



APPROVED August 4, 2003

**CITY OF ALBANY
PLANNING COMMISSION
City Hall Council Chambers, 333 Broadalbin Street
Monday, July 7, 2003
6:00 p.m.**

MINUTES

Planning Commissioners present: Dala Rouse, Paul Davis, Dan Bedore, Dennis Venable, Wayne Rackham, Anne Peltier, John Donovan, Mark Irving

Planning Commissioners absent: Karlee Tinney

Staff present: Community Development Director Helen Burns Sharp, Planner III Rich Catlin, Planner II Anne Giffen, Engineering Technician IV Ron Irish, City Attorney Jim Delapoer

Others present: 15 citizens.

CALL TO ORDER

Chair Rouse called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

DELIBERATION ON PROPOSED AMENDMENTS TO THE COMPREHENSIVE PLAN AND MAP, DEVELOPMENT CODE, AND ZONING MAP, CP-02-03/DC-03-03/ZC-02-03 (North Albany Refinement Plan)

Chair Rouse called the meeting to order for deliberation on Planning Files CP-02-03, DC-03-03, and ZC-02-03, proposed amendments to the Comprehensive Plan, Development Code, and Zoning Map to implement portions of the North Albany Refinement Plan. The public hearing was conducted on June 30, 2003. The record had been left open until noon July 7, 2003, for additional written testimony.

Rouse explained that in tonight's meeting the Commission would begin deliberations and make some tentative recommendations to implement the North Albany Refinement Plan. The public hearing has been closed, so there will be no further testimony or questions from the audience. Any tentative decision will be brought back with written findings prepared by staff for a final recommendation by the Commission. Sometime in August, the Commission will recommend a package to forward to the City Council. Rouse proposed a two-hour time limit for this meeting, with the understanding that one or two more meetings would be needed to complete the deliberations. The Commission agreed. The suggested topics for tonight's deliberation are neighborhood commercial issues and potential residential rezonings. A future meeting will be devoted to cluster development and other amendments.

Rouse noted that some of the testimony at the June 30 meeting suggested the need for a moratorium on growth in North Albany. She asked City Attorney Jim Delapoer to explain the legal requirements for a moratorium.

Delapoer spoke about provisions in state law regarding moratoriums on construction or land development (ORS 197.505-197.540). He said that a moratorium is a tool to buy time to fix an infrastructure problem created by development. A public hearing must initiate the process. Required findings include a

demonstration of need for additional public facilities, a description of the moratorium area, and assurances that housing and economic development needs would be accommodated elsewhere.

Delapoer said that traffic concerns on Highway 20 would not be a legal basis for a moratorium, because much of the traffic is created by development outside the North Albany area (e.g., Corvallis and north of Corvallis), which routes a lot of traffic to Albany via Highway 20. A moratorium request would have to show that proposed development in North Albany is causing the Highway 20 problem. A moratorium is a tool of limited duration. Within 60 days of declaring a moratorium, the government must adopt a plan to correct the infrastructure problem. The moratorium is limited to a six-month duration with extensions to a maximum length of 24 months. Each extension must be accompanied by findings that the government is making reasonable progress towards solving the problem.

Delapoer noted that a moratorium is not a way to stop development indefinitely. A regulation that prevents a landowner from using their property exposes government to an inverse condemnation claim. The government can impose restrictions on the use of property to prevent unreasonable damage to others. If those restrictions do not allow any use of the property, the landowner can claim a Fifth-Amendment taking of the property and demand compensation.

Delapoer concluded that a moratorium is useful if the problem is something the government can fix. For example, if a street is too narrow to accommodate more traffic from proposed development, a moratorium could be imposed on that street, but the solution could be the creation of a local improvement district. The citizens asking for the moratorium could be the ones paying for widening the street.

Irving asked for a clarification. The Comprehensive Plan portrays a future land use pattern and the Zoning Map reflects current zoning. Can a property be zoned RS-10 but in the future it should be RS-5? Delapoer said no. The courts have held that land-use regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan sets forth in general terms what we want to achieve in housing, resource protection, etc. The zoning regulations are the nuts and bolts for implementing those policies.

Irving asked if an area could be zoned RS-10 now, but become more dense as the infrastructure develops. Delapoer responded that zoning regulations are evolving all the time. Even the Comprehensive Plan can be changed in the future. What the Planning Commission and City Council decides in 2003 does not bind their successors later on.

Irving noted it's much harder to change the Comprehensive Plan than the zoning regulations. Delapoer agreed that it is harder for an applicant to change the Comprehensive Plan but not for the government. An applicant cannot demand that government change the Comprehensive Plan. Courts will give the government maximum discretion as to the Comprehensive Plan. For the government, it is no more difficult to amend the Comprehensive Plan than it is to amend zoning. The Planning Commission can respond to a request if they think it's in the best interests of the community.

Peltier referred to the Highway 20 example for the moratorium. Is there a difference between which development caused the problem and which development exacerbates it? Delapoer said that, according to statute, findings must describe the "extent of need beyond the estimated capacity of existing public facilities expected to result from new land development." It's a challenge to sort out cause and effect, but it's more difficult to find a solution that can be implemented in the 24 months allowed for a moratorium.

Peltier asked if it would be easier to solve problems with a city street than with a state highway. Delapoer said that it would be more in the city's control but expense is a significant factor to consider. A multi-jurisdictional problem can be more complicated to fix.

Rouse asked if an owner of land with wetlands, for example, has a right to develop the property to its maximum capabilities. Delapoer said no. Government can limit a property owner's right to develop and use property as reasonably necessary for the public welfare. Zoning regulations mean a contract between neighbors. In return for accepting limitations on development rights, residents know their neighbors can't

do anything that violates the zoning of their property. Regulation of land use may reduce the value of a property. Under present Oregon law, this is not considered a taking unless the owner is deprived of all economic use of the property.

Rouse clarified the question. If a property is zoned for a certain use, does the owner have the right to develop the property for that use? Delapoe replied that it is not an absolute right, because the zoning regulations may limit the use in some ways. Also, the right to develop does not preclude government from rezoning the land in a way that would not allow that type of use any more. Reduction in the number of permitted uses of a property is not legally a taking. In general, an owner has the right to use property for a lawful use, and government has a right to limit the use if there is a compelling need to do so.

Rouse asked Ron Irish to respond to comments made at the June 30 public hearing about the condition of, safety and congestion on roads in North Albany.

Irish said that the Transportation System Plan, adopted in 1997, includes provisions for intersection and street improvements (including traffic signals) at Hickory/North Albany Road, Hickory/Springhill Road, Crocker/Gibson Hill Road, and North Albany Road at the school entrance. Nothing in the proposed zone changes would alter plans to install those improvements when conditions and warrants are met.

Irish explained that a traffic impact study done for the North Albany Refinement Plan looked at three scenarios. Analysis of traffic conditions at build-out of the entire North Albany area showed failure of the street system. However, studies of build-out anywhere would usually show failure. The other two scenarios looked at what would happen in 20 years using current zoning and what would happen in 20 years using the preferred alternative proposed in the North Albany Refinement Plan. The results of those two studies were statistically equivalent in peak-hour traffic volumes (morning and afternoon commute times). ODOT and City staff concluded that the proposed new zoning would not generate a substantial number of new jobs in North Albany, so most residents would continue to commute out of North Albany to work.

Rouse asked about speed control on North Albany streets and the role of Benton County in road management. How does new development affect posted speed limits, traffic signals, and street improvements? Irish explained that Benton County is the road authority for all of North Albany, except that the City is the road authority for Hickory Street and the streets that have been built since annexation. Neither the County nor the City has the authority to modify the speed limit. ODOT issues speed zone orders for all streets and roads that are not 25 miles per hour. To change the speed limit, the road authority asks ODOT for a speed zone study. ODOT assumes most people travel at a reasonable rate and sets a speed limit accordingly. The City and County work jointly to install signals and road improvements. The City has designed and funded most street improvements under a permit issued by the County.

Davis was surprised at the similar results for the 20-year traffic analyses. He asked if there were any differences at other than peak hours. Irish said that the amount of commercially-zoned land was doubled for the North Albany Refinement Plan. Trips associated with commercial areas are generally off-peak, so they don't show up in the peak-hour analyses.

Staff Report:

Catlin said that staff prepared a decision points paper to help guide the decision-making process on each topic. Staff brought along maps used during the project of floodplains, wetlands, and other natural features. Catlin directed the Commission's attention to the first item for deliberation.

Site # 1: Gibson Hill and Scenic Drive – Proposal for zone change to NC and RS-5 from RS-10.

Bedore asked about the criteria for selecting this location. Catlin replied that the criteria discussed at the work session include the location of the intersection, moderate traffic volumes, proximity to a number of existing homes, and a history of being zoned for commercial use before annexation.

Venable noted strong opposition to commercial use of the property and wondered if the property owners would be deprived of property rights if nothing went in now. Catlin explained that the properties could be developed now for residential use under the RS-10 zoning. There is no right to commercial development unless the zoning changes.

Venable said that the properties would be more valuable if zoned for commercial use.

Irving asked if the property owners testified. Giffen answered that the Bakers have submitted two letters.

Peltier stated that her notes from the public hearing were all negative, except for the Bakers' letter. Rouse noted that Jim Lawrence sent a letter supporting the concept of neighborhood commercial, including being able to walk and bike to a commercial location.

Peltier understands the intent of neighborhood commercial. There was considerable testimony about Site #1. It's a busy street, one that's not safe for kids to be around.

Rouse noted that kids already walk past this site to and from Oak Grove School. Giffen said that there are no sidewalks on Gibson Hill Road or Scenic Drive. She explained that the site plan review process includes a review of the impacts of a proposed development. The use may not be a convenience store. It could be an office that generates little traffic.

Irving said that of a range of uses eligible in neighborhood commercial, the Commission must assume the worst. There was no testimony in favor of neighborhood commercial at any of the three proposed locations, or that it will be needed in 20 years. The fact that so many people testified against any neighborhood commercial was a dramatic statement by the public.

Catlin said he had talked with a number of people about what type of use could go on these sites. The convenience store was the most inflammatory. When asked about uses other than convenience stores, most said that no commercial or office use of any kind would be compatible with rural character. Even when informed that the City could limit the types of permitted uses and impose design standards to mimic existing homes in the area, people still objected. The question is what is good public policy in this situation?

Sharp also noted that staff anticipated that not all three sites would be designated neighborhood commercial; perhaps none of them. However it's important to have the discussion. If you wait until you need a site, it may have already been developed with houses. The market need doesn't exist now, and there is strong public sentiment against, but it is important to decide whether to reserve key sites for a future need.

Rouse interpreted the testimony as opposition to neighborhood commercial sites now. She suggested that most people did not testify about future need, but that's what the Comprehensive Plan addresses.

Irving thinks people envisioned maintaining rural character in 20 years. In most parts of an urban community, neighborhoods would be laid out to include corner stores, shops, and offices. But North Albany is desirable because of its rural character. The conveniences of urban living are not important. The testimony was in favor of keeping North Albany rural except at Hickory Street and Highway 20.

Rouse said once subdivisions start going in, whether RS-10 or RS-5, it's no longer rural. Five-acre lots, septic tanks, and wells would be more descriptive of rural. North Albany has lost a lot of its rural character. At build-out, it will not be rural any longer.

Rackham asked Irish if there are turn lanes at the Scenic Drive/Gibson Hill Road intersection. Irish replied that there is a turning lane at the intersection, but the roads don't have left-turn pockets.

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Rackham considers these rural roads, not urban. If there were an office or convenience store on the corner, there would be more turns at that intersection than if it were residential. For these reasons, he believes Sites 1-A and 1-B are not suitable for neighborhood commercial.

Irish said that a left-turn pocket would be needed for an intensive commercial use but not for residential development of the land.

Rackham asked if a future “appropriate” neighborhood commercial use could be accommodated through a variance. Sharp said no. If zoning stays RS-10 at, anyone interested in commercial use would have to apply for a zone change under quasi-judicial rules.

Rouse’s concern is the small size of the area proposed for NC. It might be viable if the NC area were expanded. On the other hand, it’s not an attractive site for residential use because of the busy corner. If it’s not suitable for NC, is it really suitable for RS-10?

Davis suggested that the informal, heated market survey taken at the public hearing might deter an investor from building a convenience store. The property will be difficult to develop, anyway. It’s not good for residential. It’s up to the Commission to decide the use of the land.

Rouse asked for a recommendation from the Commission. Rackham suggested RS-6.5 and Venable asked for Office Professional.

Delapoer suggested the Commission follow Roberts Rules of Order to move the deliberations along.

Venable moved to rezone Site 1-A to Office Professional. Davis seconded the motion. Venable said the benefit would be day use without excessive traffic. Sharp read the list of permitted uses for OP, which includes convenience-oriented and service-oriented retail intended to serve nearby residents, with a maximum business footprint of 5,000 square feet. Davis withdrew his second. Venable asked if findings could eliminate convenience stores from the zone. Delapoer replied that findings could not make unlawful what the zoning allows. Peltier asked if the City could discriminate among uses that are allowed. Delapoer answered no, the City had to allow uses permitted by the zone. Irving asked if Tax Lot 801 (Site 1-B), 0.24 acres, is large enough for two lots under RS-5? This would increase the value of the property but keep it residential. Giffen agreed it’s large enough for two 5,000-square-foot lots.

Irving moved to recommend that Tax Lot 801 be rezoned to RS-5. Bedore seconded the motion. Peltier asked for the list of permitted uses. Giffen noted that RS-5 is a single-family zone that allows attached housing. Venable asked about the feasibility of access for two houses on that lot. Irish replied that the access question would be addressed when the land was divided. Donovan asked if the motion would allow a daycare center or other compatible use. Delapoer said that most commercial uses would have to apply for a zone change, and the City can’t do “contract zoning” to allow one commercial use and not another. Giffen asked whether the Commission could recommend a revision to the Development Code to modify the list of permitted uses as Venable suggested. Delapoer said doing so now might raise Measure 56 notice concerns. The motion passed 7-1 (Rackham opposed).

Irving moved that Tax Lot 3700 remain as RS-10. The motion failed for lack of second.

Davis moved to rezone Tax Lot 3700 to RS-5. Donovan seconded the motion. Davis amended the motion to include all of Tax Lot 3700 as well as Tax Lots 1200 and 1201. Donovan seconded the amended motion, which passed 6-2 (Irving, Rackham no).

Site #2: Future intersection of Crocker Lane and North Albany Road—Proposal to designate a general location for a future NC site on the Comprehensive Plan map. No zone proposed.

Peltier moved to designate the future commercial node with a star on the Comprehensive Plan map. Venable seconded the motion. Irving opposed the motion based on overwhelming desire of the community

for no commercial development at this location. Peltier doesn't want to rezone it now, but of the three suggested sites, this is the most reasonable. It's the farthest from Hickory Street and centrally located in North Albany. Bedore acknowledged the opposition by neighbors, but the Commission must balance those concerns with good policy for long-term development. The proposal for Site #2 is a good plan. Irving asked why. Bedore responded that in future, it will be more economical for people to make shorter trips. Catlin reminded the Commission that the motion would not rezone the property, but that it would have to be rezoned before it could develop.

Sharp noted that this will be a key intersection when North Albany Road is extended. Any zone change request would not be immediate. Irish said that North Albany Road will likely be connected between Gibson Hill Road and Covey Run in 2004. Irving asked if a zone change could be requested in the future if the Comprehensive Plan map is not amended at this time. Giffen answered that it could, because the NC or OP zones are compatible with the existing Comprehensive Plan Map designation of Urban Residential Reserve. Site #2 is the most isolated of the three proposed commercial nodes, allowing the most opportunity for surrounding property to develop with some foresight. Since the joint work session on June 9, the property owner has called to oppose the proposed change. The owner of land east of Crocker Lane through which North Albany Road would be built is opposed to that street extension. The motion passed 6-2 (Irving, Rackham opposed).

Site #3: Springhill Drive and South Nebergall Loop—Proposal to change zoning from Residential Reserve/RS-10 to Mixed Use Residential to allow mix of residential and neighborhood commercial.

Rouse commented that in her visit of the site, she didn't notice a curve on the corner as the map shows; it's more square. Sharp noted that the extra right-of-way gives that impression. Irving opined that this is the least desirable of the three node locations because it is very close to the Hickory Street area, the property owners oppose the zone change, and it doesn't make sense for the same reasons as the other two sites. Bedore moved to not rezone the site. Irving second. There was no discussion. The motion passed 8-0.

SITE 5-A: between Highway 20 and railroad tracks, proposed to be rezoned to RS-5. The cluster overlay zone is also proposed.

Rouse noted that discussion of the cluster overlay would come later. After discussing the boundaries of Site 5-A, Rouse asked about the future street pattern in this area. Irish explained that Hickory Street would eventually extend west as a local street connecting to Rainwater Lane for an outlet to Highway 20. Other private roads may connect, also. Rouse asked about the average lot size for the area. Catlin listed 60 tax lots totaling 78 acres, for an average size just above one acre.

Catlin responded to testimony about the floodplain. Giffen showed a composite of the Flood Insurance Rate Maps for North Albany. Much of Site 5-A would be inundated during a 100-year flood. Longstanding City policy allows fill and development of floodplain property. Under the National Flood Insurance Program, part of the floodplain is developable, except for a corridor (the floodway) that is permanently reserved to pass floodwaters. In this area, the floodway is south of Highway 20. Under this policy all of the land in Site 5-A could be filled to an elevation above flood level. Testimony referred to the need to fill more land if it is zoned to a higher density, but in practice the entire site is usually filled regardless of density. A City policy even requires new streets to be elevated to within one foot of the base flood elevation. The result is that the entire site would generally be filled.

Rouse asked if the area zoned Open Space on the west end of Thornton Lake is an overflow of the lake. Catlin replied that it is low, contains wetlands, and would not be affected by the rezoning proposed for Site 5-A. Peltier asked about the impact of floodwaters on Open Space land if adjoining residential land is completely filled. Catlin explained that Open Space land would become a channel during a 100-year flood.

Sharp noted that the state's last improvement to Highway 20 raised it above the 100-year flood elevation. She noted that about one-third of North Albany is in the floodplain, much of it developed before annexation and before the National Flood Insurance Program. Some streets in the Springhill Road area are ten feet

below the 100-year flood elevation. Albany's regulations, like those of many communities, allow development in the flood fringe. The model presumes some fill in the floodplain.

Irving recalled emphatic testimony regarding the effect of fill in the floodplain. Catlin acknowledged that it is a legitimate concern for owners of homes built before floodplain regulations. Those were built at grade, now estimated to be several feet under water. If more properties are filled for development, it would affect the flood elevation. Under the floodplain model, the flood elevation could rise by as much as one foot. The result could be more flooding on those existing homes. One way to mitigate for the fill would be to create an area for storage of floodwaters equal to or greater than the amount of fill. This is known as balanced cut and fill.

Catlin went on to explain that many different house plans comply with floodplain regulations, but staff advises owners to review house plans with their insurance agent to find out the cost of flood insurance for several house plans. There is a trade-off between the upfront cost to fill a lot and the long-term cost of flood insurance. Bedore moved to not rezone this area. Davis seconded the motion, which passed 8-0.

SITE 5-B: north of railroad tracks, around West Thornton Lake, proposed to be rezoned to RS-5 from RR/RS-10. The cluster overlay zone is also proposed.

Giffen noted that most of Site 5-B is in the floodplain. In response to testimony, Catlin explained that steep slopes are found north of West Thornton Lake Drive outside Site 5-B. Davis moved to not rezone this area. Irving seconded the motion. Peltier agreed that there should not be more homes in the floodplain between the lake and West Thornton Lake Drive. Donovan suggested that opportunities for housing diversity be allowed somewhere in North Albany. Sharp pointed out that the existing North Pointe area is zoned RS-6.5. The motion passed 8-0.

SITE 5-C: north of West Thornton Lake, west of North Albany Road, proposed to be rezoned to RS-5 from RS-10.

Catlin noted that 80-90 percent of the 17 properties of Site 5-C are in the floodplain. Irving moved to not rezone this area because of floodplain issues. Rackham seconded the motion, which passed 8-0.

SITE 5-D: south of East Thornton Lake. Currently zoned RS-6.5, no zone change proposed. Cluster Overlay proposed to help protect lake.

Catlin noted that some of this site is located in the floodplain but there is sufficient high ground to develop it with some fill needed in low areas. There was no motion to change the zoning of this site from RS-6.5.

SITE 5-E: adjacent to North Pointe and the Village Center, from RS-6.5 to RS-5.

Catlin pointed out that this area is slated for future phases of the North Pointe development. Developable portions have already been filled. A small pond and some low-lying land would be retained as open space. Bedore moved to rezone Site 5-E to RS-5. Venable seconded the motion, which passed 7-1 (Rackham voting against).

SITE 5-F: north of middle school, proposed to be rezoned to RS-5 from RS-10.

This site is composed of one tax lot next to the middle school. Fill of the property has begun. Rouse mentioned RS-6.5 as another option for the property. There was no motion to rezone the property.

SITE 5-G: part of Village Center, south of railroad, west of North Albany Road, proposed to be RM-5.

Catlin noted that this is "the only puppy in this litter with different spots." It is inside the Village Center Comprehensive Plan designation and intended for higher-density development.

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Rouse noted that there was written testimony on behalf of the owner of Tax Lots 100 and 102. Bedore moved to rezone Site 5-G to RM-5. Venable seconded the motion. Rackham recalled that there was some support for the proposed rezone in previous meetings. Rouse wondered if too much property was included in the proposal. Rackham doesn't think so. Irving asked for an estimate of the number of units that could go in this area. Staff estimated about 180 (18 acres at 10 units per acre), after streets and the proposed church and assisted living facility are subtracted. He commented that this is the areas where density should go. These residents are needed for the grocery store to be successful. The traffic from this development would have the least impact on North Albany Road. The motion passed 8-0.

POST SITE: In order to develop a master plan on their 105 acres, the Posts are requesting zone changes to portions of their land between Gibson Hill, Scenic, Crocker, and Valley View (near Benton County Park). They are requesting to rezone RS-10 land to RS-5, RS-6.5 and RM-5 (see maps included with testimony).

Catlin recounted the testimony of Dan Post and summarized the Post proposal for rezoning portions of the 105-acres. Bedore moved to support the Post requests. Davis moved to table the discussion to the next meeting. Irving seconded the motion, which passed 5-3 (with Bedore, Donovan, and Venable voting against).

OTHER BUSINESS:

There was no other business.

NEXT MEETING DATE:

The Planning Commission agreed to continue deliberation at 6:00 p.m., Monday, August 4, 2003.

ADJOURNMENT

Hearing no further business, Chair Rouse adjourned the meeting at 8:02 p.m.

Submitted by

Reviewed by

Rich Catlin
Planner III

Helen Burns Sharp
Community Development Director