

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, November 12, 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, Floyd Collins, Dick Olsen, Bessie Johnson, Jeff Christman, and Ralph Reid, Jr. by speaker phone.

SCHEDULED BUSINESS

Communication

Accepting the resignation of Gordy Gamet from the Parks & Recreation Commission.

MOTION: Councilor Johnson moved to accept the resignation of Gordy Gamet from the Parks & Recreation Commission. Councilor Konopa seconded the motion and it passed 6-0.

Quasi-Judicial Public Hearing

SD-07-07 and SP-19-07, Fabian Estates Subdivision Tentative Plat and Tree Felling.

Bedore explained that the quasi-judicial public hearing is regarding a Land Use Board of Appeals (LUBA) remand of the City's approval of a Subdivision Tentative Plat that would divide a 4.52-acre parcel of land into 11 residential single-family lots (Fabian Estates, File SD-07-07).

Bedore called the public hearing to order and asked if any member of the City Council wished to abstain. No one did.

Bedore asked if any member of the City Council wished to declare a conflict of interest, or report any significant ex parte contact or a site visit. Konopa said she had driven down Maier Lane.

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 LUBA. Testimony and evidence must be directed towards the approval standards staff will describe or other criteria in the plan or development 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.

Staff report:

Planning Manager Don Donovan explained that on December 12, 2007, the City Council approved a Subdivision Tentative Plat application and a Site Plan Review for Tree Felling application for Fabian Estates subdivision. Fabian Estates subdivision would be located on property on the south side of Maier Lane, east of Skyline Drive in North Albany. The subdivision would divide a 4.52-acre parcel of land into 11 residential single-family lots. A total of 129 trees larger than eight inches in diameter would be removed to construct the subdivision and 208 trees larger than eight inches in diameter would remain. Donovan provided an overhead indicating where the property is. He said the approval was appealed to LUBA and LUBA remanded the decision back to the City to more fully explain parts of the approval. The LUBA remand: 1) requires more information about access for the adjoining property to the east; 2) requires the applicant to submit a storm drainage plan; and 3) requires the City to respond to the appellant's contention that a Comprehensive Plan Implementation Method applies to the subdivision review. LUBA found that the rest of the City's decision was consistent with the requirements for review of the subdivision and tree felling applications. No further review of the tree felling is required.

Donovan said, tonight's testimony is limited to the following three questions: 1) Is the 40-foot-wide access easement extension provided by the subdivision to the properties to the east consistent with the Albany Development Code (ADC) 12.150 requirement for a "street" extension, and does this easement satisfy the

ADC 11.180 (2) requirement that the required access to adjoining developable land allow that land to be developed in accordance with the ADC or is another form of access required? He said that the staff report finds that the 40-foot-wide easement does not meet the ADC 12.150 requirement for a street extension, so the requirement in ADC 11.180 (2) for access to the adjoining property will not be met unless a public street right-of-way is dedicated. Dedication of a right-of-way meets the definition of "street" in the ADC. The applicant has agreed to dedicate the right-of-way. The street would not have to actually be built with the subdivision. It could be built later if the property to the east is ever divided to create another parcel that would need access to the public street to be built in the Fabian Estates subdivision. 2) Have the requirements of ADC 12.530 been met? Donovan said ADC 12.530 requires the applicant to submit a storm drainage plan. The applicant did submit a storm drainage plan with the original application, but the City Council required in a condition of approval that the applicant change the plan. This did not meet the requirement that the applicant submit a plan that shows what would be built. The applicant has now submitted a storm drainage plan that includes the requirements imposed in the condition. The City Engineer has reviewed the plan and approved it as required by ADC 12.530. 3) Does Albany Comprehensive Plan Goal 7, Implementation Measure 10, require the applicant to increase minimum lot sizes in the subdivision because the slopes on the subject property exceed 25 percent? Donovan said the staff report explains that Comprehensive Plan Implementation Methods are not review criteria for subdivisions.

Assistant City Engineer Jeff Blaine explained what was in the storm drainage plan and that the applicants would provide additional information.

Applicant

Andy Bean, 130 West 1st Avenue, representing the applicants, said they agree with the staff report. There is access to adjacent properties, there is a proposed street, and no need for additional access because those properties are already developed according to the Development Code. The street extension being provided is a response to LUBA's concerns. The third issue was approval of the storm drainage plan. The City Engineer has approved their submission. It goes beyond what is usually provided at this stage of the process and it meets LUBA's concerns. They will obtain easements over other property and allow for changes and alterations. If any changes are approved, the plan does provide for a public hearing for the neighbors. He explained that if easements can't happen and there is another way to meet the City's conditions, this proposal allows for options. There is a need for multiple easements and that will take time. In the past flexibility has always been available. On the access issue, the applicant is proposing a street.

Councilor Olsen asked, is this a new proposal? Bean said no, it is an expansion. If easements cannot be obtained, it will provide alternatives.

Olsen asked, will this by-pass the Council? City Attorney Jim Delapoer said no, they could bring it back to the Council. They are just admitting that they may not be able to get the easements and this opens it up for alternatives.

Councilor Christman asked, can there be time constraints to get the easements? Delapoer said the pressure is on the applicant because they cannot go forward without them or go to the City Engineer with an alternative plan. Christman asked, if the neighbors didn't agree with the alternative plan, could they ask for it to come to the City Council? Delapoer said the City generally takes this step at the plan level. LUBA said no, it should be reviewed by the City Engineer at this step in the process. The best thing for the Council to do is to make sure that the City Engineer is following the right process. Staff's job is to give the Council discretion to find ways so they can do whatever is in the best interest of the community.

Councilor Johnson asked, because there is an alternative available if one doesn't work, wouldn't it be best to look at something else? Delapoer said that is what the applicants suggest, given especially the fact that they do not own all the land where the improvements will be located. There is no dedicated right-of-way in control by the City or the applicant, thus if there is a valid alternative the applicants feel the City has a requirement to seek the other alternative rather than put a burden on the applicant.

Olsen asked, do we know anything about the alternative? Delapoer said we have a conceptual idea of the alternative.

Councilor Collins asked if the outflow was to West Thornton Lake or the creek. Bean believes it is two different outflows.

Collins said, the applicant has a reference to still needing to resolve the peak flow issues. Can they explain that? Bean explained that if the alternative is proposed, then they have to deal with peak flows. Bean said the applicant has been seeking the easements continually through this process. The alternative is just a proposal.

Dan Watson, 710 East Thornton Lake Drive, the applicant's engineer, said LUBA said they have to have a drainage plan and the City Engineer has to approve it. They have prepared a detailed final level design plan. Regarding peak flows, he mentioned that they do have detention. They are detaining all storm events through the 100 year event. Peak flow that leaves the site after development will be the same as the peak

flow that left the site before development. They have been working with the property owners regarding the easements. The property owner's main concerns have to do with access. The applicant is concerned about satisfying both City staff and the property owner. He thinks they will get there, but may need to make some changes; for example moving the location of the bioswale.

Collins asked if their report was based on a rainfall event rather than a run-off event. Watson said yes.

Collins asked, since at times runoff event drainage conditions could be greater, how does the design for detention and release deal with it? Watson said it would run down the natural channel. It would be the same whether there are houses there or not.

Collins was concerned about what is happening with the hillside slides in Portland and the possibility of it happening in this area. He was also concerned about what would happen to the infrastructure on West Thornton Lake Drive during a substantial runoff. He continued to ask questions regarding the geotech analysis, storm water release, tree cutting, long term improvements by exception, and the possibility of constructing a fence. Watson referred to specific pages in the report explaining the technical details of his questions and said that they continue to work with the owners of the property regarding easements, runoff, and rainfall.

Collins explained to the audience that he retired from the City of Albany as their Public Works Director, and before that was employed by the city of Salem as their Assistant Public Works Director.

Johnson asked, how many properties do you have to get easements from? Watson said a minimum of three.

Olsen asked if there are any estimates on the pond regarding a 100-year storm. Bean replied that all detentions are on the development. It complies with City standards.

Collins said he believes the Council's question to staff is, did they get the detention right, did they get the runoff right, and would the system work as proposed?

Support:

No one wished to speak.

Opposed:

Norm Hill, 110 Madrona Ave, Salem, representing Mark Azevedo and Kathy Cook, for the record submitted a formal packet in opposition to the application, a copy of a grant submitted by Azevedo and others for the East Thornton Lake Natural Area, and a letter from Dr. Mary Santelmann asking the Council to require the applicants to develop the site in accordance with environmentally sound policies that protect the water resources of the City (in agenda file). They consider the lake a valuable asset to the community. They object to the notice and timing of the hearing. Materials weren't available until October 30 and then they received incomplete copies. They request a further hearing to provide testimony.

Hill said the staff report properly lays out the controversy regarding the easement. Initially, the developer proposed providing access to the properties west (the correct direction is east) of the subject via a 40 foot easement. However, the use of an easement is prohibited by code. Building a street now would not make much sense. Staff proposes deferring construction of the street until such time as the other parcel develops. That approach is reasonable, however merely dedicating a right-of-way now and deferring construction until later will force the neighboring property owners to bear the cost of building this portion of the road. Instead, the developer should either bond this condition or impose a covenant on the lots requiring the owners to contribute to the costs of the road if it is extended.

Hill reviewed the public improvements and their concerns about the analysis as described on pages 2, 3, and 4 of the packet he distributed. He reviewed the storm drain easements. They are opposed to the proposed condition of approval. Their engineer, Gary Bliss, doesn't believe it meets the Engineering Standards for Oregon. He said there are multiple errors in the applicant's report. Without easements they can't make a finding that their plan works.

Hill reviewed the grant that the City and the Azevedos are pursuing in order to preserve part of Thornton Lake. He said it simply makes no sense to spend City and state resources protecting the lake, while simultaneously allowing a developer to introduce additional pollutants into the lake without proper study or review. The developer's study fails to take into account the impact increasing volumes of runoff water will have on the lake.

Hill said the City has the authority to reduce standard densities to properly consider the topography of the area. By reducing the density the City would make this development better. It would preserve more trees and habitat than the current plan.

Hill said the developer challenged the City's requirement that he provide an easement for the storm drain across private property. He says there is no benefit to the City because the Developer already has a right to convey water on downstream property owners. The developer oversimplifies the basic rule of drainage. It is common practice for governments and private land owners to obtain drainage easements when they make changes to the natural drainage, including digging ditches and the reconfiguration of historic drainage patterns. Also, the development code requires the developer to provide easements to all of the public improvements in this project. After the developer has completed construction of the storm drain pipes and bio swale, those projects would go to the City. The City will need to access those facilities for maintenance and repair.

Hill said he is requesting the Council to hold the record open again, to allow them to bring their engineer for testimony. They are not asking the Council to tell the developer "no", rather, they are asking to tell them, "not this way."

Olsen asked if the retention of the water would be by digging trenches and laying pipe. Hill said he believes the proposed plan is an oversized pipe to collect the water, and then it is detained in the ground. It drains to a 10 inch pipe where it is piped into the bioswale.

Olson asked, how long before the retention pipe fills up? Hill said if a storm event is larger than the pipe can handle, there will be a surcharge and water will go all over the place.

Delapoer said, there has been a request to continue the hearing and a lot of new information has been introduced which the Council has not had a chance to review. He suggested the Council allow anyone else who would like to speak to do so, and then continue the hearing to another meeting.

Lila Rawland, 2256 Thornton Lake Drive, said there doesn't seem to be an exit for them on their property. Their property borders the proposed development. Their second concern is that the lake has a delicate ecosystem. What would drainage do to the lake? And thirdly, North Albany Road is already very busy. How much more traffic would there be?

Collins asked, if development was not being proposed and you wished to access your property, how would you access it today? Rawland said there is a little road beside it.

Fred Hueglin, 942 North Albany Road, was concerned about storm and bioswale content. He asked what is the actual rainfall that the bioswale is designed for and if the rainfall exceeds the bioswale capacity causing toxic chemicals to get into the lake and river, who is responsible for cleanup?

No one else wished to speak.

The applicant's lawyer and the opponent's lawyer wished to confer with the City Attorney regarding procedure.

RECESS

The meeting was recessed at 9:32 p.m.

RECONVENE

The meeting was reconvened at 9:42 p.m.

Delapoer explained that the applicants and the opponents have agreed that the opponents will submit any additional material by November 15 and the applicants will have an opportunity to review and provide a response by November 20. He said that both sides understand the Council's concerns about receiving documents at a public hearing. They will refrain from submitting new materials at the December 8 meeting. Delapoer suggested leaving the record open and continuing the hearing.

MOTION: Konopa moved to leave the record open and continue the hearing, have the opponents submit any additional material by the 15th of November, have the applicants submit their response by the 20th of November, provide all materials to the City Council, and reconvene the hearing on Monday, December 8, 2008, at 7:15 p.m. with the understanding that both sides will refrain from submitting new material at the reconvened hearing. Christman seconded the motion and it passed 6-0.

Final Decision

SP-12-08 and AD-01-08, Oregon Acquisition One LLC (SmartCentres) Shopping Center.

Bedore said, next on tonight's agenda is a final decision regarding Site Plan Review for construction of a shopping center with six building on 25.67 acres of land and an Adjustment to allow some 24-foot-wide travel aisles in the parking lots of the shopping center where 26-foot-wide travel aisles are usually required. The applicant is Oregon Acquisition One LLC. A public hearing on these applications was held on October

8, 2008, and a tentative decision to approve the applications was made on October 22. The City Council directed staff to prepare supplemental findings to support the approval and bring them to the City Council for tonight's meeting.

Konopa said that as per her previous statement at the October 8, 2008, City Council meeting, she would be abstaining from discussion and voting on this SmartCentre land use application, unless her vote is required for a decision. She stepped down from the dais.

MOTION: Johnson moved to approve the Site Plan Review application for construction of a shopping center with six buildings on 25.67 acres of land and the Adjustment application to allow some 24-foot-wide travel aisles in the parking lots on the northern parcel of the shopping center where 26-foot-wide travel aisles are usually required (Files SP-12-08 and AD-01-08) and Adopt the Findings of Fact, Conclusions, and Conditions set forth in the Staff Report, as modified by the Supplemental Findings, including the conditions set forth therein. This motion is based upon the evidence and testimony in the record, including the written and oral testimony presented at the October 8, 2008, public hearing, Council deliberation at the October 22, 2008, City Council meeting, and the Supplemental Findings presented to the City Council at the November 12, 2008, City Council meeting. Christman seconded the motion.

Olsen said on page 282, in the second paragraph from the top, there is discussion regarding City condemnation of the property needed for the access street. He is opposed to condemnation and therefore intends to vote no.

VOTE: A vote was taken on the motion and it passed 4-1, with Olson voting no.

Bedore said that within five days of the decision the Community Development Director provides written notice of the decision to the applicant and any other parties entitled to notice. A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a Notice of Intent to Appeal not later than 21 days after the decision becomes final.

Konopa returned to the dais.

Business from the Public

Bill Root, 2634 Valley View Drive, invited the Council to participate in the Association for Motorcyclists of Oregon Toy Run parade on December 7, 2008.

First Reading of Ordinances

Levying assessments against property specifically benefited by sewer and water connections and the assessment of sewer, water, parks, and transportation system development charges for property described as Tax Lot 400, Parcel 11S-03W-08CC, and site address 1910 Geary Street SE; and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE LEVYING ASSESSMENTS AGAINST PROPERTY SPECIFICALLY BENEFITED BY SEWER AND WATER CONNECTIONS AND THE ASSESSMENT OF SEWER, WATER, PARKS, AND TRANSPORTATION SYSTEM DEVELOPMENT CHARGES FOR PROPERTY DESCRIBED AS TAX LOT 400, PARCEL 11S-03W-08CC, AND SITE ADDRESS 1910 GEARY STREET SE, AND DECLARING AN EMERGENCY."

MOTION: Reid moved to have the ordinance read a second time in title only. Christman seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Reid moved to adopt the ordinance. Christman seconded the motion and it passed 6-0, and was designated Ordinance No. 5705.

Amending AMC Chapter 13.21 concerning parking regulations and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING CHAPTER 13.21 OF THE ALBANY MUNICIPAL CODE CONCERNING PARKING REGULATIONS AND DECLARING AN EMERGENCY."

MOTION: Reid moved to have the ordinance read a second time in title only. Johnson seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Reid moved to adopt the ordinance. Christman seconded the motion and it passed 6-0, and was designated Ordinance No. 5706.

Adoption of Resolutions

Approving an extended property tax abatement agreement between the City of Albany, a cosponsor of the South Santiam Enterprise Zone, and Entek Membranes, LLC.

City Manager Wes Hare said there is no impact on the City of Albany by passing this resolution. It is necessary because we are partner in the South Santiam Enterprise Zone and they need our support.

MOTION: Konopa moved to adopt the resolution. Collins seconded the motion and it passed 6-0, and was designated Resolution No. 5696.

Establishing a 50-foot parking restriction at 1290 Industrial Way.

MOTION: Konopa moved to adopt the resolution. Collins seconded the motion and it passed 6-0, and was designated Resolution No. 5697.

Establishing a parking restriction on 36th Avenue adjacent to South Albany High School.

MOTION: Konopa moved to adopt the resolution. Collins seconded the motion and it passed 6-0, and was designated Resolution No. 5698.

Ratifying the sale of City-owned property at 38159 Scrael Hill Road and accepting the following easements and ratifying the warranty deed.

MOTION: Konopa moved to ratify and accept the resolutions concerning the sale of the City owned property commonly known as the Archibald property. Collins seconded the motion and it passed 6-0, and the following resolution designations were made:

- | | |
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| Conservation easement from George & Cory Koos within 100 feet of the Santiam River. | RES. NO. <u>5699</u> |
| Construction easement from George & Cory Koos (temporary). | RES. NO. <u>5700</u> |
| Access/maintenance easement from George & Cory Koos along Burkhart Creek. | RES. NO. <u>5701</u> |
| Access/maintenance easement from George & Cory Koos south of Canal. | RES. NO. <u>5702</u> |
| Noise easement from George & Cory Koos for the operation and maintenance of water intake and pumping facilities. | RES. NO. <u>5703</u> |
| Warranty deed to George & Cory Koos transferring ownership of an excess parcel of City property. | RES. NO. <u>5704</u> |

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) October 8, 2008, City Council Meeting
 - b) October 22, 2008, City Council Meeting
- 2) Authorizing the City Manager to sign a lease agreement with the District 4 Council of Governments for usage of the Albany Senior Center for the Senior Meals program.
- 3) Approving a liquor license for Mexico Lindo II, 637 Hickory Street, Suite 130.
- 4) Accepting a public sewer line easement from P & F Geary Square, LLC. RES. NO. 5705

MOTION: Konopa moved to adopt the Consent Calendar. Christman seconded the motion and it passed 6-0.

Award of Bid

WL-09-01, Eighth Avenue Water Line Replacement.

Public Works Director Diane Taniguchi-Dennis said this low bid reflects the very competitive climate in favor of the City right now.

MOTION: Collins moved to award the WL-09-01, Eighth Avenue Water Line Replacement contract in the amount of \$223,040 to the low bidder, Emery & Sons Construction, Inc., of Stayton, Oregon. Christman seconded the motion and it passed 6-0.

Personnel Request

Approving salary grade increase for Nonbargaining (Confidential) Administrative Assistant I.

MOTION: Konopa moved to approve a one-range increase in pay for the Non-bargaining classification of Administrative Assistant 1 (AA1) effective December 1, 2008. Johnson seconded the motion and it passed 6-0.

Reports

Receiving Parks & Recreation 2008 Summer & Event Statistics Report.

The Council complimented the Parks & Recreation Department on the amount of events they provide and how well they are attended and produced.

Receiving Code Enforcement Team First Quarter Report for Fiscal Year 2008-2009.

Public Information Officer/Management Assistant Marilyn Smith said they have started planning for community-wide litter pickup in the spring of 2009.

BUSINESS FROM THE COUNCIL

Bedore said he attended the graduation of the Police Citizen's Academy and complimented the Police Department on a job well done.

RECESS TO EXECUTIVE SESSION TO DISCUSS CURRENT LITIGATION OR LITIGATION LIKELY TO BE FILED IN ACCORDANCE WITH ORS 192.660 (2)(h)

The Regular Session was recessed into Executive Session at 10:20 p.m.

RECONVENE

The Regular Session was reconvened at 10:51 p.m.

NEXT MEETING DATE

The next Regular Session is scheduled for Monday, November 24, 2008, at 7:15 p.m., in the City Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:52 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, CMC
City Clerk

Stewart Taylor
Finance Director