let me down".

On behalf of the city, I issue a real note of condolences to the Kim family. That was such a tragedy. I'm very sorry that had to happen. Ted Watkins, Biscuit Building, has a huge card for Mrs. Kim, if you haven't had a chance to sign it, please stop by and do so.

Johnson-Should be a big card sent to the Forest Service and Bureau of Land Management to block those roads off.

Popoff-On behalf of myself, the council, staff, everyone connected with the city, we wish everyone a very Merry Christmas and a Happy New Year.

CITIZEN COMMENTS:

Mayor-if anyone wishes to add an item for Council consideration to the agenda, you may present it but the request requires a majority concurrence of the members present to be so added. Decisions on added agenda items that were not advertised on the agenda could be challenged.

Jim Freedman (from the audience) citizen and taxpayer-I've mentioned this before, I've attended the sewer plant meetings. You guys have another source of energy that is free, it methane, I have seen sewer treatment plants that run themselves on the methane gas that is produced from the sewer. I've seen cities that sell the methane. I think this community could generate electricity from the methane if we could talk the city administrator into going after methane generator, we could get free energy to heat this building and heat the schools and stuff just from the wastewater. It's already done in other communities. I'd just like to keep bringing that up.

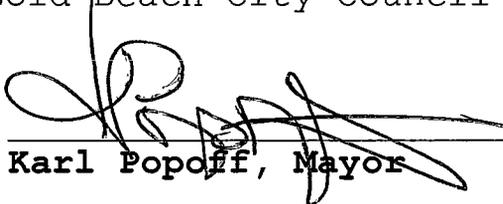
ANNOUNCEMENTS:

The next regular meeting for the Gold Beach City Council is scheduled for Monday evening, January 8, 2007 in the Council Chambers of City Hall, 29592 Ellensburg Ave., at 6:30 P.M.

ADJOURNED at 8:17 P.M.

The location of the hearing/meeting is accessible to the disabled. Advance notice is requested if special accommodations are needed. Call (541) 247-7029 so that appropriate assistance can be provided. The City of Gold Beach is an affirmative action EEOE and complies with section 504 of the rehab act of 1973. Complaints of Discrimination should be sent to: USDA, Director, Office of Civil Rights, Washington, D.C. 20250-9419

Approved by the Gold Beach City Council on January 8, 2007.



Karl Popoff, Mayor

ATTEST:


Robert Bare, City Administrator

**CITY OF GOLD BEACH CITY COUNCIL HEARING
DECEMBER 11, 2006
GBA-0601 AN APPEAL OF THE PLANNING COMMISSION DENIAL OF
APPLICATION GBC-0601 FOR A VACATION RENTAL DWELLING
IN A RESIDENTIAL (1-R) ZONE**

Present: Mayor Karl Popoff, Councilor Sue Johnson, Councilor Don Flynn, Councilor Mark Coltrane, Councilor Michele Martin, Councilor David Alexander
Staff: Curry County Planning Director Dave Pratt, Associate Planner Jodi Ferrin

Mayor Karl Popoff opened the public hearing at 6:33 PM and explained the nature of the application. The hearing was an appeal of a Planning Commission denial of a request for a conditional use permit to operate a vacation rental dwelling in an existing single-family dwelling on assessor map 3614-31BB tax lot 1603, owned by John Upshur. Popoff introduced county planners David Pratt and Jodi Ferrin (the county provides contract planning services to the City of Gold Beach.) Popoff stated the order of the testimony: staff would present history, the applicant Upshur would be next, persons signed up to testified would follow. Popoff said he would like to hold testimony to five (5) minutes per person. He said Councilor Johnson would keep time. Popoff said he wanted to conduct the hearing quickly and fairly. He asked everyone to treat each other with respect. Popoff requested Ferrin to present her staff report.

Ferrin said the hearing was a quasi-judicial hearing that could be appealed to the Land Use Board of Appeals (LUBA.) Ferrin said they wanted to ensure that procedurally everything was covered. Pratt introduced himself. He stated he would like to enter the staff report dated December 11th that came with the council packets into the record, its attachments as well as the complete files that were generated as a result of the case. Pratt pointed out that the decision reached by the City Council was appealable to LUBA if filed within twenty-one (21) days of the final decision.

Ferrin stated that she would not read all of the report before the members due to the volume of materials and said she hoped everyone had had the opportunity to review the report. Ferrin pointed to the stack of file folders on the table and said the folders comprised all the material related to the matter before them. In order to help them digest the material, Ferrin said she had pulled the most relevant items: the staff report used in the Planning Commission hearing, a copy of the final order, and correspondence between staff and the applicant. The yellow pages at the front of the council booklets have a chronology starting with the first violation investigation in 2003 to the present. Ferrin stated the applicable criteria for the record.

Ferrin said the original application denied by the Planning Commission had been submitted to resolve a zoning violation of operating a vacation rental dwelling without a valid conditional use permit. The applicant previously had a permit that expired on January 30, 2006 without a request for renewal of the permit. Prior to the expiration the Planning Commission had initiated revocation proceedings against the applicant last year about this same time due to non-compliance with the previous conditions of approval. Ferrin said the City had never had that happen before. As a result, there was a lot of going back and forth between staff and the City Attorney to ensure that the Final Order was correct. By the time the final order was officially

signed, the permit had actually expired. Technically, the Planning Commission had voted to revoke the permit but it expired prior to that taking affect. Either way, Ferrin stated there was no valid permit after January 30, 2006.

It was brought to staff's attention that despite the expiration of the permit, the dwelling was still being offered and advertised as a vacation rental. Ferrin said she again initiated violation proceedings and eventually Upshur submitted an application for a new permit. Ferrin explained the permit request came to her initially as authorized by the zoning ordinance. She subsequently referred the matter to the Planning Commission with the recommendation that it be denied because the previous permit had been revoked for non-compliance. The Planning Commission voted to deny the permit and Upshur appealed the matter the City Council.

Ferrin said there was a lot material and she was available to answer any questions the Council had. She said Upshur and several neighbors were present to testify and she would like to give them the time to be heard.

Popoff called for Upshur to testify next. Upshur introduced himself and stated his address as the home on Tom Cat Hill (the subject of this appeal) and his main residence in southern California. Upshur said he would like to say he was happy to be there but he wasn't and said that everyone else probably felt the same way. He said this matter had been going on for a long time and everyone was tired of it. Upshur asked for a clarification on the time permitted. Popoff said he would give me a few minutes more and asked him if 10 minutes was sufficient. Upshur said that was fine and to cut him off if he went too long. He asked for the opportunity to rebut after other testimony which Popoff said he would permit.

Upshur said that he is a professional CPA by trade. He has a masters degree in Business from USC; currently is a professor at National University and teaches accounting and finance. Upshur said he wanted to go back a little on the history of the permit. He said he had looked around several years ago for an area to live and retire in. He chose Gold Beach and when the Giottonini House became available, he bought it. During this time he met the neighbors, the Anapolskys. They were the only neighbors on the hill at that time and invited him to dinner. He said the only reason he had bought the house was to do something commercial like a Bed and Breakfast. Upshur stated that about half way through his dinner with the Anapolskys they told him that if he was planning a B & B they "would not let him do that." Upshur felt this was the reason that everyone was here tonight.

Upshur said he lived full-time in San Diego and needed the revenue from the vacation rental "to keep it." He said after the Anapolsky dinner "the campaign" against him commenced. He said he saw several people in the audience. He saw Pete Peters and he remembered Pete telling him if he ever wanted to do something with the place "you should be able to do what ever you want to do with your property." Upshur said he filed the application "way back when."

He said that because of the opposition that seemed to be growing before he ever filed the application to operate the B & B and because he had found a significant other and wasn't going to be in Gold Beach full-time, he decided not do the B & B. He was looking for an alternative

and then decided to operate a vacation rental. He said he looked into “all the rules and regulations,” and Jodi made “me aware of what they were.”

Upshur said that at the earlier (2003) planning commission hearing, the Planning Commission Chair, Tamie Kaufman, said permits were required for all vacation rentals. Upshur said “Jodi’s answer was: well, if we know about them.” Upshur said there were a number of vacation rentals in the past and currently that do not have valid conditional use permits. He specifically mentioned: Hilltop Round House and Currie House. He said to his knowledge none of them have the three things the city requires: 1) a conditional use permit, 2) the taxes being paid currently, and 3) a business license. Upshur said he had a business license and he stated he was not sure why he was granted a business license “if in fact, it’s not to operate the vacation rental.”

Upshur said he “volunteered” a number of conditions at the time because of the neighbors concerns. He said at that time, the Anapolskys were the only other persons on the hill: Dave Little and Gary Schlottman had not yet built their new homes. Upshur said he hired a property manager, Michelle Alday, to manage the property. He said there had been no problems and the only “major” incident had been “this motor home thing.” Coincidentally that had occurred on a planning commission meeting day. Upshur said that Michelle and her assistant, Missy Hartman had told the people about the no motor home restrictions but the people “just broke the law.” Upshur said there was no law about not having motor homes on Tom Cat Hill but he felt it was foolish because of the narrowness of the road. Upshur went on to say:

“...to my knowledge, and still to this day, there’s never been a complaint of any kind, of any violation of the basic conditions that are in the city charter, not one. There’s never been an accident, there’s never been any kind of incident, or anybody that has stayed in my house that has caused a problem for anybody.”

Upshur said he had spoken with the neighbor Gary Schlottman just prior to coming to the hearing and he said he “did not have a problem with it.” Upshur felt he was the only one that was in a position to know. Since the Anapolskys house had been for sale there were a number of cars going up and down the hill, workmen working on the houses being built, visitors-friends, families, deliveries, etc. He said one audience member, Don Buffington, had a Fourth of July party every year with at least 50 people. He felt he was being singled out for all the traffic.

Upshur felt that the very, very small minority of people that had written letters in opposition to the vacation did not represent the majority of the people that lived on Tom Cat Hill. He said “there are dozens and dozens of people” they do not represent. Upshur said he wanted to bring business to Gold Beach and he still felt that was the right thing to do. He said that he had brought “probably tens of thousands of dollars” into the community from his guests.

The people that were complaining, he felt, were wrong and the vacation rental did not change the residential character of the neighborhood. Popoff said he had approximately one minute left. Upshur stated that he “did not knowingly violate anything.” He said he was up here in February to see what was going on and he “never got word or notice that the thing had been revoked.” He had asked for the revocation hearing to be postponed and he never heard anything else.

In regard to the tax reports, he said he sat down in May with Shirley (Shirley Walker, City of Gold Beach Administrative Assistant) and asked what he could do. Shirley said she did not think she could take them. Upshur said Shirley asked him why he didn't put in another conditional use application, so he did. He said he talked to David Pratt and Tamie Kaufman and was encouraged to submit a new application. He said "my understanding was everything was okay." Upshur was shocked when he got the denial notice. Upshur said he was obviously not wanted in Gold Beach and he did not want to fight the battle anymore so his house was for sale.

Popoff said after the opposition spoke there would be the opportunity for rebuttal by Upshur. After that the council would ask questions.

The next speaker was Don Buffington, a neighbor on Tom Cat Hill. Buffington said he lived on the hill for 18 years. The road going up the vacation rental is a 12 foot road on a blind curve. He agreed there had not been any accidents to date, but there had been several near misses. He said there is no place to turn around and the road is dangerous.

Buffington said he questioned the minority Upshur spoke of. He stated that 11 of the 13 property owners in the vicinity had responded negatively to the proposal from the beginning. He said that vacation rentals should be allowed in areas of the city where it is safe but he felt Tom Cat Hill was too dangerous a road to permit a commercial use. Buffington said he spoke on behalf of the Anapolskys, Fernandos, Zaninovichs, and McClellands, all opposed to the vacation rental dwelling.

Buffington said Upshur "completely ignored" the Planning Commission's efforts to try and discuss things with him. He said that Upshur also ignored Ferrin's phone calls and mail attempts to contact him. He said he doubted that Upshur was accurately paying the promo room tax. Buffington said the appeal should be denied and the Planning Commission decision upheld.

Buffington asked for clarification on how the Council decision could be appealed. Pratt and Ferrin explained the LUBA appeal option.

Pete Peters was the next speaker. Peters said the house was for sale for about a \$1,000,000. Peters said he did not recall telling Upshur that he could do anything he wanted with the property, "because I know better than that." Peters said the road serving the vacation rental is a private drive. Peters said the house was a "party house" because of the size. He said that was the problem with the traffic. Several families rent the house at one time and generate a lot of traffic.

Another problem Peters had was the business license. He thought that the license had been revoked by the city. He asked Ferrin for clarification on the business license matter. Ferrin said she would clarify this topic and others in few minutes.

Peters felt the use at this location was not appropriate. He said Gold Beach is getting too many vacation rentals and "we are turning into a vacation rental town."

Popoff gave Upshur a chance for rebuttal. Upshur directed his first question to Ferrin: "Jodi, have I ever ignored a phone call from you or an email or a letter or any kind of communication if I knew you were trying to get a hold of me? Is that true what he (Buffington) said?"

Ferrin responded that she wasn't sure that he ignored phone calls. She said when an issue involves a violation all communication is in writing. She stated: "Yes, John you have ignored several of my letters. I had to send the police department up the first time (first violation in 2003). Ferrin directed the council to A-4 in their packets which was a violation letter that she had sent certified because Upshur had said he had not received documents in the past. Ferrin said in the letter she had to invoke the authority from the utility code to disconnect city utility services for non-compliance with the zoning ordinance.

Upshur said he disagreed. The police had "never, ever" been sent to my house. Upshur said Ferrin was referring to "way back when before I ever applied for anything, before I ever advertised, before I ever did anything the Anapolskys saw a Wild Coast (Wild Coast Vacation Rental Management) truck up at my place and they filed a complaint that I was renting my house. Which I give you my word I was not doing. I had not rented it. I had not advertised it. Had done nothing and when I brought that to Jodi's attention and the police department then they cancelled the citation if you recall Jodi. The police were never sent to my house."

Ferrin: "The police were sent to your house."

Upshur: "Well, if they were I wasn't there and I've gone and talked to the Chief and said, look, if someone's looking for me I'm easy to find. So the police were sent to my house (to Ferrin)? Was I there?"

Ferrin: "Yes, in fact, you wrote me back and said "thank you for sending Officer Hartman."

Upshur: "Oh okay, and at the time, you're right but they had cancelled the citation, he apologized."

Ferrin: "No, they called me and I said if you would apply for a conditional use permit we would not issue the citation."

Upshur: "There was no reason to have a citation because I wasn't doing anything. I don't want to argue about that. Second of all, the reason I wanted certified stuff is I never got anything about the hearing in November until very recently. And what I am saying now, and I'll say it on appeal if I have to, I have never ignored....okay have you ever ignored my phone calls?"

Popoff told Upshur that he was not going to tolerate his dialogue Ferrin. Popff stated if Upshur had something to say his remarks should be directed the council. Upshur agreed and said he disagreed with Buffington's assessment that the road was "very, very dangerous" he said there had never been an incident. He felt the road was more hazardous because of the construction occurring on the hill not his vacation rental. Upshur said if the city was going to allow construction the vacation rental should be allowed. He said the things that were being complained about were not the "right things." The renters have been good people and they have never done anything wrong.

Popoff asked Ferrin if she had anything to add. Ferrin directed the council to the page directly behind the pink sheet titled: "Letters and other items oldest to newest not already copied within the GBC-0601 Final Order of Denial," the letter, dated July 30, 2003, which was the original violation letter sent to Upshur. Ferrin stated the letter was generated because the vacation rental was being advertised—not proposed to be advertised, but advertised. Ferrin said she did not get a response to the violation letter. On August 11, 2003, the City Administrator, Hyrum Fedje, directed Ferrin to have the police department issue Upshur a citation. This memo was located directly behind the July 30 letter in the packet. Ferrin read the Police Chief memo. Ferrin said the next letter in the packet was from Upshur she directed the council to the second page where Upshur stated that "special accolades" should go to Officer Hartman. Ferrin stated she did not call property owners to tell them they had a violation. To properly document the violation process all owners with potential violations are sent written notice.

Ferrin said she could not answer to Upshur's claim of not receiving correspondence. Ferrin said once the article was placed in the mail she did not know where it goes after that. Once Upshur had notified her that he had not received certain items Ferrin started sending things certified in order to ensure receipt.

Ferrin said the reason why everyone was here tonight was that in January, the vacation rental started to be advertised again without benefit of a permit. Ferrin sent Upshur letters and again she was ignored. The only reason she got a response was Ferrin threatened to have Upshur's utility service suspended. Ferrin said that when Upshur said he came in to talk to Shirley, he came in to talk to Shirley about Ferrin not having the authority to invoke the utility code provisions—not to resolve the zoning violation. Ferrin said as an agent of the city she did have the authority to invoke the utility code and Shirley was given a copy of the violation letter.

In regards to the promo room tax, Shirley advised Upshur that until the violation was resolved she could not accept the room tax as this could be seen as the city's approval of the vacation rental.

Following the planning commission denial of the request for the conditional use permit, the planning commission directed Ferrin to notify the city that they could begin proceedings to collect the tax.

As far as other vacation rentals in town, Ferrin said she had received a letter from Upshur complaining about this matter earlier in the year. She had investigated his concerns and found that all the houses he referred to were either located in commercial zones or had valid permits. Ferrin also clarified the business license issue. The city issues two types of business licenses: the first is for actual businesses, the second is a rental license—anyone that has rental property in the city limits must purchase a rental business license. The rental license is for any type of rental, not just for vacation rentals. The issuance of a rental license does not mean that the dwelling is permitted for vacation rentals.

Ferrin said that when she is made aware of vacation rentals she follows up on them and contacts the owners. All of the houses mentioned by Upshur have valid permits. Ferrin mentioned others that Upshur had not.

Ferrin said she has never had to threaten to shut off someone's water in the past to get them to comply.

Popoff started with Councilor Johnson and asked if she had any questions for anyone then proceeded around the dais. Johnson said she did not. Councilor Flynn said he had no questions and that Ferrin had made things very clear. Councilor Coltrane did not have any questions. Councilor Martin asked Popoff if this was questions just for Ferrin? Popoff said no, it was for anyone that had given testimony.

Martin said from the materials that were provided and Ferrin's testimony she found that 1) Upshur failed to follow through with the conditions set by the planning commission, 2) was warned to comply and failed to do so.

Martin asked for clarification about the revocation and expiration of the prior condition use permit. Ferrin said the permit officially expired January 30, 2006. Martin asked if he came back later to reapply for the permit. Ferrin stated only after he was notified of the violation proceedings. Martin clarified that he applied 6 to 8 months after his permit expired. Ferrin said yes. Martin said it was pretty clear to her that several violations had occurred and in her opinion he shouldn't get his permit back.

Popoff next asked Councilor Alexander if he had any questions. Alexander asked Ferrin if she knew whether Upshur had a business rental license for the rental. He noted that Upshur was advertising the dwelling on a month-to-month basis as well as daily and weekly. Ferrin said as far as she knew he did have a valid license. Ferrin said she could verify that in front office immediately if he wanted her to. Alexander said it wasn't necessary.

Alexander said that looking through the materials and the conditions of approval he noted that the house is authorized under the previous permit for up to ten (10) guests at a time. Alexander said he had looked at Upshur's website for the vacation rental and it is advertising up to ten (10) ADULT guests. Upshur said that was his interpretation of the condition. Alexander said the problem he had with that interpretation was that if ten (10) adults show up and bring two (2) children each, then the house now has thirty (30) guests. Alexander said he questioned Upshur interpretation of the guest condition. Alexander asked Upshur how he arrived at his interpretation. Upshur said he was the one that had volunteered the condition. He said there were five (5) bedrooms in the house. Upshur said he prepared a list of the conditions to be prepared and given to each renter and that stated how we interpreted the conditions. One of the interpretations was ten (10) adults and that "was signed off by the city."

Alexander asked Ferrin if she wanted to add anything. Ferrin directed the council to the second page of the Final Order of GBC-0305, the expired conditional use permit she stated that condition #3 is: guests shall be limited to no more than ten (10) at any one time. Upshur agreed but stated that when they submitted their rental agreement it stated ten (10) adults. Ferrin stated again what the Final Order said.

Upshur said to Alexander that the house contains artifacts, art work, collections, etc—he said he would not want thirty (30) people in his house. He said that he turned down weddings, reunions

and other large parties, “a whole bunch of business” to comply with the spirit of the conditions. Upshur then said when he came up in the summer, Shirley asked him if there was a reason he did not want to apply for a new permit. He said no and that Shirley encouraged him to apply. He spoke with Dave Pratt and Tamie Kaufman. He said Kaufman told him to eliminate the conditions—“you shouldn’t have any conditions” that’s what she said.

Popoff thanked Upshur and said the questions had been answered. Popoff asked Alexander if he had anymore questions because Councilor Johnson did want to say something. Alexander said he had one more item for Upshur, he said he noted on the advertisement that Upshur states “no extra charge for children under twelve (12)” he asked Upshur if that meant children over twelve (12) were adults? Upshur said yes.

Councilor Johnson wanted to tell Upshur that she believed in property rights—his right to use his property—but she also believes that neighbors have rights also. She said that one person’s rights can not be ignored to uphold another. Johnson said her personal feelings were immaterial, the council has to follow and vote on city ordinances and policies. Johnson then stated if everyone was done she would like to call for the question.

Popoff wanted to ask some questions. Johnson said she would remove her request for the question so that further discussion could continue. Popoff said he had read all the materials and he did not see in the materials where Upshur had a property manager but was screening the renters himself. He questioned how the conditions of approval could be met with an absentee owner. Popoff asked when Upshur had hired Alday and Hartman. Upshur said he had initially hired Wild Coast Vacations but he felt they did not do a good job. He said even with Alday and Hartman he has met every single renter via email or phone. He said he handled all the money and no one else.

Councilor Martin asked if there was a limit by the fire marshal for number of persons within a dwelling? General discussion on this matter. Popoff asked if there were any further questions. He asked if the members had enough information to make their decision.

MOTION

Councilor Sue Johnson made a motion to deny the Upshur appeal GBA-0601. Popoff asked for a second. Councilor Don Flynn seconded the motion. Popoff asked for discussion. None heard. Popoff asked for the question. The motion passed unanimously.

End of public hearing at 7:25PM