

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, July 23, 2008
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Bedore called the meeting to order at 7: 15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Bedore led the pledge of allegiance to the flag.

ROLL CALL

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

SCHEDULED BUSINESS

Communications

Albany Visitors' Association updates and upcoming events.

Jimmy Lucht, Albany Visitors Association (AVA) Manager, explained that the Bi-Mart River Festival would be on the weekend, on Water Street, between Ferry Street and Broadalbin Street. There will be a BBQ Cook Off, a kid's BBQ Cook Off, Rays Food Place BBQ-Cook Off, a Treasure Hunt, pirates, a rib eating contest, a kid's pie eating contest, entertainment, and a fastest text message-sender contest for teens. He invited the Council to attend.

Proclamation read by Mayor Bedore

Bedore read a proclamation declaring August 1-3, 2008 as Albany Pirate Days. Captain Slappy, representing the Albany pirate community, gave each of the Council members a pirate name (in agenda file) with a description of their personality. Captain Slappy administered a Pirate Oath to the Council (in agenda file).

Request from the League of Oregon Cities for Albany's top four priorities for 2009 legislative proposals.

This item was postponed to a Council work session.

Second time extension request from Bob Mitchell for the airport restaurant property.

City Manager Wes Hare explained that Bob Mitchell has encountered some problems regarding the sprinkler system. His recommendation is to grant the extension with the understanding that this is the last extension the Council will consider.

MOTION: Councilor Johnson moved to approve a second 90-day extension for completion of the airport restaurant being constructed by Bob Mitchell Construction with a deadline of January 9, 2009. Councilor Konopa seconded the motion and it passed 6-0.

Business from the Public

Leslie Templeton, 20826 Sunny Lane NW, asked if any fenced dog parks were being considered in Albany. Public Information Office/Manager Assistant Marilyn Smith said the Parks Master Plan includes a dog park.

Keith Eichleman, 4021 Somerset Drive NE, explained that the Boy Scout Troop 100 was attending this City Council meeting in order to qualify for a merit badge.

Second Reading of Ordinance

VC-01-08, vacating a portion of Jackson Street NE, north of Water Avenue and adopting findings.

Bedore noted that the ordinance that would be read a second time includes only the vacation of Jackson Street north of Water Avenue. The ordinance the City Council read the first time was for the vacation of both Jackson Street and Jefferson Street. A condition of reading the ordinance for the second time, and approving the street vacations, was that the owners of property adjacent to the streets sign joint use and maintenance agreements for the vacated street rights-of-way. An agreement has been submitted for

Jackson Street, but not for Jefferson Street. The staff memo in the agenda explains this in more detail. Bedore asked the City Attorney to read the ordinance a second time in title only.

City Attorney Jim Delapoer read for the second time in title only "AN ORDINANCE VACATING A PORTION OF JACKSON STREET NE, NORTH OF WATER AVENUE, IN ALBANY, OREGON; AND ADOPTING FINDINGS."

MOTION: Councilor Reid moved to adopt the ordinance. Councilor Collins seconded the motion and it passed 6-0, and was designated Ordinance No. 5701.

Bedore explained that a decision of the City Council may be appealed to the Oregon Land Use Board of Appeals (LUBA), if a person with standing files a Notice of Intent to Appeal within 21 days of the date the decision is reduced to writing and bears the necessary signature of the decision maker.

Adoption of Resolutions

ST-07-03, 53rd Avenue Bridge and Roadway Improvements, declaring a necessity that the City acquire certain real property located within and outside the city limits of the City of Albany, Linn County, Oregon, for the purpose of improving and creating a public right-of-way.

Hare said this is the beginning of the process to acquire property that the City needs to build the 53rd Avenue extension that is in the master plan and is a contractual obligation with the SVC Corporation.

Delapoer said the nature of the contract with PepsiCo requires that the City go forward to acquire the property for the roadway. This resolution formally authorizes the beginning of the condemnation process if the City is unable to come to a mutual agreement with the property owner and it also authorizes the City to ask the court for immediate possession. Immediate possession is achieved by depositing with the court an amount determined by an appraiser as fair market value. He explained the process to get immediate possession. He said the opponents will bring up a legal question to challenge the ability to get immediate possession outside the City limits. He recommends getting an intergovernmental agreement with Linn County, whose jurisdiction is immediately outside the City limits, regarding the property. That should avoid the legal challenge. He doesn't anticipate problems with Linn County. Immediate possession could be necessary if PepsiCo decides to go forward this January. He said that he has, acting on the City's behalf, retained outside legal counsel whose specialty is this very area. If it becomes necessary to go for an immediate possession, he cautioned the Council that the jury may come back for a higher award to the property owner. The City would pay all costs incurred. This resolution will authorize beginning the process. Delapoer assured the Council that staff is continuing discussions with the property owner.

Konopa said the contract isn't with PepsiCo directly; it is with one of their new sub corporations that has been in existence only since 2004. What happens if SVC goes bankrupt? Delapoer said the City's agreement is with SVC not PepsiCo. SVC stands for Stokley Van Camp Manufacturing. They have been in existence for decades. Hare said staff did a very thorough search of the company before the contract was negotiated and they have assets over a billion dollars, so they feel confident they will live up to their side of the agreement.

Councilor Olsen doesn't like the idea of condemning property. He will be voting against the motion.

Johnson agrees with Olsen about condemning property. She asked if the City was still within the agreement timelines. Delapoer said, if PepsiCo goes forward, we have no extra time. He feels most of the legal opposition to this project is to slow us down.

MOTION: Johnson moved to adopt the resolution declaring a necessity that the City acquires certain real property located in Linn County, partially in the City of Albany and partially outside of the City limits, but within the Urban Growth Boundary, for the purpose of improving and creating a public right-of-way. Councilor Christman seconded the motion and it passed 4-2 with Konopa and Olsen voting no. The resolution was designated Resolution No. 5636.

Authorizing the Mayor to sign the financing contract with the Oregon Economic and Community Development Department to provide financing for infrastructure improvements related to the SVC development agreement and the Oak Creek Revitalization Area.

Delapoer explained that this is a necessary resolution to get the financing in place with the state.

Konopa asked, what would happen if the Local Improvement District never went through and SVC backed out of the project? Hare said the agreement with the state is what is in the project document. SVC has never backed out of similar projects. The City has an agreement with PepsiCo; they have lived up to their obligations so far. He believes our risks are reasonably covered.

Christman asked, is this similar to a line of credit? Delapoer said yes.

MOTION: Johnson moved to adopt the resolution authorizing the Mayor to sign the financing contract with the Oregon Economic and Community Development Department to provide financing for infrastructure improvements related to the SVC Development Agreement and the Oak Creek Revitalization Area. Reid seconded the motion and it passed 5-1, with Olsen voting no. The resolution was designated Resolution No. 5637.

Authorizing the Mayor to sign the intergovernmental agreement with the Albany Revitalization Agency pledging certain revenues for repayment of the Oregon Economic and Community Development Department special public works fund loan.

Delapoer explained that this resolution is a housekeeping resolution to allow for a paper trail of the monies.

Konopa asked, does it matter if the Mayor or the City Manager signs the agreement? Hare explained that the state requires the Mayor's signature.

MOTION: Johnson moved to adopt the resolution authorizing the Mayor to sign the Intergovernmental Agreement with the Albany Revitalization Agency pledging certain revenues to repayment of the Oregon Economic and Community Development Department Special Public Works Fund Loan. Reid seconded the motion and it passed 5-1, with Olsen voting no. The resolution was designated Resolution No. 5638.

Adoption of Consent Calendar

1. Approval of Minutes
 - a) June 9, 2008, City Council Work Session
 - b) June 25, 2008, City Council Meeting
2. Annual liquor license renewals.
3. Authorizing the Fire Department to apply for a 2008 Homeland Security Grant. RES. NO. 5639
4. Accepting a right-of-way dedication from KCH Enterprises. RES. NO. 5640
5. Accepting Federal Aviation Administration (FAA) grant funds and a commitment to provide the required local match. RES. NO. 5641

Konopa asked that 1a) be removed for discussion.

MOTION: Konopa moved to adopt the Consent Calendar with item 1a) removed for discussion. Collins seconded the motion and it passed 6-0.

MOTION: Konopa moved to adopt item 1a) with correction from "1992 Transportation Plan" to "1997 Transportation Plan" on page two of the June 9 minutes. Johnson seconded the motion and it passed 6-0.

Award of Bid

AR-08-01, Security Fence Improvements, and AR-08-02, Drainage Improvements at the Albany Municipal Airport.

MOTION: Collins moved to award a contract in the amount of \$80,075.50 to the low bidder, Gelco Construction Company, for fence improvements, and to also award a contract in the amount of \$90,601.25 to the low bidder, Sloan's Enterprise of Amboy, LLC for drainage improvements at the Albany Municipal Airport. Reid seconded the motion and it passed 6-0.

Report

Receiving Code Enforcement Team Year-end Report for Fiscal Year 2007-2008.

Bedore said that 330 Marilyn Street is occupied by an elderly couple who are unable to accomplish the requirements for the cleanup of their property. He proposed to undertake a clean up on their behalf, asking for volunteers from the Council, Scout troops, and Oxford House members.

DIRECTION: Council directed staff to schedule a cleanup day, with volunteers and City staff, for 330 Marilyn Street.

Smith explained that item 7) on the report is being cleaned up.

Bedore complimented the Code Enforcement team.

Reid also thanked the team for work on 20th Avenue and Hill Street.

BUSINESS FROM THE COUNCIL

Johnson introduced her grandson, Chase.

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Olsen asked that there be more visible advertising for Albany as he is proud of living here. Johnson said the AVA is working on that. There followed discussion about where advertising is taking place and how often.

DIRECTION: The Council directed staff to contact the AVA asking them to prepare a presentation regarding how the City is being advertised.

Collins passed on a constituent's compliment to the water crew.

Konopa had concerns about the cyclone fencing surrounding the storage buildings and City offices at Timber Linn Park. She suggested some sort of coverage on the fences to camouflage the equipment. The Council discussed options.

DIRECTION: The Council directed staff to consider vegetation cover for the cyclone fencing surrounding the City-used buildings at Timber Linn Park.

Bedore said there is a large motor home rally planned at the fairgrounds this weekend and he will be speaking.

Bedore mentioned that bike path signs are planned to go up east of the Dave Clark Bike Path where it currently moves into the neighborhoods and becomes unmarked. He too has received compliments regarding the City.

Hare reported that Arthur Wallace owns property that the City has been trying to mediate a settlement for because of drainage issues from a subdivision the City permitted on Clover Ridge Road. Wallace believes his property is receiving more water as a direct result of the subdivision's drainage plan. The developer eventually was willing to negotiate with the Wallaces to accept a payment of \$12,000 towards the reconstruction of their property to re-drain the runoff. Because of the current economic climate, the offer has been withdrawn as the developer is no longer able to give it. The Wallaces were very upset. It has been the City's contention that the damage was the result of the developer and not the City. However this dispute has gone on for three years. There has been money spent in staff time, if nothing else, trying to mediate the dispute. To forestall any potential litigation, Hare thinks it would be wise to make the payment of \$12,650 to the Wallaces from the City's liability reserve. He is asking the Council for permission to settle with Mr. Wallace.

Bedore mentioned that since this issue came up, the City has changed their practices on how they have oversight on developments like this. Payment to the Wallaces would be with the understanding that no further legal action would take place.

Johnson was concerned about setting a precedent. Hare said this was a pretty unique case. He said the Wallaces expressed concerns at a Planning Commission meeting and were assured that drainage was accounted for. But, there is standing water in their backyard.

Konopa said she showed pictures of the drainage damage a year ago. She explained that she has been in contact with the Wallaces and this process has been very slow and laborious for them, and they are elderly. It was very confusing at times for them and they did not realize that they had to respond to the developer's offer themselves. They thought that someone would do that on their behalf. So, basically they left the offer on the table too long before accepting.

Collins suggested the City file a grievance with the Construction Contractors Board and the Better Business Bureau.

MOTION: Konopa moved to resolve the drainage issue on Clover Ridge Road and settle with Mr. and Mrs. Wallace for \$12,650. Reid seconded the motion and it passed 6-0.

There followed discussion of accountability of the developer and how much responsibility he should have taken.

DIRECTION: The Council directed staff to contact the developer regarding the Clover Ridge Road drainage issue asking for reimbursement of the \$12,650 and if there is no resolution, to contact the Construction Contractors Board or the Better Business Bureau about the issue.

Smith asked if the Council meeting schedule for November and December (in agenda file) was acceptable to the Council. The Council was agreeable.

Community Development Director Greg Byrne gave a brief update on "SmartCentres" timelines.

NEXT MEETING DATE

The next Work Session of the City Council is scheduled for July 28, 2008, at 4:00 p.m., in the Municipal Court Room, at City Hall and the next Regular Session is scheduled for August 13, 2008, at 7:15 p.m., in the Council Chambers, at City Hall.

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ADJOURNMENT

There being no other business, the meeting was adjourned at 8:20 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, CMC
City Clerk

Stewart Taylor
Finance Director