

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Monday, December 8, 2008
7:15 p.m.

MINUTES

CALL TO ORDER

Council President Sharon Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa 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

Council members absent: Mayor Dan Bedore

SCHEDULED BUSINESS

Communications

Considering an emergency grant request from LOVE INC

Randy Glaser, 2544 NW Dover Lane, Chair of the Resource Development Committee, for LOVE INC. said they are requesting the money to jump-start their income budget. LOVE INC evolved from the City of Albany Homeless Summit meetings. They are a clearinghouse to meet social service needs. Getting organized took a year and a half. They have secured office space and are ready to open their doors.

Konopa asked, what other types of fundraising would LOVE INC be involved with? Glaser said mostly churches, individuals, and businesses.

Councilor Christman asked, what is meant by "clearinghouse"? Glaser said it would be a central place for referral to individuals or organizations that can meet the need of the client. People at the office would be trained and have listings of services available in the Albany area. They would also do a verification process to screen out offenders.

Christman asked, will those agencies accept your verification? Glaser said he assumes they will, since churches don't have the staff to deal with most of these situations.

Councilor Collins asked, are you going to be coming back in the spring, during the City's outside grant process, for \$30,000? Glaser said they may ask for \$10,000 to \$20,000 during the normal grant process. Collins said he is concerned that the way the economy is going, the City may not be able to provide any funding in the spring. Glaser said they hope they do not have to come back.

Councilor Olsen said he thought FISH was a clearinghouse for the homeless. Glaser said they did at one time, but no longer have the staff or money.

Olsen suggested they approach other organizations besides churches.

Collins asked, is LOVE INC up and running? Would it reduce the work load of the Police Department? City Manager Wes Hare thought the service would be valuable to the community. Police Chief Ed Boyd said he was optimistic that it will have a positive impact. He said that when identified needs are met for this select population, it reduces their calls.

Councilor Reid thinks ambulance calls would be reduced as well.

Christman was concerned the City is being asked to put up money to show the community it is a viable program. He believes it should be the other way around. They should have gone to the community first for funding.

Konopa believes there is a need and they will do a better job than what is being done now. Her fear is that other nonprofits may want to come to the City for financial help.

Collins believes that the savings to the Police Department and the Albany Fire Department as well as their ability to screen offenders will be an asset to the City.

MOTION: Collins moved to approve an emergency grant request of \$10,000 from LOVE INC. and have staff prepare a resolution transferring appropriation for the December 17, 2008, City Council meeting, if needed. Olsen seconded the motion and it passed 5-1, with Reid voting no.

Considering the protest of special procurement for Library furnishings.

Hare said there is a memorandum in the agenda packet explaining why the architect believes the company chosen was the most appropriate.

Collins was concerned about one company being put off by the architect telling them that it would be sometime in the future and then the architect going to a soul source company instead. He was worried that there was no bidding process and questioned the integrity of the process. Councilor Johnson was also concerned.

Hare said the architect makes a valid case for choosing this vendor. Collins said his concern is that there never was an opportunity for anyone else to bid on the furnishings.

Collins asked, if we upheld the protest and instructed staff and the architect to design specifications, and put it out to bid, what would that do to the timing of the Library? Library Director Ed Gallagher said it would delay the project by at least a month to a month and a half.

Olsen asked, can we verify that they meet the specifications? Gallagher said the Council would have to check with the architect.

Reid commented on the justification information from the architect not necessarily being correct. He said he has some questions. Gallagher said he is not the expert, the Council would have to ask the architect.

Olsen asked if staff has any idea what the savings is compared with SpaceSavers, and if they had a chance to bid. Gallagher estimated a savings of around a 65 percent by piggy backing on the other contract.

Finance Director Stewart Taylor said the original contract had been through a competitive bid. The City would be piggy-backing on to that contract, using a cooperative contract. Albany gets the pricing that was available in that contract. We generally include cooperative language in our contracts as well.

Hare said the City is taking advantage of the other jurisdiction doing the work. What he understands is this was a very substantial discount because it was part of a disaster recovery bid. It was a negotiated reduction in price.

City Attorney Jim Delapoer believes if the City goes out to bid, there may be a delay of the Library opening by more than six weeks. That would add additional costs. He believes that the principal merit is that there is an emergency and the City needs to move forward.

Collins said this was not a competitive process, it was a negotiated price, and he is unhappy to be put in the emergency box.

Johnson said it seems like we do this a lot. She would like to see things done on a more timely basis.

MOTION: Collins moved to adopt the resolution denying the protest received regarding the procurement method for shelving, paneling, and furniture for the Library project. Johnson seconded the motion and it passed 6-0, and was designated Resolution No. 5713.

Continued Quasi-Judicial Public Hearing

SD-07-07, Fabian Estates, LUBA remand of City approval of a Subdivision Tentative Plat that would divide a 4.52-acre parcel of land into 11 residential single-family lots.

Konopa said this continued Quasi-Judicial Public Hearing is regarding a Land Use Board of Appeals (LUBA) remand of City approval of the Subdivision Tentative Plat for Fabian Estates that would divide a 4.52-acre parcel of land into 11 residential single-family lots (File SD-07-07). The applicant is Frank Fabian. The Council agreed to accept new written information through November 20 and expressed the preference to receive only verbal testimony at tonight's continued hearing. The Planning staff sent a memo to the City Council for tonight's meeting agenda with new written information attached.

Konopa opened the public hearing at 7:50 p.m.

Konopa 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. No one did.

Konopa explained for all those wishing to testify, to please be aware that they must raise an issue with enough detail to afford the Council and parties an opportunity to respond to the issue if they later want to

raise that issue on appeal to the LUBA. Testimony and evidence must be directed towards the approval standards staff will describe or other criteria in the plan or Development Code which they 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 time limit the City has to make a decision on the LUBA remand. 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 or damages in Circuit Court.

Staff Report

Planning Manager Don Donovan said the questions before the Council are consideration of continuing information regarding the three issues that LUBA identified in the remand: 1) Is the 40-footwide easement extension consistent with the Albany Development Code Section 12.150, requirement for a street extension, and does the easement satisfy ADC 11.180 (2), that adjoining access to a developable land is acceptable or is another form of access required? The staff report on November 12 concludes that the easement wasn't acceptable and the applicants would have to dedicate a right-of-way, which they have agreed to. Both parties agree that the street doesn't need to be built now, but there may still be a question as to who pays for it, either by providing a bond for street construction or recording a covenant. 2) Has ADC 12.530 been met? It requires that all proposed storm drain plans must be approved by the City Engineer. The applicant's have submitted a plan and the opponents identified what they see as errors in it. 3) Does the Albany Comprehensive Plan, Goal 7, Implementation Method 10, require an increase in the lot sizes because the slopes on the property exceed 25 percent? Donovan said staff feels that the Comprehensive Plan clearly describes what the implementation methods are; and that they will be incorporated into the Development Code by a separate action.

Engineer Jeff Blaine provided a map (in agenda file) that shows the proposed drainage pipeline to the bioswale, to be discharged just below West Thornton Lake. The applicant wanted a modified condition in case they weren't able to get an easement across access property to the lake. Their alternative proposal has not been reviewed by staff. Blaine has had numerous conversations with the property owners. The opponents concern was regarding the excavation needed during construction of the pipeline on the easements. If the Council approves it tonight and the applicants come in, the application would need to be approved by a geotechnical engineer. The City retained WRG Design to conduct an independent review of the drainage proposal and they say it is adequate. WRG was available to answer any questions

Konopa asked, what if a homeowner puts in extra pavement and drainage is diverted? Blaine said they can't predict or protect against every scenario.

Collins said since the alternatives would be to discharge into the lake and not downstream and if we are concerned about the lake, the City needs to encourage discharge farther down.

Olsen asked, where would the natural drainage be without an easement and how can the applicants have it drain there without an easement? Delapoer said utilizing the natural drainage is legal. Olsen doesn't think it would drain where they say the natural drainage is. He said the City needs a storm drainage plan.

Collins said he hasn't heard about the total volume of water that might be coming down the natural drainage way. Blaine said that there will be an increase in volume.

Applicant

Andy Bean, 130 West 1st Avenue, representing the applicants, asked that the Council and people providing testimony to please focus on the three issues. He said this property is zoned RS-10, which allows building at a far less size than the 50,000 feet the applicant is proposing. He said this is urban property not rural property.

Dan Watson, 710 E Thornton Lake Drive, Engineer for the applicant, provided an overhead and explained the natural and existing drainage. He explained the collection and drainage proposed and showed detention manhole designs. They propose to pipe water all the way down the hill and into an area below the lake. He said there were questions regarding lot 6 and 7 and explained how they will make sure drainage gets into the detention system. He explained the options they have to drain the lots. He mentioned that the items he was providing tonight were photocopies of items already in the record. He explained the piping. He said the rate the flow leaves the site and where it is discharged are the keys to its effectiveness. There is no impact to the downstream property. Watson said that after meeting with the Lake Association they incorporated their preference to have the drainage below the lake. As to the trees and storm drain alignment, they can go around the trees. They are willing to get a tree impact permit if necessary. The bioswale, as submitted, will work for the project.

Collins asked if the downstream pipe was sized to handle flows. Watson said it is designed to handle all the flows.

Konopa asked, will the natural flows in the area be picked up? Watson said yes, we are picking them up.

Michael Robinson, 1120 NW Couch Street, 10th Floor, Portland, said the applicants have addressed the three issues brought forward by the LUBA remand. There is nothing unusual about the subdivision. The proposal is similar to the current neighborhood. They have agreed to a 40 foot wide street dedication. The road is only necessary for the four lots that aren't theirs; therefore they believe it should be built by whoever develops them. Their storm water plans satisfy the ADC requirements and are acceptable to the City Engineer. It meets the standards the City has imposed. He said they agree with the staff report that Goal 7 is not applicable at this time. He disagreed with the opponent's lawyer about conditions of approval and cited a legal example of when it does apply. He said it is consistent with state law to approve an alternative. He talked about the obligation for property owners to take the uphill drainage and others are obligated to take theirs downhill. He asked the Council to approve with the reasonable conditions provided by staff.

Bean said the Engineer for the opponents is no longer in dispute with their plans and mentioned that they aren't able to gather storm water drainage from outside their own area. He asked the Council to approve with the proposed conditions.

Support

Tony Nova, 1886 NW Bloom Lane, said he has had experience with these developers and drainage problems. They believe in responsible development. At a previous development people below the development were concerned about storm water runoff. After the Fabian group put in their system, they had less water than in the past.

Opponents

Norm Hill, 110 Madrona Avenue, Salem, said he was hired by Mark Azevedo and Miss Cook. Regarding the street issue, they do not believe it is fair to put costs of construction on to a future developer. They would like to see a stub street. It would require the neighborhood to do a Local Improvement District (LID). They could add it to the deeds as part of a built-in cost. Regarding the hillside construction issue, the proposed plan is not the only option. Their position is that they can look at the Comprehensive Plan and increase the lot size. They are asking to require a minimum 20,000 square foot lot size. The storm water issue has been resolved, but they are concerned they will not build what they say they will build. They are also concerned about it being a private system with responsibility being taken over by a neighborhood association. Regarding the easement problem, he disagrees with Mr. Robinson. Unless the Council has a finding that the plan is feasible, then you can't approve the development. He feels they have a phantom alternative plan. He doesn't believe they are being fair to his clients. His clients are asking the Council not to say no, but to have the applicants do their homework. They have concerns about the tree felling and the new pipe that is going in. Hill asked, once they go from an open channel to a pipe, what happens to the natural area?

Mark Azevedo, 1210 Skyline Drive, provided photos of where the drain line would come across the road. He doesn't believe it could handle the runoff. He said removal of the trees on property causes more runoff. The more canopy cover, the less runoff.

Robinson objected because this was not relevant. LUBA already ruled on the tree issue. Delapoer asked the Council not to make a decision based on the tree concern.

Azevedo continued with concerns about the easements necessary to put in the pipe for the storm water. Construction of the pipe will necessitate removal of trees.

Collins asked, if the Council approved the plan with a condition of the easements, and they cannot secure the easements, will they have to come back to the Planning Commission with an alternative? Delapoer said yes. In the past the City has given that authority to staff as well as the Planning Commission. If the Council put a condition on approval saying it had to be this way or no other, modified plans would need to be brought to the Planning Commission.

Public Works Director Diane Taniguchi-Dennis said this is unusual. In the past the City has not required this type of plan so early in the process. There is a proposal to allow for amendments by the applicants and request a type two land use process. It would be referred to the Planning Commission and could be appealed to the City Council. There followed discussion regarding the process.

Annette Higginbotham, 1240 West Shady Lane, said removal of trees makes for an unstable area. She doesn't want to repeat other City's disasters. Even though staff believes it meets the Comprehensive Plan, she said the pipeline goes against the Goal 10 of protecting special features and addressing steepness. An open cut excavation will impact the white oak root systems. Putting a bioswale in a natural channel is also an environmental issue. She believes this would be setting a City precedent.

Craig Bradley, 1071 Skyline Drive, objects to the project and is concerned about the engineering report. It is a steep hillside and the area will be affected by storm drain runoff. He is concerned that limited tree removal will not be enforced. He was also worried about machinery damage while installing the pipes.

Phil McFadden, 524 34th Street, Corvallis, is a hazelnut grower. He has an orchard and owns the deed to the property where the pipe will be put in. He favors good planning and careful management of water resources. He is willing to give an easement to the City. The water coming off the hill which comes from springs, goes into the lake. If it is diverted by going into the hill and put under the surface, it will cause a lot of erosion. He asked the Council to be careful how they manage the water. That strip of land is the only legal access to his property. Directing water towards the south end of the lake is a good concept. He prefers a smaller easement and pipe. He would be granting an easement with the idea that there is a future need of infrastructure.

Recess

The Regular Session recessed at 10:15 p.m.

Reconvene:

The Regular Session reconvened at 10:26 p.m.

Rebuttal

Watson said the natural elements were dealt with in the original application. Watson reviewed his engineering numbers.

Bean said the Council needs to consider the future beneficiaries of the street. Hillside development has been addressed. Continuing this process is turning the Council into engineers for each application. He reminded the Council that this is not a rural area. The City hired an engineer, the opponents hired an engineer, and the applicants hired an engineer. They all agree it is a workable plan.

Watson said he still believes he will be able negotiate an acceptable solution, regarding the easement.

Robinson said the City Engineer has accepted the plan; three sets of engineers have looked at it and agreed. Watson has indicated only three trees need to be removed for the piping to curve through. Regarding the street, Hill has said the applicant should pay for it, but why? The value is to another developer. The hillside development is covered under the Albany Development Code. City requirements have been met. It is a private system to be maintained by a homeowners association. It is not a phantom plan. They will be comfortable with the conditions as proposed by staff, if approved. Nothing in the LUBA remand prevents the Council from imposing conditions. Regarding the conditions for the easement, they will accept them. If they cannot comply, they would need to come back. Everyone is procedurally bound. They want to be a good neighbor to Bradley.

The hearing was closed at 10:53 p.m.

The hearing was reopened 10:54 p.m.

Collins asked about the size of the bioswale. Blaine said they wanted room for a vehicle. There is a legal easement but no cut to the road.

Collins said an RS-10 zone allocation allows up to a 30 percent smaller lot. His point being, not all the lots are over 10,000 sq feet.

There followed discussion regarding the timeliness for development of a street. Donovan said staff would follow the process in the Development Code.

The hearing was closed at 11:10 p.m.

There was Council discussion regarding the timeliness of the street, potential future use, and the current developer paying for stubbing to the adjacent property line.

Delapoer suggested the Council give staff flexibility in the wording of conditions regarding trees, streets, and storm drainage.

MOTION: Johnson moved to grant tentative approval with conditions as modified the subdivision tentative plat application for Fabian Estates Subdivision (File SD-07-07) with the following four conditions 1) construct a public street right-of-way to the boundary of the adjacent property line. 2) Acceptance of Revised Condition 4.7 (storm water drainage) as shown on page 14 of the agenda with the last sentence removed. 3) Staff to provide options for the drainage plan in order to have limited impact as to the removal of additional trees. 4) Calculations for storm drainage would be based on the tree canopy from the

predevelopment proposal. The motion includes direction for staff to prepare additional findings that address the new information and testimony presented at the public hearing and bring them to the December 17, 2008, City Council meeting for consideration. Christman seconded the motion and it passed 6-0.

Public Hearing

Amending the fee schedule for certain building division fees.

Konopa opened the public hearing at 11:31 p.m.

Staff Report

Building Manager Melanie Adams explained that the City needed to come into compliance with state methodology for fee distributions as well as increasing fees to cover actual costs of service. The last building fees increase was in 2001. Current fees are not accounting for 40 percent of personnel and central services expenses. She said that even the fee increase would not allow full cost recovery. More extensive information was provided at a Council work session. She mentioned that a representative from the Home Builders Association was in attendance and had submitted written testimony, but had to leave.

Testimony

John Robinson, 2500 Del Rio Court SE, a small General Contractor, said the local economy is in bad shape. In December of last year he had to lay off his employees, including his son-in-law. He named several companies that had to lay off employees or are closing this year. He is against raising the fees in this economy. They already had an increase in fees with the school excise tax that was passed this year. He believes it is necessary to cut current staff levels, even though it hurts. The two reasons he heard for the request for an increase in permit fees was that requests have fallen and the last increase was in 2001. These reasons do not take into account the current economy. In his industry, they can't charge customers more simply because there are fewer of them. Nor can he increase his hourly wage simply because it has been a while since an increase. He needs to assess his market and his customers are very sensitive to any increases in permit fees. Also, the current staff level and current work load have not been justified. If there are fewer permits, there is less work. He gave examples of a couple of other cities that have renovated the way they do permits that decreased costs. He said there is room for process improvement in Albany and gave a personal example of a process frustration he experienced. He said no one likes to lay off employees. He didn't want to, but had to do it. He doesn't think there needs to be any more pressure on the construction industry.

Hare said that the Building Department has already taken cost cutting measures and they will probably be looking at layoffs. He mentioned that the city of Corvallis laid off two people this week. The Council needs to consider if the department will continue to be a self-sustaining, non tax-supported, department. At the work session staff mentioned the problem of laying off people and then being unable to find professional, experienced, people when you need to hire them back.

No one else wished to testify.

Konopa closed the public hearing at 11:46 p.m.

Christman asked, has the department done any staff size comparisons with other cities? Community Development Director Greg Byrne explained that although they haven't done that, cost cutting measures have been put in place and he mentioned more that would need to be done.

Johnson said, what home builders are going through affect homeowners and builders. Adams said that staff recognizes what is going on with the economy and the department can possibly get through the end of this fiscal year without additional revenue. After that, she said they do not know whether they will have sufficient revenue to maintain operations. Hopefully, commercial projects will come through.

Konopa said the City can't sustain the Building Division while promoting growth. She would be willing for this to come to a work session to discuss other fund sources.

Collins said the Council can approve the changes to the fee schedule to bring it into compliance with state regulations without increasing the fees. He would like the fees to come back as part of the budget process.

MOTION: Collins moved to have staff comply with new Consistent Form & Fee Methodology rules announced by the State Building Codes Division which become effective on January 1, 2009, and bring fee discussion back to the Council at a session scheduled by the City Manager. The motion was seconded by Johnson.

Byrne explained the cost savings measures taken in the last several months. He mentioned that even if the modest increase proposed here were approved, the Building Department will not be self sustaining.

There continued to be discussion about prioritizing and the budget process for the fees.

VOTE: A vote was taken on the motion and it passed 6-0.

Business from the Public

There was none.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) November 10, 2008, City Council Work Session
- 2) Accepting an easement from Bob G. Mitchell. RES. NO. 5714
- 3) Approving a liquor license for Cinema Treasures, Inc., dba Pix Theatre, 321 Second Avenue SW.

Johnson moved to adopt the Consent Calendar as presented. Reid seconded the motion and it passed 6-0.

Report

Overview of Albany's pretreatment program plan to meet EPA pretreatment streamlining regulations.

This item was postponed to a future meeting.

BUSINESS FROM THE COUNCIL

Christman asked for an update on the leaf pick-up. Assistant Public Works Director Mike Wolski said they are heading to North Albany this week and should finish within a week. He will check on other areas of concern.

Hare said he met with the anonymous donor for the new Library and she is considering changing the accent color on the outside walls.

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

The Regular Session was recessed into an Executive Session at 12:25 p.m.

RECONVENE

The Regular Session was reconvened at 12:59 p.m.

NEXT MEETING DATE

The next City Council Work Session is scheduled for Monday, December 15, 2008, at 4:00 p.m., in the Municipal Court Room. The next Regular Session is scheduled for Wednesday, December 17, 2008, at 7:15 p.m., in the City Council Chambers.

ADJOURNMENT

There being no other business, the meeting was adjourned at 12:59 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, CMC
City Clerk

Stewart Taylor
Finance Director