

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, May 28, 2008
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Dan Bedore called the meeting to order at 7:16 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Bedore led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Ralph Reid Jr., Bessie Johnson, Dick Olsen, Floyd Collins, and Sharon Konopa

Councilors absent: None.

SPECIAL PRESENTATION

Historic Preservation Awards

Planner II Anne Catlin said that May is National Historic Preservation month. This year's theme is "This Place Matters".

Catlin introduced Oscar Hult, Chair of the Landmarks Advisory Commission (LAC). Catlin gave a PowerPoint presentation (see agenda file). Hult and Bedore presented the Historic Preservation Awards. Recipients were: Mark and Anni Manley; Thad and Shannon Olivetti; Whitespires Berean Fellowship Church; Mark Martin and Laura Bryngelson; Zella Mae Packard; Historic Interior Homes Tour Committee; Jeremy and Jamie Carlton; Cara and Jared Leach; Allen and Jodi Nelson; and Torri and Kela Lynn.

Bedore said the historic downtown and homes are important not only for Albany's heritage but also for attracting tourists. He thanked the Commission for their hard work in assuring the properties are maintained with integrity. He also thanked Catlin for her dedication to historical homes.

SCHEDULED BUSINESS

Consolidated Quasi-Judicial Public Hearing

PA-01-08 and VR-05-08, appealing the Planning Commission's approval of a tentative partition plat that would divide a 1.59 acre parcel of land into two parcels (north side of Valley View Drive NW).

Bedore said, next on the agenda is a quasi-judicial public hearing regarding an appeal on the Planning Commission's approval of a Tentative Partition Plat that would divide a 1.59 acre parcel of land into two parcels. The applicant is Orezona Building Company (Orezona). The appellant is Daryl Bechtolt. This is City of Albany case file PA-01-08.

Bedore called the quasi-judicial public hearing to order.

Bedore asked, do any members of the Council wish to abstain? There were none.

Bedore asked, do any members of the Council wish to declare a conflict of interest or report any significant ex parte contact or a site visit? There were none.

Bedore said, for all those wishing to testify, please be aware that you must raise an issue with enough detail to afford the Council and parties an opportunity to respond to the issue if you later want to raise that issue on appeal to the Land Use Board of Appeals. Testimony and evidence must be directed towards the approval standards that staff will describe or other criteria in the plan or Albany Development Code (Code) which you believe apply to the decision. If additional documents or evidence are provided by any party, the City Council may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension to the 120-day limit. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with enough detail to allow the local government or its designee to respond to the issue precludes an action for damages in Circuit Court.

Bedore called for the staff report.

Planning Manager Don Donovan said, there are two applications before us tonight. The first application is a partition application that would divide a 1.59 acre parcel of land into two parcels. The second application is for a variance for the partition that would allow four parcels of land to use an easement to the public street because the Code usually allows only three parcels to use an easement. The property that would be divided is located on the north side of Valley View Drive in North Albany. Donovan used an ortho photo on the overhead to show the location of the property. The owner of the property is Orezona Building Company LLP.

Donovan said part of the property that would be divided is inside the City limits and part of the property is outside the City limits (and outside the Albany Urban Growth Boundary). Benton County will also have to make a decision on the partition because they have jurisdiction over the part of the property outside the City limits, but they have told staff that they will wait to make their decision until the City makes a decision.

Donovan used the overhead to show the partition map that was filed.

Donovan explained that when the City's Planning Division gets a land use application, staff writes a report that explains how the proposal meets or does not meet the requirements of Code. These applications first went to the Planning Commission for a public hearing. The Planning Commission approved the partition, with some conditions of approval. A neighbor, Daryl Bechtolt, appealed the Planning Commission decision to the City Council. The staff report went to the City Council about a week before this public hearing so the Council had a chance to review it. The report was also available to the public for that same period of time.

Donovan said the Code includes the review criteria that staff uses to evaluate each application. He said he will review the criteria for the partition and for the variance and explain how the applicant's proposal meets the review criteria or how the proposals can meet the review criteria if the City Council adopts conditions of approval. The written staff report includes more detail, but it's about 15 pages long. Donovan explained, it is possible that the City Council will hear more information tonight and make a decision that is different than what the staff report recommends.

Donovan noted that the staff report included reference to letters received earlier so that the City Council would be aware of issues raised during the time leading up to the Planning Commission meeting. There is some incorrect information in the staff responses that were included with the information about the letters. The partition property probably is in the Countryman Estates subdivision. The staff comments still say it's not. When staff first looked at the Countryman Estates subdivision plat, the property was not included. But the applicants did further research and found that another map was filed with the Benton County surveyor later that includes the partition property in Countryman Estates. The point of the discussion was to address some comments about covenants, conditions, and restrictions (CCRs) that go with the lots in the Countryman Estates subdivision. The bottom line though, is that the CCRs are not part of the City's review of the partition application because they are private agreements between the lot owners. They are not City regulations. The City can't enforce private restrictions so they are not a basis for making a decision about the partition.

Partition Application

Donovan said there are five review criteria that have to be met if the partition application is to be approved.

The first review criterion requires that development of any remainder of property under the same ownership can be accomplished in accordance with the Code. The proposed partition will divide the entire 1.59 acre parcel owned by Orezona at this location, so there is no remaining property to be considered.

The second review criterion requires that adjoining land can be developed or is provided access that will allow its development in accordance with the Code. All of the surrounding properties have access to public streets and are already developed with single family houses. The only parcel that will need another access across this property is Parcel 2 of the partition. The slope at the bottom of the property is steep, there is a drainage swale, and lots of trees. The best access for the new lot seems to be on the driveway that already exists on the property, on the west side. The variance is for use of the existing driveway. The only difficulty is that the Code usually limits to three the number of parcels that can share an easement and this house would be the fourth house.

The third review criterion requires that the proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances. The City does not require a traffic study for projects that generate less than 50 new vehicle trips at the peak traffic hour. It will probably generate about ten trips a day. Valley View Drive is under the jurisdiction of the Benton County Road Department.

Donovan explained that the Code requires that streets adjacent to new development be improved to City street standards, unless the City Engineer determines that the improvement is not timely. Valley View Drive is not improved to City standards because it does not have curb, gutter, or sidewalk. The City Engineer has determined, though, that it would not be timely for this applicant to improve the street across the frontage of the partition property now because the partition would create just one more lot. The length of street improvement would be very short, which would not help traffic much and it would be difficult to determine exactly at what elevation, or grade, to build the street improvements. The City wouldn't want to put in something now that would not work later. So they are not required to put in improvements across the frontage. Under these

circumstances, the City Engineer requires the applicant to sign a Petition for Improvement and Waiver of Remonstrance. The Petition and Waiver requires the owners of lots in the partition to be part of a Local Improvement District (LID) and pay their share of street improvements if a LID is formed in the future to finance the improvement of this section of Valley View Drive.

The fourth review criterion for the partition requires that the location and design allows development to be conveniently served by various public utilities. There is an existing public sewer main that extends in Valley View Drive to the east boundary of the property that would be divided. A sewer main must extend across the frontage of the property. There are already two water mains in Valley View Drive across the frontage of the property, so no new water mains would be required. A storm drainage system may be needed just to provide drainage. They could get a permit from Benton County to allow drainage into the ditch.

Donovan said the last review criterion for the partition says that any special features of the site have been adequately considered and utilized. There are steep slopes on the property that would be divided. The applicants were required to submit a geotechnical report with the partition application. The report concludes that "there are no adverse geologic or geotechnical site conditions that preclude residential development of the site. The only area not suitable for building pad construction is the south central portion below elevation 418 due to water drainage to this area." Donovan used an overhead that outlined the area of the parcel where a house could be built, which is anywhere above the 418 contour of the map so long as the usual setbacks from property lines are provided.

There is a drainage swale on the property. The City's Engineering Division reviewed the proposed partition and found that the drainage swale collects drainage from the partition property and a surrounding area that is about 3-4 acres.

A grading permit from the City is required if more than 50 cubic yards of dirt are to be moved on the property. Neighbors would get notice and an opportunity to comment if a grading permit application is submitted in the future.

Donovan said the other special feature of this property is trees. The applicant does not propose to cut trees with the partition, so there is no review of tree cutting required or included now. It seems apparent that trees would need to be cut to build a house on the new parcel and to widen the existing driveway as required for emergency access. The Code requires a Site Plan Review application if five or more trees larger than eight inches in diameter are to be cut. Neighbors would get notice and an opportunity to comment if a tree felling application is submitted in the future.

Variance Application

Donovan said there are four review criteria that have to be met if the variance application is to be approved.

The first review criterion requires that the proposal will be consistent with the desired character of the area. The proposed variance is to allow four parcels of land to use a shared driveway with easements over it. It seems to be the opinion of North Albany residents that construction should avoid steep slopes and removal of trees where possible. Construction of a new driveway for the new parcel that would be created by the partition would make it necessary to clear existing trees and vegetation over a strip of land approximately 30 feet wide. Allowing the new parcel to use the existing driveway and widening it will avoid the necessity to construct a new driveway on steep slopes and remove trees. The written staff report concludes that the proposed variance to allow one more lot to use the existing driveway is consistent with the desired character of the area.

The second review criterion starts with "If more than one variance is being requested..." Only one variance is requested, so this review criterion is not applicable.

The third review criterion requires that the requested variance is the minimum necessary to allow the proposed use of the site. Just one new parcel will be created. The variance request is to allow just one new parcel to use the shared driveway and easement, so the requested variance is the minimum necessary to allow one new parcel to be created.

Donovan said the fourth review criterion requires that any impacts resulting from the variance are mitigated to the extent practical. The impact of one more parcel and house using the shared driveway and easement would be about ten more vehicle trips per day on the driveway and an increased potential that emergency vehicles would have to use the driveway. The existing driveway is about 12 feet wide now. The applicants propose to widen the driveway to 20 feet of paved surface. A 40 foot wide easement would be provided to allow the driveway to be located where it impacts the fewest trees. The written staff report concludes that the increased width of the driveway will adequately mitigate the impact of increased traffic on the driveway.

Donovan added that Attorney Kenneth Dobson submitted a letter from Buckley LeChevallier, Attorneys at Law, dated May 23, 2008, to the Planning Division for the City Council hearing record that lists a number of reasons that Dobson believes the partition application should either be denied or sent back to the Planning Division for reconsideration. A copy of the letter was placed on the dais prior to this meeting (see agenda file).

Donovan asked if the Council had any questions.

Councilor Ralph Reid asked, do the other two owners have a recorded easement for access to the property? Donovan said yes.

Bedore called the applicant to testify.

Dan Watson, 710 East Thornton Lake Drive, from K & D Engineering, represented the applicant. The new property line for this application will be along the City limits, which also happens to be the natural property boundary line. His client is not proposing a home at this time, although that is likely in the future and they will address tree issues at that later date. The applicants took time to meet with the North Albany Neighborhood Association (NANA) and they agreed not to oppose the project because they agree that a one acre lot is consistent with their vision of North Albany. Watson said, at the Planning Commission hearing, in an effort to meet a compromise, the applicant agreed to a deed restriction of a one acre lot. At the time they made that concession, they thought they were being good neighbors. Now, they are asking for that restriction to be removed and to allow the property to be governed by the current Code. The applicant is not proposing to subdivide the property, and in fact desires for just one house. The applicant is hoping the increased value of the land could help to offset some of the costs of this appeal.

Watson said as part of this project they hired engineers, Geotech, to see if it was a suitable building site location. The Code requires that any partitions with steep slopes be reviewed. This site has slopes up to 18 percent and the steepest slope is in the right-of-way (ROW). Geotech found that virtually the entire site is buildable. Watson does not anticipate any problems in siting the home, which is the rationale for the Code. They have been processing a concurrent application with Benton County and have been notified about a couple of revisions: Benton County wanted the septic easement area to be increased to provide for a replacement area and also to increase the access easement to 50 feet. Watson is asking for the City to condition the project to allow for those two items so the project can meet the Benton County requirements as well.

Watson said the opponent's attorney submitted a letter dated May 23 with reasons why the property should not be approved. Watson reviewed each of the reasons given.

First, they claim that the Notice of Hearing was procedurally deficient. It did state that comments provide a basis for appeal, so their assertion is not true. Section 11.180 lists the review criteria, which were listed in the notice. We do not believe the City has to publish the entire Code; just the criteria. The staff report was also provided to evaluate applicable Code sections as they relate to the criteria.

Secondly, the letter stated that the applicant failed to show that the variance is the minimum necessary to allow the proposed use of the site. Watson said they are creating one additional lot. They do need to allow the lot access, so the variance is necessary. It will also help them to reduce grading and potential future impact to trees if they created a driveway to Valley View Drive.

Thirdly, the opponent said the engineering report is incomplete by jumping to the conclusion that a septic is a soil hazard and it is not. If it was a soil hazard, there would be soil hazards all over North Albany. They did show a replacement field area on the revised map that was submitted to Benton County. They plan to increase the size of the septic area, which is also a condition of Benton County. Watson said Section 6.200 list the items that need to be addressed in the Engineers report. Geotech addressed all these items.

Regarding the special features; on this one acre site they have the flexibility for home placement and by using the existing driveway they are reducing the impact to the trees. This creates the flexibility that allows them to address and accommodate the special features. As Donovan pointed out, the entire site is feasible for building with the exception of the south central portion below elevation 418.

Watson said the appellant claims the proposed drain field does not comply with state law ORS 340 regarding trenches across property lines, but it does comply. He entered into the record a copy of Oregon Administrative Rules, Department of Environmental Quality, 340-071-100 and 340-071-0130 (see agenda file).

Regarding special features and possible wetlands on site; the application does not propose to fill them. Further, they reviewed the local and national wetlands inventory and neither lists wetlands on the site. Also, the SCS soil surveys indicate that the property has Veneta soil, which is not listed as hydric soil on DEQ's list. The NRS soils is type 1.67, which also is not hydric soil. Clearly, the site is not encumbered with wetlands at this time. He walked the site today and despite the rain all week, there was no water.

Watson said Plate 2 of the Comprehensive Plan talks about natural areas and provides for Albany's inventory. The site is not listed in the inventory and is surrounded by developed properties. Parcels to the east are smaller, and the parcel to the left is approximately the same size as this lot.

Watson said the Zoning Code and Comprehensive Plan looks at all the issues, including natural areas. Recently the Council reviewed the open space zone districts and staff has added those areas that are appropriate for protection. This site was left as zoned for residential according to the zoning and the Comprehensive Plan. The density is computed in the City's available lands inventory. The appellant stated that the variance is inconsistent with the desired character of the area, but if the concern is saving trees and minimizing grading, the variance is fully consistent. Watson submitted the SCS and NRCS soil types for the record (see agenda file)

City Attorney Jim Delapoer reminded the speakers that they would have to supply to the City Clerk any documents they want to include in the record; they cannot just make a verbal reference.

Watson used a map to show the requirements of Benton County. The map shows that the new easement has been widened to 50 feet and the septic easement has been increased on Parcel 2.

The Council had no questions for Watson.

Bedore said there were three people that signed up to speak in favor. Bedore reminded them please avoid being redundant and that the CCRs and the tree felling are not conditions of approval for the purposes of this hearing tonight.

Jason Schaefer was called but did not wish to speak.

Jason Cota was called but did not wish to speak.

Justin Tedrow was called but did not wish to speak.

Bedore asked if there was anyone else in the audience that wished to speak in favor of the application. There were none.

Bedore called those that wish to speak in opposition to the application.

Daryl Bechtolt, 2567 Valley View Drive, asked Donovan to point out her home on a map on the overhead. Bechtolt said, this neighborhood has just three houses. She said Orezona built a house on Crocker Lane that they couldn't sell for a very long time. Meanwhile, the people that live across the street from her, on Parcel 1, were looking for a larger house with less property so they proposed to trade their house with 1.59 acres for the house on Crocker Lane. She said she lives in a lovely enchanted forest that is filled with peace, tranquility, and quiet. It is so quiet because of the combined forest the three houses share. Her portion is 1.3 acres and the neighbor's is 1.5 acres. The forests contain hawks, hardwoods, and large Douglas Firs. The forest on Parcel 2 is the guardian forest; it keeps the noise pollution out and provides privacy, which she cherishes. It acts in a positive manner for the three properties on Kingston Way. Her neighbor, Mrs. Stovell, has lived on the other side of the road since 1961. Bechtolt said she took a petition around to the neighbors on Countryman Acres because she did not receive support from the president of her organization. She accumulated 44 signatures. She said, the "enchanted forest" exists because of the promise that we would never subdivide our property. When the Orezona took possession of the house and 1.59 acres and put it up for sale, a buyer came along and then Orezona pulled a "switch-a-roo" because they said the buyers would only get a half acre and Orezona would build on Parcel 2. She said she knows this to be true because she was standing in the street when they were talking to their realtor. It was a shock to her because she thought they were protected by their "promises", but that was wrong. Then she thought the Planning Department would see what an unsuitable building site it was, but she was wrong again. Bechtolt said she has written letters to the City and to Benton County, but to avail. She wrote a challenge to Benton County but was told it was too long, too repetitious, and too sarcastic. She thanked Donovan for being very kind.

Bechtolt said, we are against this because it would destroy the desired quality of our area. Everyone tells us how quiet it is and it is because of this tiny guardian forest on Parcel 2. She described its location. The little crevice is the collection point of the surrounding four acres. All the surface and subterranean fluids of the surrounding areas flow into the little ravine so it is quite different in topology from the surrounding land. The tiny forest acts like a kidney, filtering the fluids as they travel downward and enter the culvert under Valley View Drive. The trees, which are all carbon credits, act as lungs breathing in the carbon dioxide and exhaling the oxygen. This is shocking to her that this tiny little neighborhood of three houses is assaulted in this way. She is seldom visited by the aromas of industrial Albany. The forest is part of the ambience and quality. The little forest is an incredibly poor building site, because it is in the confluence of five septic tank drains. Three houses above are now on sewer, but that has only been for the last five years. For 30 years before that, those fluids were seeping into the forest. Stovell has been there since 1961 so for 47 years, septic from that house has been seeping into the little forest. Bechtolt said her grandson told her that if water has any contact with fecal material, it is contaminated; and as talented as the tiny forest is, Bechtolt said, it is not a sewage treatment plant. She asked, would you like to live in a house built at the confluence of five septic tanks? Is it prudent for the Orezona to subject themselves and their employees to any residual contaminants? Scientists are reluctant to exhume plane accident victims and anthrax victims because those germs and spores live forever.

Bechtolt said, this tiny forest is also a wildlife sanctuary for animals, rabbits, salamanders, and turtles. Building a house would impinge on the animal's neighborhood. She said the Branch Engineering report was cursory and done hastily and superciliously. It was not thorough. It was done, according to the report, as cheap and as fast as possible. No soil samples were taken. The forest is described as moderate with fir trees and an undergrowth of blackberries and scrub trees. Those "scrub" trees are maple, cherry, and oak trees. According to the dictionary, Bechtolt said, "scrub" is "scrappy" but these trees are as tall as the firs, so she believes they are "stately" trees, not scrubby trees. There is also Oregon grape, filberts, willow, and a snow drop plant. Lewis & Clark took snowdrops back to Jefferson as an example of the flora in our area. She said, this report is cursory and not very in depth.

Bechtolt said, while holding up a document to the microphone, that these are the houses I want to draw your attention to. She drove out and looked at them. For example, 1859 Valley View Drive is listed as a comparison, but it is a third of a mile to the east of the forest, on the other side and on a completely different slope. Also, 3512 NW Ridgeview is a half mile from the forest and also on a completely different slope; it has no relevance whatsoever to the tiny little forest. Finally, 2409 Woodcrest Drive is a quarter of a mile from the tiny forest. Bechtolt said she fails to see the relevance of the report and if K & D Engineering put credence in it, it is almost negligent. If Orezona paid for it, they were ripped off and if Donovan and the Planning Department counted on it, they were misled.

Bechtolt held up petitions that she had people sign. She said it has been suggested to her to buy the park, but the Orezona has a buyer. They are ready to buy it with cash. She said, we are here because of greed. Orezona should just chalk this up as a bad business experience. They should be cognizant of the neighborhoods in which they build. She asked, is it prudent of the City to allow a house to be built on the confluence of five septic tanks? It is not our obligation to reward Orezona for what they believe is a bad business deal. She said, I plan to spend my golden years sitting in the living room of my chalet surveying my enchanted forest drinking Tasters Choice coffee, a product of Albany's Oregon Freeze Dry since 1956. She feels she is ill equipped, but is so sincere. She has suffered a great deal of tragedy in her life, and when she turns off of Valley View Drive and drives down her road, it is soothing to her. It restores her soul. She feels a spiritual connection to the enchanted forest, so she is pleading for the forest's life.

She said, this is a private driveway and it says in her deed that all three homes in the neighborhood have equal rights to the driveway. She read a portion from her deed. She said, do not tamper with our little road. Also, she paid 4.5 times the property taxes the other property did, so she has financial as well as numerical superiority. In 31 years, the City, and Benton County, and the insurance company have not cared much about how wide the road was. It is a subterfuge in speech, just to facilitate the heavy equipment, to be used to destroy the little forest. She feels like her two predecessors who signed the Declaration of Independence and she pledges her life, her cause, and her honor to save the little forest. This is very important to her and the other neighbors. The wilderness is the preservation of the world. She said there is a song she likes to sing and she quoted a portion of it. She said, please save my forest.

Bechtolt did not hand the petitions to staff for inclusion in the record.

Deborah Orr, 2793 Countryman Place NW, said that this is the part of Countryman Acres which was developed as rural residential to maintain that lifestyle. This property is at the right hand corner on the edge of the development and the rest of the properties are 2.5-5 acres. It was not built to be a subdivision or suburbia; it was built to be a rural setting and continues to be that way. They have grandfathered in some smaller parcels, but all of the neighbors have a commitment to maintain that lifestyle. It is unfair to take away this setting which has existed 30-40 years and change it into something that it was not intended to be. Widows and retired folks have to fight this battle to maintain the lifestyle they have had for the last 30-40 years with money they may or may not have.

Vynn Berg, 3324 NW Countryman Circle, said he was born, raised, and lived for 60 years in Beaverton before being lured to Albany by his son. He asked staff, isn't a portion of the property across Valley View Drive slated for a subdivision? Donovan said yes, but a corner of it will be saved. Berg asked, so if that is happening, why do we need one little parcel, if we are getting all of those new homes? He said one night he was driving up Valley View Drive and stopped for a turtle crossing the road. He is still amazed how he can stand on his property and see property that shouldn't hold water, yet can be standing in six inches. He watched neighbors build in spots they thought would be okay, but with rains it became swampy. It is an unfortunate situation and he suggests leaving at least a little bit of land. It seems that from the City's perspective, given other development, maybe we don't need this little piece. He would be willing to buy it back for what they paid for it, if he could keep it as a rental and leave it as it is.

Ken Dobson, 3 Center Point Drive, Suite 250, Lake Oswego, said he will tie in some of the comments made by the neighbors to the approval criteria in the Code.

Dobson explained, one of the review criteria for the variance proposal is to be consistent with desired character of the area. Bechtolt has 44 signatures on a petition which state that this is not the desired character of the area. When requesting a variance in a jurisdiction that has these specific requirements, things like petitions do need to be considered in the evaluation of whether or not this conforms to the Code. Dobson understands that traditionally CCRs are something that jurisdictions cannot enforce, but because of the requirement that it be consistent with the area, the CCRs that apply to the property must be considered by the City in terms of meeting that criteria. Dobson asked Donovan, are the CCRs part of the official record? Donovan said to the extent that Bechtolt attached the CCRs to her appeal, they are part of the record.

Dobson said the Planning Department has failed to adequately address the special feature of wildlife on the property. There is reptilian life on the site and the City needs to take a look at it. The City has said that according to Goal 5 it is not listed as a significant wildlife, but that does not mean that there is no wildlife that should be considered in relation to the review criteria that says we have to consider the special site features. If the City wanted to limit the review to items only in the Goal 5 list they could have said that, but they did not – they said "special site features". It needs to be considered.

Dobson said there are errors and deficiencies with the application. The Notice of Hearing is deficient in that it only lists criteria for variances and partitions. However there is another set of criteria that apply, and that is the Hillside Development criteria. Under Section 6.190 of the Code the Hillside criteria should be considered. They should have been mentioned in the Notice of Hearing Appeal because they are substantial requirements. The public at large has been kept in the dark. It is procedurally defective and it is grounds to deny, remand, and send the application back to the Planning Department.

Dobson said, more importantly, the variance requirement is the minimum necessary to allow for the proposed use of the site. The applicant wants to use the private easement to access the site, but Parcel 2 has direct access to the public street, so it is not necessary. It is a preferred option according to the applicant, but the Code says it has to be necessary. Thus, the variance needs to be denied because the property has direct access. It should be denied and the applicant should have to go back and redesign the access.

The Engineering report is also deficient, Dobson said. It must identify soil hazards, with the purpose of showing where they can and can't build. The map that was submitted to the Planning staff shows a drain field, but it does not show the replacement drain field per the Department of Environmental Quality (DEQ) regulations which says that for a house built after 1972 serviced by a septic, it must have a replacement drain field. A replacement drain field can't be built on. When City staff reviewed the application, they lacked that information. The applicant's say they will submit a new map; but, submitting it afterwards, when it has already come to the Council for a decision, is too little - too late. Donovan noted that the map is attached to the letter, so the Council did see it. Dobson said, regardless, all the information should have been in front of the Planning staff at the time they make the decision, and be available to the public when they review that decision, but it was not. Furthermore, the map they did submit raises yet another concern. They must have a ten-foot set back from the property line, yet there are no setbacks. Under the Code, land use applications must conform with Oregon's environmental laws. It does not conform, therefore this application must be denied.

Dobson said a complete Engineering report should map out where building can and cannot take place, and that was not done. The lack of demarcation of the replacement septic drain field, and because the map they did submit shows an illegal drain field, warrants a reversal of this decision and denial of this application.

Regarding wetlands, this property is inundated with water, and even the applicants say they can't build there because it is so wet. Even though this particular property is not on the wetlands inventory, it does not mean it is not a wetland. Dobson said, notwithstanding the wetlands and that this does not match the desired characteristics of the neighborhood, we ask that the record remain open so that wetlands delineation can be performed on this site.

Delapoe said the law requires that if a request to leave the record open is made during the first public hearing the request must be granted, but this is not the first public hearing on this matter so the Council is not under legal obligation to leave the record open. Because of the 120 day clock for this decision, the only way to leave the record open is if the applicant agrees to an extension for the same amount of time. However, the applicant must request it. Dobson said, in that case, we do not request the record to be left open.

Finally, Dobson said, the Council is reviewing applications that call for a partition that runs straight down the boundary of unincorporated City of Albany and Benton County. While he did not see a requirement that approval be conditioned on approval with Benton County, it is still important to maintain relations with Benton County for the items approved which require documented coordination. He also requests that any approval by the City also be contingent upon approval by the Benton County Planning Department.

Councilor Olsen asked, are you concerned about the drain fields on the northern piece of the property? Dobson said yes. To conform with Oregon laws they need to have a replacement drain field and move the other one. The application that was submitted was not discussed so Planning staff did not have the opportunity to review that. The map submitted after staff review showed an illegal drain field.

Bedore asked, is there anyone else in opposition who would like to speak? There was none.

Bedore asked, is there anyone that is neither opposed nor in favor that would like to speak?

Bill Root, 2634 Valley View Drive, wished to speak. He lives across the street and two houses down from the property. When the application first came out, he was against it for a couple reasons, most of which have already been discussed. At a NANA Board meeting, Orezona presented the proposal. They explained to NANA that legally, the parcel could be subdivided since it is zoned RS-10. Instead, Orezona is choosing to build just one house on the northern edge of the property which would have the least impact on the forest. The south end of the property is 18 feet deep and full of trees. If the property had fill to accommodate the four houses which are legally allowed, the trees would be killed. Root said when they proposed just one house on the northern end, NANA voted and decided to not oppose the application with the stipulations they made at the Planning Commission. They want to withdraw the stipulations now, and NANA is not sure we would have approved the application without them. There are 2,000 trees over 8 inches in diameter. Over 1,000 will be cut down on 42.5 acres. Root is opposed to cutting down trees. He rides a motorcycle and he knows from personal experience that when riding by forests, the temperature drops significantly. There is an impact to the environment when too many trees are cut down. The Country Club Estates is the only section inside the City limits; all others fall outside.

Ron Nugent, 3368 NW Countryman Circle, is the President of the property owners association. He said that every property along Valley View Drive is actually in the City. He asked, is the Council's task to approve or deny the application, or are they here to uphold or overturn the Planning Commission's decision? Bedore said the Council is making a ruling on the appeal of the Planning Commission decision. Nugent said the last time there were a lot of folks that left the meeting believing the deed would show that Parcel 2 would not subdivide again. Since then, Orezona asked that that stipulation be removed. He asked, does that stipulation apply or not? Delapoer said the Council could say they will not require the restriction, but the Council also has the authority to make it a condition of approval. It was included in the record as an agreement of the record at the time. He thinks there is legal justification to condition the approval according to that condition. Nugent said to the Council, if you do vote, please make it clear whether or not you are requiring that condition to be included.

Bedore called for the applicant's rebuttal.

Watson said, regarding the surrounding soils and failing septic, that is not the case. The evidence is in the SCS information that was submitted. No one has provided testimony for a threatened species. It is a second hand testimony. The existing owner's rights to easements, or egress, cannot be denied and do not supersede the owners rights otherwise. They can freely use the access; there is nothing in the CCRs to prevent it.

Regarding the DEQ regulations, Watson said it was submitted into the record. He read ORS 340.071 regarding property lines and said it goes on to provide for setbacks. We are requesting the flexibility to meet that condition. He reminded the Council that state law directs them to approve an application if it meets the City's codes or can be conditioned to meet them.

Also, the National Wetlands information showed that these soils are not hydric and in fact they drain very well. One of the requirements for wetlands is that soil is hydric. In summary, they request that the Council uphold the Planning Commission's decision and allow for a 50 foot wide access easement as required by Benton County, allow the increase the reserve area easement for the septic system for Parcel 1 and 2, and not impose the deed restriction that Parcel 2 cannot be further divided.

Reid asked, is there a defined water channel on this property? Watson said the channel is broad and mostly vegetated, with less vegetation near the road. The drainage area is about 2.5 acres total. It is not an incise channel, one that has a bank over six inches.

Donovan asked to respond to some of the items that Dobson raised in his letter. Donovan said, Dobson asserts that the partition and variance applications must be denied because the Notice of Public hearing does not conform to the requirements of the Code and he cites ADC 1.330(4). But this section of the Code applies to Type I-L land use procedures and this particular application is a Type III land use decision.

In regards to Dobson's assertion that the notices were defective, Donovan read from ADC 1.400(f): "Failure to raise an issue by letter, or in person, before the close of the record or the final evidentiary hearing, or failure to provide statements or evidence with sufficient detail to allow the City Council an adequate opportunity to respond to each issue raised, precludes an appeal to the Land Use Board of Appeals based on that issue." The Notice includes this exact statement, except the statement in the Notice says "precludes an appeal based on that issue, instead of "precludes an appeal to 'the Land Use Board of Appeals' based on that issue." Donovan does not think there is any difference between the two statements in terms of communicating the required information.

Donovan said the Notice of Public Hearing includes a list of the applicable review criteria. In fact, Dobson has all the applicable criteria because Donovan emailed him the staff report and noted that it would not change when it went to the City Council. The email was sent on May 9, 2008. The City believes the Notice was sufficient and that Dobson did have all the criteria.

Lastly, Donovan said that Dobson asked that the City did coordinate with Benton County. ADC 1.215 requires that the Community Development Director send a "project review" sheet to other governmental bodies as appropriate. One was sent to Benton County and we reviewed their comments. In summary, Donovan said, we have already done what Dobson suggested.

Delapoer said to the Council, we need a tentative decision to approve or deny the application and to direct staff to impose conditions necessary, if any, to bring the application into compliance with the Code. Then staff will prepare Findings of Fact. The Findings will be presented at the next Council meeting, which will comply with the 120 day clock.

Delapoer explained that the CCRs can only be litigated by someone in the neighborhood. Cities are not involved in their enforcement because cities are not involved in their creation. The City is not in a position to evaluate nor can the City get involved. He explained the process which private property owners could use to enforce the CCRs.

Councilor Sharon Konopa asked, what mechanism can we use to require that they do not further subdivide the property? Delapoer said, make it a condition of approval that they record a covenant running with the land, approved by staff, that it will not be further divided. The City would then have legal standing to enforce it if there is a future violation. Delapoer said he doesn't like that idea, but it can be done.

Bedore closed the public hearing at 8:56 p.m.

Delapoer explained, as part of the deed, the condition would be enforceable although a future Council could choose not to enforce it. It merely would carve out the ability to enforce it if a Council so chooses.

Councilor Bessie Johnson asked, can we enforce no subdividing? Delapoer said, this is a de novo proceeding, so it is not just a matter of overturning a decision; rather, you are making a new decision. However, if an applicant made a certain condition earlier, if they revoke something they conceded to in a previous meeting, Delapoer thinks that provides a legal hook. It will hold a future property owner responsible, and it would be up to the City to impose it or not impose it. We would have authority to seek an injunction in Circuit Court. Bedore asked, can a future Council revoke that? Donovan commented that we could also make it a condition of approval. Delapoer said, but that is satisfied by the covenant. Discussion followed. Delapoer said that a future Council would have the ability, but not the obligation. If the restriction was imposed, they would require it to be followed. He said, this is a de novo hearing, as if we were deciding this for the first instance.

Olsen asked, can a future applicant go to the Planning Commission to have the restriction removed? Delapoer explained that they could go to the Planning Commission and staff could say it violates a condition. If it were in the covenant we may be able to restrict but not by the CCRs. Adding the City as a third party may be a requirement for the City to be able to enforce the restriction. Discussion followed. Donovan said the City is not offered as a third party and that would have to be there.

Delapoer said staff could put together conditions according to what the Council decides.

Konopa asked, will staff have any say in the location of the home since it has some environmental impacts? Donovan said a condition in the staff report is that they must follow the restrictions in the Geotech report, and the restriction is that they cannot build below contour 418.

Konopa asked, since Valley View Drive is not up to City standards, is the other subdivision improving it? Donovan said they are doing at least a partial street. Konopa asked, how many more could be accessing Valley View Drive? Donovan said there was a traffic study which indicates there is not that much traffic from Valley View Drive.

MOTION: Johnson moved that the City Council approve the Tentative Partition Plat application that would divide a 1.59 acre parcel of land into two parcels; and the variance application to allow four parcels to share an access easement. This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing. The motion died for lack of a seconder.

Reid asked, is there a drain field easement? Donovan said according to the Geotech report, they can build over the drain field. Konopa asked, can we prevent that? Shepard said the recording of an easement for a reserve drain field would prevent construction in an easement.

Reid said Senate Bill 100 relates to development within city limits. This takes precedence. He hopes this type of development can be accommodated inside the city limits. Those outside the limits probably are not concerned. We are required to allow construction that cannot happen outside the limits; which means eventually, we will be very dense in housing. There is a need for trees, but this is inside the limits so it needs to take place, otherwise it will be outside. A positive route would be to restrict it from subdividing and require a 40 foot ROW.

MOTION: Councilor Jeff Christman moved to approve with conditions as modified the Tentative Partition Plat application that would divide a 1.59 acre parcel of land into two parcels; and the Variance application to allow four parcels to share an access easement (Files PA-01-08 and VR-05-08). The modification is that the Deed in Building Restriction not allow Parcel 2 to be further subdivided or partitioned. This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing. Reid seconded the motion and it passed 5-1, with Johnson voting no.

Delapoer explained that staff will do a Findings to support the Council's position.

The Council recessed at 9:18 p.m.

During the recess it was pointed out to Delapoer that the appellant did not hand the petitions to the Clerk. Donovan said they were just handed to him during the recess. Delapoer said that since the public hearing had already been closed they will not be included in the record.

The Council reconvened at 9:25 p.m.

Public Hearing

ST-08-04, Somerset Drive to school, and ST-08-06, school to Knox Butte Road; adopting the engineering and financial investigation reports and authorization to secure easements, obtain bids, increase appropriations, and issue warrants for construction.

Bedore opened the public hearing at 9:27 p.m.

Assistant Public Works Director Mark Shepard explained the changes in the project. Staff originally proposed a 32 foot wide street and the Council asked if a wider street was necessary. Rather than make a decision on the street width now, staff estimated for up to 43 feet for wider travel lanes, should the Council choose it. Shepard said the discussion about street widths and parking is scheduled for the work session on June 9. Approval of this item tonight will allow the City to move forward with the Local Improvement District (LID). The cost in the LID accounts for up to a 43 foot wide street. Shepard noted that a representative from the Brandis property and Greater Albany Public Schools (GAPS) is at the meeting as well.

Civil Engineer II Jeff Woodward said the improvements have been divided into two projects for scheduling and logistical reasons. GAPS purchased the property from Brandis after the negotiation for ROW was complete. At the time, Brandis was assuming they would move forward with their own development, so they would participate financially in the infrastructure improvements. But, their project was delayed, so GAPS is now burdened with the full improvement cost. GAPS is asking the City to authorize the LID so the costs can be redistributed.

Woodward said the LID from Somerset Drive would extend water, streets, and storm drainage utilities east to the intersection of Brandis and then south to the school district site. Water is needed for fire protection for construction of the new school and part of the rationale for breaking this project down into two projects is so we can provide that water in time for GAPS to meet their construction schedule. It is best to take all the utilities off of Somerset Drive because it is the closest. A condition of approval for GAPS is that access is from Knox Butte Road. Because of wetland permitting, it is not likely the street will open in the fall of 2009. GAPS staff offered to meet with the Somerset Drive neighborhood to let them know that for about a year, that will be the access until the second project is done. The assessments for the street are envisioned to be on an area basis. The future streets to the north are not included in this LID but they will be obligated to pay for extensions in the future. The cost of the northern LID is over \$3.3 million. The City has some water SDCs which Woodward described. The two totals are \$92,000, so the net assessable is \$3.2 million. It will be recovered through assessments on the benefited properties. The schedule requires that we work with the school in an innovative way. The consultant is working on design and the intergovernmental agreement (IGA) will allow our partnership with GAPS to work as our agent. It would save a lot of time.

Olsen asked, is this new street essentially the main north south arterial for this part of town? And will it replace Clover Ridge? Olsen's concern is that if it is a main thoroughfare it should not be too narrow.

Woodward said the improvements from the school to Knox Butte Road simply can't be resolved in time to be done with the other project, so it is a separate project. The proposal includes a second LID to pay for all utilities from the south line of the school to Knox Butte Road, and to construct the roundabout. It will include all four properties. It is appropriate for all benefited parties to share the cost. The street and water line will be limited to the properties along Knox Butte Road for frontage improvements. Costs will also be recovered through assessments which will be done on an area basis to keep it as fairly distributed as possible.

Delapoer said the Engineering Report references an IGA. ORS 190 allows for units of government to act for one another on tasks. An LID is something only a city can enact, but we can delegate GAPS to proceed with the construction project. They still have to comply with the laws. On the dais is a resolution authorizing the IGA (see agenda file). Both entities have approved it. GAPS agrees to front the money and do the engineering and construction to the City's specifications. City Engineers will inspect and approve the work. GAPS can negotiate with their contractors. Once the project meets the City's standards, final assessments will be adopted by the City and we will have options as to how we will reimburse GAPS. There are two resolutions in the agenda (see agenda file) to build in flexibility. GAPS is using bond money. Delapoer said we have not done a project like this before. This creates a unique opportunity for both the City and GAPS.

Olsen asked, why can't the City borrow money from GAPS and follow normal procedures? Delapoer said, GAPS does not have the authority to loan us the money to build it. In practical terms that is what is happening, though. Discussion followed.

Hare said he instructed City staff to work with GAPS to pursue this goal and remove as many hurdles as possible. He commended City staff for their work and said that GAPS has commended City staff as well.

Johnson asked, when would the LID go into effect? Woodward said, we are asking for your approval to form the district tonight; there will be a public hearing later to levy the assessments.

Bedore asked, is there anyone that would like to speak in favor?

Tanya Durkee, 5735 SW Corbitt Avenue, Portland, is the acting President of Timberhill Corporation. Durkee explained that Timberhill is 35 percent co-owner of the property. Brandis family members own Timberhill, as well as the remaining 65 percent of the property, under various names. For the most part, she has been the person coordinating with various Brandis family members to gain consensus and move forward. Durkee said they believe the school is an important community goal. In fact, John Stewart was the first person to go to the school district because he realized that a new school is an important component of this area. Durkee said, we do recognize the need for a school. She worked through negotiations with the Brandis' for Brandis Village but

that purchase fell through so they withdrew their application. While in that process she was very clear with GAPS that if that application fell through, the Brandis group was not planning to develop the property so they do not intend to pay for the infrastructure. They did sign a remonstrance and understood that there may be an LID formed. They are in favor of formation of a LID because they do believe it is important to get the school up and running. To that end, they dedicated the ROW that will provide for the north and south road. She was not able to attend but did watch the last Council meeting and heard questions from the Council about road width and the location of the roundabout, so she thought it was important to appear tonight. John Stewart is working on Brandis' behalf regarding the road width. She said, for us it would be difficult to dedicate any additional street width and we would resist any efforts. The property to the north has a significant open space to the west of the school district property and additional encumbrance on the developable acreage moving west will potentially limit the development of that strip. It would require \$248,000 more for Brandis' members to fund the additional width of the road. The roundabout has a developability issue if it is moved to the west because it will hinder their future development south of Knox Butte Road. She said, please consider not imposing any further obligations. She has gained consensus from the rest of the Brandis group to this point and it may be difficult to get a new consensus.

Konopa suggested Durkee attend the June 9 work session to discuss the road width. City Code requires 36 feet and that should be in the original plan. Durkee will be sure a representative attends.

Olsen stated, this is not a collector street - it is an arterial street.

Ed Fitzpatrick, 5541 SW Gustan Place, Corvallis, is the project manager for GAPS. Fitzpatrick explained that GAPS petitioned the City for this LID and they fully support the resolution. He feels it is positive for all parties concerned. It will provide utilities to the new school and future park, safe routes for the subdivisions, and the cost to the City is minimal. The IGA dictates that GAPS would take responsibility for scheduling the project. Fitzpatrick said, we too have safety concerns about the road width which we will address on June 9. Speed is a major concern, and a narrower road would reduce that. The on-street parking is also a safety concern. The street was designed for off-street parent drop offs and bus loops. With on street parking, parents will drop students off at the curb which is dangerous. A bigger concern is storm water because if the road is widened, it will increase the pipe size, manholes, and treatment mechanisms. The bioswales are designed to be in the ROW; if the road is widened significantly, it will be impossible to do them. Filters would be used instead, which will require ongoing maintenance by Public Works so that is not a preferable option for the City.

Fitzpatrick said they have already been through a lengthy process with three permit applications. The permits were approved. To widen and change it now is problematic to stay on schedule. He is concerned about another four-month approval process. Lastly, there is time and money involved in redesigning to include a wider roadway. This design is based on a 32 foot wide road and a 70 foot ROW, as approved by the Planning Commission.

Johnson asked, is there enough parking to accommodate school events? Fitzpatrick said other schools have parking issues, but they have 80-100 spaces on average. This school will have 190 spaces. It is probably not adequate for every school event, but overall parking will be much less of a problem than at other schools. Also, the future park grounds will provide space for overflow parking.

Fitzpatrick thanked Hare and City staff, as they have been exemplary in working towards reaching agreements over the last year.

Bedore closed the public hearing at 10:07 p.m.

Konopa said that before June 9 she would like to see a list of other school frontages that are 32 feet wide.

Olsen asked, does Fitzpatrick take the place of City engineers? Delapoer said that per the IGA, GAPS is in charge of the bid. Shepard said the ROW is 70 feet wide.

Olsen asked, by signing this, do we sign away the width of the street? Delapoer said not necessarily, but it is true that the further we proceed with the project, the less we will want to change. But authorizing the IGA and the LID does not preclude the Council's decisions about changing the road width or design. But if the Council wants to change the design in such a way that the ROW is not adequate, and the City is forced to condemn ROW, we will not in all likelihood meet the school district's schedule. Discussion followed. Olsen said, when we did finish Clover Ridge road years ago and Linn County did not have enough ROW, the street was very narrow and we decided in the future that we would do the next street the right way. He does not see a skinny Road as satisfactory for all this access.

Christman asked, do the LID cost estimates include a maximum street width of 43 feet? Shepard said yes and added that the final decision about the width can be determined later on June 9. The urgency now is to get the LID authorized.

Konopa asked, is 70 feet ROW enough for a 43 foot wide street? Shepard said yes, it is enough for the street and sidewalks. It may not be enough room for the bioswales though, so additional ROW or else additional storm water treatments such as filters would be required. If the school changes the design, they will have to resubmit it for permit approval.

Public Works Director Diane Taniguchi-Dennis said the storm water is more challenging because of the point of discharge and because a higher level of treatment is required.

MOTION: Reid moved to adopt the engineering and financial investigation reports, authorization to secure easements, to obtain bids, and to issue debt for the construction of ST-08-04, infrastructure improvements - Somerset Drive to the school and Johnson seconded it. The motion passed 6-0 and was designated Resolution No. 5605.

MOTION: Reid moved to adopt the engineering and financial investigation reports, authorization to secure easements, to obtain bids, and to issue debt for the construction of ST-08-06, infrastructure improvements – School to Knox Butte Road, and Johnson seconded it. The motion passed 6-0 and was designated Resolution No. 5606.

MOTION: Reid moved to authorize the execution of an intergovernmental agreement pursuant to the provisions of ORS Chapter 190 and Johnson seconded it. The motion passed 6-0 and was designated Resolution No. 5607.

Business from the Public

Mark Azevedo, 1210 Skyline Drive, submitted a document titled General Observations about 2008 City Survey (see agenda file). He suggested ways to improve the poll next time. He compared the survey results to census data for Albany to ascertain if it was a true random sample of the community as a whole, not just a subset. The college statistics do not match. The biggest difference is for four years of college and post graduate work. The responders are also far wealthier. Because the responders are more educated and wealthier than most, the sample does not represent true randomness. Thus, the statistics are invalid. These responders will fall into jobs such as at Oregon State University or Hewlett Packard, or are part of the business community. Folks in those groups will not answer for all of the community, and results will be skewed. The assumptions for the model are not valid. For example, of those that responded to the question about the rate of growth, half say it is too fast and half say it is too slow. But it wouldn't be fair to say that the community as a whole feels that way. A way to improve the survey is to define "growth": is it in terms of population, or education, or personal, or business? Then follow up questions such as, "are you in favor of growth? If yes, then who should pay for the infrastructure necessary for growth to occur?" Azavedo said the question as currently stated does not address the complexity. Future polls should be sent to each Ward because the issues will vary depending on the Ward. It would make City government more efficient.

Azavedo said the zone page shows income and the differences in income for zones in 1999. Finally, one of most telling pieces of the survey is the written comments. They paint a picture of how citizens look at Albany. It is clear to Azavedo that regardless of where a person stands on growth or community, they value our "small town" feel. It is an important fabric of this community that should be kept in mind when the City makes its decisions.

Johnson said the survey was distributed to random registered voters, but only 44 percent returned them. There could have been different results if they all participated. Azavedo said, but you did not meet the assumptions of the model so the statistics are skewed. Discussion followed. Hare said he agrees with Azavedo that the survey was not statistically valid and he reminded the Council that the consultant advised them not to do a mail-in survey for that reason. A truly random survey would be conducted by telephone, but was much more expensive so the Council decided to do a mail-in survey instead. The more educated respond to mail in surveys according to statistics. Hare pointed out that social science research is not the same as hard science.

Second Reading of Ordinance

Establishing procedures for retrieving and reclaiming abandoned shopping carts.

Attorney Jim Delapoer read for the second time in title only, "AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE TITLE 7.84, PUBLIC NUISANCE, BY ADDING SECTION 7.84.200 RELATING TO SHOPPING CARTS."

MOTION: Reid moved to adopt the ordinance and Konopa seconded it.

Johnson said she will be voting no because the people she talked to are not sure why we need another ordinance on the books that may not be enforced the way we want it to be.

VOTE: A vote was taken and the motion passed 5-1 with Johnson voting no, and was designated Ordinance No. 5694.

Adoption of Resolutions

Appropriating \$200,000 for costs incurred in development of the SVC modification agreement.

MOTION: Reid moved to approve a resolution appropriating \$200,000 for costs incurred in development of the SVC modification agreement and Christman seconded it. The motion passed 6-0 and was designated Resolution No. 5608.

Accepting the conveyance of tax foreclosed properties from Linn County to the City of Albany.

MOTION: Reid moved to accept the conveyance of tax foreclosed properties from Linn County to the City of Albany and Christman seconded it. The motion passed 6-0 and was designated Resolution No. 5609.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) April 9, 2008, City Council Meeting
 - b) May 5, 2008, City Council Work Session
- 2) Annual liquor license renewals.
- 3) Approving liquor licenses for:
 - a) Johnny Carino's of Albany, LLC, D/B/A Carino's Italian Restaurant, 1825 14th Avenue SE.
 - b) Szabo's and Loafer's, Inc., D/B/A Szabo's Steak and Seafood/Loafer's Deli, 222 Washington Street SW.
- 4) Accepting a grant from the Oregon State Historic Preservation Office. RES. NO. 5610

MOTION: Konopa moved to adopt the Consent Calendar with Item 4) removed. Johnson seconded the motion and it passed 6-0.

Finance Director Stewart Taylor pointed out that there is a revised resolution on the dais accepting the grant from the Oregon State Historic Preservation Office (see agenda file). The difference is that the revised resolution identifies the budget year as 2008-09, although the grant application needs to be returned during this fiscal year to give notice of acceptance of the grant. The Council decided to make a separate motion to incorporate the revised resolution on the dais.

MOTION: Christman moved to accept the Resolution on the dais as presented for Item 4) and Johnson seconded it. The motion passed and was designated Resolution No. 5610.

Reports

Authorizing renewal of the Albany Community Pool lease.

Parks & Recreation Director Ed Hodney explained that three years ago, the City signed a lease that made us responsible for the Albany Community Pool. Their employees became City employees. The lease expires June 30. Hodney provided information in the staff report. The new lease is essentially the same as in 2005 with some minor changes, which Hodney reviewed.

Johnson asked if any capital improvements are pending. Hodney said, we may need to replaster the pool in the near future. The clause that addresses extraordinary expenditures requires that the City have a discussion with the school district and if we can't come to an agreement about who pays what, the City is still protected.

Konopa said she is fully supportive of the swimming lessons provided to the schools. Hodney said a donor contributes \$43,000 a year for that program, for which we are very grateful.

MOTION: Johnson moved to authorize the renewal of the Albany Community Pool lease. Reid seconded the motion and it passed 6-0.

2007- 2008 Landmarks Advisory Commission report.

Catlin said the LAC and staff do a lot of education and outreach throughout the year, including workshops for the public, newsletters to property owners, and several presentations throughout the community. There has been funding last year and this year for the Residential Rehabilitation Matching Grant program. A small amount of money has accomplished several improvements in the Hackelman Historic District last year.

Catlin said the expansion to the Monteith National Register Historic District is still in progress. Staff will be making a presentation to the state Historic Advisory Committee on Historic Preservation next week and expects the expansion will be approved by them and sent to the National Registry for their review.

Reid is discouraged that we have all these funds, but the City-owned Monteith House is not being kept up. The roof and gutters are in great need of repair because they are not being maintained. There needs to be coordination between the LAC and City-owned properties. Hare said the City has provided financial support to maintain the Monteith House but was unaware of current needs. Catlin said the Monteith House will receive \$2,000 in grant money from the remaining SHPO grant funds. Reid said that according to the Monteith Society, the repairs will cost \$20,000 for the items he mentioned and more.

BUSINESS FROM THE COUNCIL

Olsen said the National League of Cities ran an article about how cities can save money by switching from traditional street lights to LED lights. He will bring copies of the article to the next meeting.

Johnson provided each Councilor with a map of the Valley View Drive properties subject to the public hearing (see agenda file). The map shows the Hawk, Johnston, Kerr, and Bechtolt properties. Johnson said tonight the Council had several new documents on the dais; she suggested that in the future if there are several new documents, that the Council has a few minutes before the meeting begins to read them.

Christman asked for an update on future discussions about a Hearings Officer. Delapoer said the new Planning Director, Greg Byrne, asked for an opportunity to weigh-in on that discussion. He has that experience and Delapoer does not. Also, since his department will administer the program, it would help to have him be included in the discussion.

Reid announced that tomorrow he is 79 years old and has been married for 54 years.

Konopa said that the copy of the Del Rio's Good Neighbor Agreement document she received from Bedore is missing pages 2 and 4. Bedore will send it.

Bedore said he did a piece promoting Albany that was taped by Comcast. He was followed by Andy Olson. The piece lasted five minutes and he was interviewed by Ken Ackerman. They will be broadcast by Comcast on CNN at five minutes before the hour. His intent was to present Albany in a positive way and he believes he was successful.

Hare said that while he was in Pakistan he attended a school safety conference and saw the epicenter of the earthquake where 17,000 kids died while at school. There were 6,000 schools destroyed in 2005 and 300 have been rebuilt. This is a preventable problem worldwide. The success story is the state of California, which in 1933 adopted the Field Act. They adopted universal building codes and there has not been a single death of a student in schools from earthquakes since that passed. Hare said it is a reminder of the importance of our building codes.

Hodney reminded the Council that the first of four community picnics will occur next Tuesday, at the Doug Killin Friendship Park, at 6:30 p.m. The park dedication will be at 7:00 p.m.

RECESS TO EXECUTIVE SESSION TO DISCUSS REAL PROPERTY TRANSACTIONS IN ACCORDANCE WITH ORS 192.660 (2)(e)

The Regular Session was recessed into Executive Session at 11:02 p.m.

RECONVENE

The Regular Session reconvened at 11:30 p.m.

NEXT MEETING DATE

The next meetings are a work session on June 9, 2008, and a Regular Session on June 11, 2008.

ADJOURNMENT

There being no other business, the meeting was adjourned at 11:31 p.m.

Respectfully submitted,

Mary A. Dibble, CMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director