

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, December 9, 2009
7:15 p.m.

MINUTES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Konopa led the pledge of allegiance to the flag.

ROLL CALL

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

SCHEDULED BUSINESS

Communication

Accepting Lolly Gibbs' resignation from the Planning Commission.

Councilor Johnson moved to accept Lolly Gibbs' resignation from the Planning Commission. Councilor Reid seconded the motion and it passed 6-0.

Legislative Public Hearing

CP-02-09, amending Ordinance No. 4477, which adopted the Albany Comprehensive Plan, adopting findings; and declaring an emergency.

Public Works Director Diane Taniguchi-Dennis asked the Council to open this public hearing, receive comments, and then continue the public hearing to another meeting for staff to gather information.

Konopa opened the public hearing at 7:17 p.m.

No one wished to testify or provide comment.

The Council agreed to continue the public hearing at the scheduled City Council Regular Session on January 13, 2010.

Quasi-Judicial Public Hearing

SP-37-08, SP-38-08, VR-09-08; considering site plan reviews to construct a Lowe's home improvement and garden center and to remove 42 trees and to allow the building area of the proposed Lowe's building to be 152,236 square feet.

Konopa explained that the hearing was regarding a Site Plan Review application to construct a Lowe's home improvement store and garden center on an 11.54 acre site located at the southeast corner of 9th Avenue SE and Oak Street SE, a Site Plan Review to remove 42 trees that have trunks larger than 25 inches in circumference, and two variances. One variance will allow a maximum building area of 152,236 square feet when the Albany Development Code (ADC) 4.090, Table 1, shows the maximum building area in the Community Commercial (CC) zoning district is 100,000 square feet. The other variance will allow a 60-foot-wide access for a two-lane commercial driveway when ADC 12.100(2) shows the maximum access width for a two-lane commercial driveway is 32 feet.

Konopa called the quasi-judicial public hearing to order at 7:22 p.m.

Konopa asked if any member of the Council wished to abstain. No one did.

Konopa asked if any member of the Council wished to declare a conflict of interest, or report any significant ex parte contact or a site visit.

Councilor Christman declared a conversation with State Representative Andy Olsen regarding this subject but no facts were given.

Councilor Collins declared that various people had approached him to express their opinion regarding this subject, but he didn't have conversations with them.

Johnson declared that she too had been approached by individuals wanting to express their opinion, but she didn't have conversations with them.

Konopa explained that for all those wishing to testify that they should be aware that they must raise an issue with enough detail to afford the Council and all parties an opportunity to respond to the issue if they later want to raise that issue on appeal to the Land Use Board of Appeals (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 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

City Attorney Jim Delapoe explained to the audience that tonight's subject is not about the potential Local Improvement District (LID) for a street improvement. He explained the LID process and opportunities for public input.

Janet Morris, Planner II, explained that the 60-foot-wide access for a two-lane commercial driveway variance is no longer an issue and was therefore not addressed in the staff report. Morris said the staff report has been available to the public and they received only two phone calls, neither which was against the project. Staff is recommending "approval with conditions" on all the applications.

Morris said the key application is the variance request to allow the building to be 52.2% larger than the 100,000 square feet allowed in the Community Commercial Zoning District. She noted that none of the other commercial zoning districts have a stated maximum building size. Morris said the applicants have mitigated the impact of the larger building size by: setting the building perpendicular to 9th Avenue so that a narrower side of the building faces that major street; created a high activity area along 9th Avenue by placing a large plaza and the Garden Center, which has a more open wall design, on that end of the building; the façade includes lots of glass, and a variety of roof heights, building materials, and colors; and the drive aisles have been designed like a street to include lots of landscaping and pedestrian connections.

Morris said the development is also dependent on getting access permits from Oregon Department of Transportation (ODOT) for its proposed 9th Avenue access, and participating in whatever transportation improvements are needed for Oak Street. She said the Council has been provided a copy of a letter and attachments ODOT sent by email (in the agenda file). The letter says that at this time the road approach permit applications submitted to them are not complete and they are waiting for the applicant to provide further requested information. This further information will ultimately result in the determination of the extent of required transportation improvements that will be needed to support the development. The applicants have chosen to delay having the additional information prepared until they have a land use decision. They understand the risks of proceeding with the land use decision absent the final determination of road improvements. They said they will accept a condition to build all required street improvements as ultimately determined, or in the case of Oak Street, participate in the Local Improvement District (LID), if it is formed.

Morris said the applicants also propose to construct a section of the City's bike path system along the west side of Periwinkle Park from 9th Avenue south to connect with the existing path at Kinder Park. The proposed size and placement of the Lowe's building results in some of the pathway being squeezed into a narrow area that doesn't create a safe, inviting, and comfortable space. Some of the path will be within an easement on Lowe's property, and most of the southern portion would be constructed on City property. There needs to be sufficient room to provide a safe and comfortable space in which to walk and bike. Staff is recommending a condition that the path area be redesigned to accomplish this goal.

Morris said for security reasons the site will be lighted from dusk to dawn. The proposed lighting will result in the site being bathed in a strong white light all night long. Staff is recommending this be toned down by use of shorter parking lot lights, HPS for a softer tone of light, and lower wattage (450w), as there are residential properties on the west side of Oak Street and to the southeast across Periwinkle Creek.

Applicant

Jerry Baysinger, the Architect representing the applicant, from Baysinger Partners Architecture PC, 1006 SE Grand Ave STE 300, Portland, provided a PowerPoint presentation (in agenda file) explaining Lowe's contributions to the community, traffic patterns in the area, and their request for a building variance. They proposed to construct a building of 121,000 square feet enclosed plus 32,000 square feet as a Garden Center. A single building with a maximum area of 100,000 square feet is currently allowed in property zoned Community Commercial (CC). He provided sketches and footprints of their plans. They will also construct a bike path and the additional truck turn-around on the north end of the building resulted in the path area being a little less than what is required in the Transportation Master Plan.

Baysinger reviewed the proposed exterior lighting conditions, showed a photometric diagram of the lighting, and requested new language similar to, *“To mediate the impact of the exterior lighting on the area residences, the applicant shall provide a photometric diagram showing the light levels at the perimeter of the site complies with the Albany Development Code. Overall height of pole lighting shall be not more than 38 feet. All lighting fixtures must include full cut-off shields that are oriented parallel to the adjacent ground. Angling the light fixtures is not allowed as it creates glare.”*

Baysinger reviewed Lowe’s proposed participation in a LID and requested a modification to Site Plan Review (SPR) condition 5.5, *“In the event the City Council forms a Local Improvement Assessment District for the extension of Oak Street, the applicants shall participate in the assessment district in lieu of constructing the improvements outlined above. All required ODOT approvals and permits will still need to be acquired prior to issuance of a building permit. The applicant may choose to construct the Oak Street extension and receive a credit from the Assessment District for those improvements.”*

Baysinger reviewed Lowe’s proposed traffic patterns, truck routes, and street plans. They revised the language of SPR condition 1.4 to, *“1.4: Before issuance of a building permit, the applicants shall construct, or financially assure the construction of the following for the extension of Oak Street between Ninth Avenue and Pacific Boulevard:*

- *Curb, gutter, and sidewalk along both sides of the street. Sidewalk on the east side of the street may be attached to the curb in order to minimize impacts on the adjoining building.*
- *Number of lanes in each direction shall be a function of the Progression Analysis to be performed by Lowe’s traffic engineer.*
- *On street bike lanes in each direction.”*

Baysinger asked the Council to consider their variance request for flexibility on the width of the bike/pedestrian path due to incomplete topographic information. The new language for the variance (SPR condition 1.1) would read, *“1.1 The Lowe’s development plans shall be revised to show the applicants constructing a City standard bike/pedestrian path on the west side of Periwinkle Creek from 9th Avenue south to the existing path on Kinder Park. The pathway shall be designed to include 10 feet of pavement, a minimum of two feet of unobstructed clear space on both side of the paving, and safety fencing as deemed necessary by the City. Where the site is physically constrained, the pavement width may be reduced to eight feet and the clear space on each side reduced to one foot minimum.”* In Variance conditions 3.1 and 4.1 they would also like to strike the first sentence and they do not believe the building needs to be reduced, *“Where the site is physically constrained, the pavement width may be reduced to eight feet and the clear space on each side reduced to one foot minimum.”*

Baysinger asked the Council to consider an easement in place of the staff’s requested right-of-way dedication in SPR condition 1.2. The access easement would be up to six feet.

Baysinger provided a handout (in the agenda file) to the Council with their requests for changes to the conditions. He said they are all within the requirements of the criteria.

Testimony

Joseph Hlebichuk, 1912 Springhill Drive, retired Oregon State University Business Professor, spoke as a concerned taxpayer, saying that the project will bring in necessary jobs. He urged the Council to nurture investment in Albany by approving the development.

Konopa said that even though jobs are important, she reminded the audience that the Council needs to receive information regarding the criteria and the site plan.

Mathew Conser, The Conser Group, 1010 Airport Road, spoke as an affected property owner. He said he has been involved with this project for five years. He said Lowes has conformed to the Albany Development Code. The traffic plan was originally less complex and it was City staff that suggested the extension of Oak Street might be a necessary outcome of the Traffic Analysis Findings. He gave an example of how Lowe’s request for a larger building doesn’t exceed the potential building capability of the property if it were to be used for a multi-building complex. Conser said a portion of the property is in the Central Albany Revitalization Area (CARA) Urban Renewal District. He would like to see the Council support in-fill development, which is what he considers this to be. The Lowe’s project is an efficient use of the property, addresses the Albany economy, and encourages other properties to develop. He referenced the Albany Strategic Plan and how Lowe’s addresses the themes of that plan including Great Neighborhoods, a Safe City, a Healthy Economy, and an Effective Government. He said it serves as a village center. There is an immediate pay back once the project is completed as a long and short term investment in the community. It also meets CARA goals. He said the Oak Street extension relieves traffic problems in the area. He mentioned the quality of the company, job creation, and keeping jobs in the community. He asked the Council to support the variance request and site plan.

Ed Perlenfine, 2910 Alexander Lane, was frustrated with the ODOT process. He supports the variances that Lowe’s is requesting.

Jim Conser, 3439 NW Eagle View Drive, read a letter (in the agenda file) from Senator Frank Morse in support of the Lowe's project.

Lise Grato, 220 7th Avenue, supports the Lowe's project.

Opposition

Mike Styler, 1320 Oak Street, said he didn't see any analysis of Oak Street from Queen Avenue to 9th Avenue, and intersection of Oak Street and Queen Avenue, where accidents happen. He welcomes Lowe's to Albany but he doesn't feel this site is right for them. They are paving the entire property and there is too much tree removal. No groves will be left and the replanted growth would take a long time to mature. He said despite what Lowe's trucks do, independent delivery trucks could go any direction on his street. He was also concerned about their statement to fill in part of the creek. He said they need to enhance the creek, not derogate it. He said he doesn't like the narrower bikeway and wall next to it. The original zone change to the property was to allow a small shopping center. He doesn't believe Lowe's fits in the neighborhood; it would be putting a parking lot and box store next to a park.

Theresa Esch, 1115 Oak Street, Apt 7, agreed with Styler, and was concerned about her apartment building being torn down and having to move. She said there is no affordable housing in Albany except in poor neighborhoods.

Ping Lee, 2521 27th Avenue, owner of Ping's Garden, which is located across from the proposed Lowe's location, said he is not against Lowe's, but the site plan affects his business. He handed out a picture (in agenda file) showing a potential extension and improvements to Oak Street. It will take a big chunk of his property. He is concerned that ODOT will say they have to close their driveway on 9th Avenue. He will lose customers, if he has to do that. His parking will be gone, if Oak Street is widened. He feels he is the only one that will get impacted by the proposed street extension. He opposes the street improvements, not Lowe's.

Rick Baker, 1115 Oak Street, Apt 2, was concerned about his apartment building being torn and losing his home.

Mark Azevedo, 1210 NW Skyline Drive, is a member of the Albany Tree Commission, and spoke to the removal of trees on the site as a special feature of the site. He was glad to hear that they consider themselves a "green" company. He passed out an article (in agenda file) regarding a White Oak grove on the property. He said there are 16 White Oaks on the site and these trees are in decline. He thinks they are historical to the City of Albany and he noted on page three of his handout the picture of what was called Hackleman's Grove on the Lowe's site. It included a "Counsel Tree" that was used by the indigenous peoples. He commented that a vast majority of the trees would be removed when building starts. He asked the Council to consider saving more trees by giving them heritage tree status within the Urban Forest Program. If that is not possible, have the removed trees be donated to the Urban Forest Program through the Tree Commission for education purposes. He mentioned, regarding the creek, that the last thing it needs is a heat bearing fence that would reflect down into the creek. It would show good faith that Lowe's cares about Albany's natural resources, if they would replace the fence, create a riparian habitat, and a less impervious surface for the path itself.

Brian Latta, 3051 NW Flame Tree Lane, Albany, was concerned about the building size variance. He said page 4 of 47 of the Staff Report, under Criterion (1), says the proposed building criterion is that the building "must be consistent with the desired character of the area." The CC designation is for small and medium-scale businesses. Contrary to the staff report in Findings 1.4, he believes the restriction of 100,000 square feet with the CC designation helps define small and medium size business. He believes Lowe's building proposal exceeds what is intended in the area and the criterion is not met.

Latta doesn't think that the criterion is met on page 7 of 47 of the Staff Report, under Variance Criterion (3), "The requested variance is the minimum necessary to allow the proposed use of the site." Latta said this is a larger building than Lowe's usually builds. It seems the building could be smaller. He thinks a smaller footprint would be a better fit for the neighborhood and this criterion is not met.

Latta said that page 26 of 47 of the Staff Report, under Parking Areas, Finding 2.8, defines the development as belonging to the "building materials sales" category. He said they sell some building materials, but mostly they are retail. The requested parking spaces are almost double the required minimum of 281. He doesn't believe that many parking spaces are needed at this site. The area could be better served with more green space. Lowe's should be in a designated Commercial Zone. This development is not proportional to the CC Zone.

Latta agrees with staff's requirement on page 28 of 47 in the Staff Report, under Conclusions, Section 2.6, that the applicants should construct the multi-use pathway along the west side of Periwinkle Creek.

Neutral Testimony

Dwayne Strickland, 1110 Sherman Street SE, said he was concerned that the proposed brick wall along the bike path would become a place for tagging. He was also concerned about the amount of traffic that would be using 11th Avenue off of Oak Street. He said that 11th Avenue is a one lane unimproved City street. He found it hard to figure the upgrades on Oak Street as the traffic that would be leaving Lowe's onto Oak Street and 9th Avenue would be traveling on the highest level ground in the area. 11th is one way now, but he feels it is too much of a disruption to the neighborhood and the use of the park.

Recess

The Council meeting was briefly recessed at 9:15 p.m.

Reconvene

The meeting was reconvened at 9:26 p.m.

Baysinger responded to some of the testimony by saying that there would be very few independent trucks; most are Lowe's and they can control most of the traffic. Regarding the possibility of filling or moving Periwinkle Creek, that has not been under consideration, the building will provide shade towards the creek so it will reduce heat on that side of the site. The wall was incorporated as part of an acoustical noise mediation agreement with neighbors. They believe that shadow lines of the wall will not have an impact on the creek. They are happy to entertain alternative paying materials for the path.

Baysinger said the diagram provided by Mr. Ping is only one suggestion for the design of the intersection change. There is no design yet.

As to the grove of oak trees, he said the City has developed around the grove. It is now an urban area. Protection for groves of trees such as these is usually achieved by designating the property a park, and that is not the intention of this site. They like the concept of a donation of the felled trees and consider it a possibility.

As to their building, Baysinger said they feel they are requesting a 21% variance because the garden center is not roofed. They are a single user on a large site. If the development was for multiple small users, the resulting over-all footprint could be much larger. He mentioned that as a category, Lowe's falls somewhere between retail and building materials. Their traffic impact analysis indicates that vehicles will not be able to go towards 11th Avenue as there will be a "Do Not Enter" sign. If they ignore the sign, they are violating the law.

Morris said that staff is recommending approval with conditions. The issues involve the building, pathway, lighting, and the noise mitigation wall. The new information brought tonight is regarding the trees being a historic grove of trees.

Johnson asked, how long is the section of the pathway that they would like to be eight feet? Morris said they are requesting all of it to be eight feet. Baysinger clarified that it would be 100 feet south and 70-80 feet north; not the entire Periwinkle Path.

Konopa closed the public hearing at 9:40 p.m.

Deliberation

Collins asked, does the City have any pathways that meet the standard of 10 feet wide with two feet shy on each side in other parts of town? Parks & Recreation Director Ed Hodney said the Dave Clark Path has several sections that are 10 feet wide. He said the Periwinkle Path does not conform with City standards right now. Collins said based on that, it is always good to reference a standard, but if the City hasn't conformed than he is open to consideration of the eight foot wide path.

Collins asked if the lighting code specifies a half-foot candle at the property line. Morris said yes. Collins said, but it doesn't specify the color or height. Morris agreed. Byrne said their concern was the adjacent large residential neighborhood.

Collins said he remembers when Ping's restaurant was built; the owner's signed a petition and waiver agreement regarding Oak Street. Transportation Analyst Ron Irish said that is correct. Collins asked, where is the existing right-of-way in reference to the parking stalls? Irish said the existing right-of-way on all of Oak Street is 60-feet wide. The restaurant's parking spaces are behind that. Portions of the entryways are in the right-of-way and portions are on private property. Irish said the only time there would be a need for extra right-of-way from Pings is if ODOT requires four lanes on 9th Avenue or Oak Street.

Delapoer mentioned that in the “taking” of any driveways from a business, the owner must be compensated.

Christman asked if the elevation difference between Oak Street and the proposed Lowe’s property is significant. Irish said there is an elevation difference, but there should be no impact when building the road. The property is not in the flood plain.

Johnson asked about the garden center area. Morris replied that staff has always considered the entire building, whether it had a roof or not. The garden area is included in the 152,000 square feet. Byrne said, it is retail space and is part of the footprint. Johnson mentioned that she likes garden centers to be out front.

Collins asked if the variance request from 100,000 square feet says building or footprint, because he believes there is a difference in definition between the Building Code and the Zoning Code.

There followed discussion regarding the words and Konopa asked staff to look bring an explanation back to the Council.

Christman asked, is there going to be any vegetation along the wall so it looks more natural? Byrne said in some places yes and in others, no. Byrne disagrees with the applicant that there are site constraints regarding squeezing the space between the path and the wall. There are site constraints because they choose to put the building there.

Reid proposed to have the building moved four feet west on the property and that would provide adequate space for the pathway.

Delapoer suggested the Council consider January 13 as the final decision date. The Council could recommend a tentative decision tonight and have staff rewrite conditions, and the Council would take final action on January 13.

Irish commented that the six feet right of way dedication came about to accommodate when the road becomes a collector street. Lowe’s is requesting it to be an easement, in order to save some parking stalls.

Irish said Lowe’s also wanted a modification of condition 1.4. Their request is for some flexibility to base the design on whatever comes out of the ODOT analysis. Staff has no objection to this request.

Irish said Lowe’s also wanted a modification of condition 1.5. If the applicant chooses to build the road based on ODOT’s decision, they want to have credit applied for the expense. Staff would not object. Delapoer recommends that the Council not consider that condition, because ultimately, it is a different process when there are public hearings on the LID.

Christman was concerned that the improvements to Oak Street be completed no matter how it is done.

MOTION: Christman moved to grant tentative approval with staff recommended conditions and include the applicants suggested changes to items 1.4 and 5.5 (pages 3 and 5 on the applicant’s handout). Johnson seconded the motion.

AMENDING MOTION: Collins moved to amend the original motion by including changes to 1.1, 3.1, and 4.1, as suggested on the applicant’s handout. Johnson seconded the motion and it failed 3-4 with Christman, Reid, Councilor Olsen, and Konopa voting no.

VOTE ON ORIGINAL MOTION: A vote was taken on the original motion and it passed 5-1, with Reid voting no.

Christman asked staff to provide a list of the recommended conditions.

Delapoer cautioned the Council about ex parte contacts.

Business from the Public

No one wished to speak.

Adoption of Resolution

Authorizing the Finance Director to sign a contract between the City of Albany and Seattle-Northwest Securities Corporation for financial advisory services for three years beginning January 1, 2010.

MOTION: Collins moved to adopt the resolution authorizing the Finance Director to sign a contract between the City of Albany and Seattle-Northwest Securities Corporation for financial advisory services

for three years beginning January 1, 2010. Reid seconded the motion and it passed 6-0, and was designated Resolution No. 5868.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) October 26, 2009, Joint School Board and City Council Meeting.
 - b) November 2, 2009, Work Session.
 - c) November 9, 2009, Regular Session.
 - d) November 16, 2009, Work Session.
 - e) November 18, 2009, Regular Session.
- 2) Opposing a Willamette Valley high-speed rail corridor that bypasses the Albany Train Station. RES. NO. 5869
- 3) Approving a liquor license for Walgreens #06530, 1700 Pacific Boulevard SE.
- 4) Accepting an easement from Rodney and Marlene Snyder. RES. NO. 5870
- 5) Authorizing staff to execute a bargain and sale deed to Rodney and Marlene Snyder. RES. NO. 5871

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

Reports

Police rank structure change report

MOTION: Reid moved to approve the rank restructure of the Police Department. Councilor Coburn seconded the motion and it passed 6-0.

ST-09-03, Oak Street Improvements LID, initial Engineer's Report and Financial Investigation

There was Council consensus to move this item to the City Council meeting scheduled for December 16, 2009.

BUSINESS FROM THE COUNCIL

Delapoe provided a memo (in agenda file) asking for the Council's final approval of a land purchase for a future Municipal Law Enforcement Center. Delapoe explained that at a previous Executive Session, the Council authorized the Police Department and the City Attorney to enter into negotiations for potential purchase of property that was suitable for a new Police building. The proposed two parcels of land have a total purchase price of \$860,000 which is \$220,000 below the original asking price for both parcels. All preliminary studies related to environmental analysis, easements, and title searches have been positive.

MOTION: Reid moved to adopt the resolution authorizing the Chief of Police to purchase, on behalf of the City of Albany, two parcels of real property as a site for a future Municipal Law Enforcement Center. Johnson seconded the motion and it passed 6-0, and was designated Resolution No. 5872.

Collins mentioned that the Council was securing the property for future consideration of building a Police Station; they are not considering building now.

NEXT MEETING DATE

The next scheduled meeting of the City Council is a Work Session on Monday, December 14, 2009, at 4:00 p.m., in the Municipal Court Room at City Hall.

The next scheduled Regular Session of the City Council is on Wednesday, December 16, 2009, at 7:15 p.m., in the City Council Chambers at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 11:25 p.m.

Respectfully submitted by,

Betty Langwell, MMC
City Clerk

Reviewed by,

John Stahl
Assistant Finance Director