

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, June 22, 2009
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:01 p.m.

ROLL CALL

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

Councilors absent: None.

BUSINESS FROM THE PUBLIC

There was no business from the public.

PARKS & RECREATION COMMISSION REPORT

Mike Graham, Parks & Recreation Commission Chair, commented that the City has a very good Parks & Recreation Commission. He referred to the annual report and asked if the Council had any questions.

Councilor Floyd Collins thanked the Commission members for volunteering their time.

Graham said that an advantage of having a Commission is that it offers a different venue for public input. Sometimes the public will say something to the Commission that they might not say to the Council.

Konopa asked for the status of the bike park. Graham said the park is moving along but funding will be an issue. He said the students deserve a pat on the back for working towards this goal. There is a core group of kids who have been sticking to this project. It is a positive experience for them to learn how local government works. It also improves relationships with the community. Parks & Recreation Commission member Sharon Edwards said the park design is in the process of being refined.

HEARINGS OFFICER PROPOSAL

City Attorney Jim Delapoer said that this Council has considered a Hearings Officer periodically over the last few years, as land use hearings have become more common and more complicated. Now that Community Development Director Greg Byrne is on board, his experience with Hearings Officers in his previous employment will be useful. Delapoer said staff has met with the Hearings Officer from the city of Bend and tried to learn some of the options. At today's worksession, the Council will discuss the options and gauge the interest of the Council in obtaining a Hearings Officer.

Delapoer explained that with the recent rapid growth in North Albany, many citizens have approached the Council with petitions or have tried to contact the Councilors individually to talk about the developments. However, per state law and quasi-judicial land use restraints, Councilors are not allowed to talk to them. This has made it difficult for the Council, as described in the staff memo. Discussion followed.

Delapoer said a Hearings Officer could at least conduct the initial quasi-judicial hearings. The law doesn't say the Council has to conduct them, just that it has to be done. There are a number of communities that engage one or more professionals for this purpose, such as retired mayors, attorneys, and retired planning directors. The more experience a person has, the better.

Delapoer recommends that the Hearings Officer be substituted for the Planning Commission only for quasi-judicial land use hearings. This way, the Planning Commission could focus on assisting the Planning staff with actual planning decisions rather than having their time consumed with being a hearings body. The Council would still have an opportunity to review the decision on appeal by an "on the record" review; or by conducting an "on the record" review of the Hearings Officer's decision; or to have a "de novo" public hearing if the matter were deemed sufficiently important. The result would be a very professional hearing at the planning level stage. Folks rarely appeal if they feel their hearing got a fair shot. There is a strong possibility that most people would feel a Hearings Officer would render a fair decision; and if not, they would have a vehicle to present their case to the Council and ask for it to be reviewed. The Council could always choose to review the case "de novo" or "on the record."

Delapoer said this process will require as much time from staff as the current process does, but it would result in decisions which would be considered to be more objective by the public. Developer application fees could be increased to cover the cost of a Hearings Officer.

Delapoer noted that even if the Council does not want a Hearings Officer, the Development Code should still be reviewed.

Councilor Bill Coburn asked, with a Hearings Officer would the Councilors be free to talk to constituents? Delapoer said the Councilors would have to avoid contact with the public if there was a possibility they might review the case. It would depend on how the Council set up the system and at which level the Council is removed as a possible judge. The possibility for appeals to the Land Use Board of Appeals remains, since those appeals are based on the last local decision.

Collins said he has several comments. He has seen a model where the Hearings Officer attends the Planning Commission to verify that the rules were followed. He asked what the Planning Commission thinks of the City moving to a Hearings Officer. He is also concerned that by removing the Council from the process, they might miss the opportunity to identify flaws in the Albany Development Code (ADC) that often become apparent when evidence is heard. He thinks that most of the community already understands why the Councilors cannot talk to them during a land use hearing. Finally, he wants to get public input about using a Hearings Officer.

Councilor Jeff Christman thinks a Hearings Officer should be pursued because it would allow the Council and the Planning Commission to spend more time on planning, as opposed to spending their time on laborious decisions about specific land use issues. It would still allow the Council the opportunity to find the holes in the ADC, as Collins has suggested. It would also allow the Planning Commission to go into more detail on how to fix the holes as opposed to being burned out after sitting through hours and hours of hearings on just one application; that time could have been time spent on the ADC instead. A Hearings Officer could provide more consistent, professional decisions that would be more criteria-driven, as they should be.

Collins supports having more professional decisions because it is fairer to our citizens, but he thinks it can be achieved with an attorney or by having the Hearings Officer involved at the Planning Commission level.

Coburn asked, is Bend unique? Does Portland have a Hearings Officer? Delapoer said many cities are moving towards a Hearings Officer, especially in larger cities such as Portland. If growth had continued, it would have reached a point where land use would have dominated the Council's time. Once the economy turns around, the City will be headed that direction again. The need for housing has not changed.

Councilor Dick Olsen said a weakness of having a Hearing Officer is that the Council will not learn about things that are omitted. For example, previous Councils missed the ecological lake and grove of trees, which both contributed to the regulation of water flow in a controversial North Albany development. If the City had a Hearings Officer, the Council would continue to miss these opportunities for review. There is a value to listening to things other than what is in the ADC. Christman noted that a Hearings Officer would actually free up the Council's time to look at the bigger picture.

City Manager Wes Hare said a consideration is if a Hearings Officer is going to be more likely to reach a decision that all parties would be more willing to consent to, as opposed to a decision made by the Planning Commission. Larger cities find that more often, parties are more satisfied with the Hearings Officer process. The job of a Hearings Officer is to make sure everyone feels they had a fair chance to offer their side. The Hearings Officer then makes a written decision. It is one person speaking with one voice, with one well-reasoned justification. He thinks the Council will still likely hear about the holes in the ADC even with a Hearings Officer.

Coburn said a Hearings Officer would provide more consistent decisions than a new Council could. He thinks there is a value to the process, but is also curious about what the Planning Commission thinks.

Councilor Ralph Reid sees the pros and cons of a Hearings Officer, but ultimately thinks that land use hearings are part of his responsibility as a Councilor. He is reluctant to relinquish that responsibility.

Councilor Bessie Johnson feels that as a Councilor, land use involvement is part of her job. She does not want the Hearings Officer to take the place of the Council. She does think the process has been working, though it is sometimes cumbersome and it does take a lot of time.

Christman clarified that his idea for having a Hearings Officer was not to shirk his duties as a Councilor, but rather to give the Council the opportunity to focus on the ADC as opposed to spending time on the land use hearings. It would be a much more productive use of the Council's time.

Collins would like to investigate having a professional at the Planning Commission level and to have the public help the Council to refine the ADC proactively on a periodic basis, rather than reactively.

Due to lack of time, Delapoer said he will address procedural and time limits at the next regular Council meeting.

ROBERT'S RULES OF ORDER REFRESHER

This item was postponed to a future meeting due to time limits.

SYSTEMS DEVELOPMENT CHARGES ADJUSTMENTS

Public Works Director Diane Taniguchi-Dennis said the staff is seeking Council direction on the annual increase to the System Development Charges (SDCs), Connection Charges (CC), and Special Assessment (SA) fees. The increases are based on the Engineering News-Record (ENR). Currently Albany's SDCs rates are at 100 percent capacity for sewer, 90 percent capacity for water, and transportation is under the old methodology.

Collins thinks the City should hold the fees at status quo. These particular fees are optional, whereas the nine percent scheduled increase for July 1, 2009, to the sewer rates is driven by the need to fulfill state mandated requirements. Since the City has to raise sewer rates this year, these other fees should not be increased. During a recession, Collins thinks fees should only be raised if there is no choice.

Taniguchi-Dennis suggested holding a public hearing even if the Council chooses not to raise the SDCs because it will provide citizen input and have a formal action on the public record. Based on the ENR, the SDC for a 1,500 square foot house would increase by \$58. She would like to set a public hearing for July 8, 2009.

Reid reminded the Council that for 7-8 years previous Councils did not raise building permit fees. No fee increases over the year has had dire results, which did not manifest until this year. If they choose to forgo this SDC rate increase, they should be aware that somewhere down the road, the fees will have to be increased to close the inevitable gap.

Taniguchi-Dennis will provide two resolutions at the July 9, 2009, Council meeting and public hearing; one to maintain the current rates and the other to increase it.

Johnson asked staff to provide a schedule of the SDC increases over the last ten years.

ANNUAL SEWER RATE INCREASE

Taniguchi-Dennis introduced Consultant Debbie Galardi.

Taniguchi-Dennis said that a nine percent sewer rate increase is scheduled for July 1, 2009. She gave a PowerPoint presentation (see agenda file).

Galardi said several cities have to increase rates in the double digits in order to meet the debt service coverage requirement of 125 percent.

Hare said that defaulting on the Department of Environmental Quality (DEQ) loan would result in a higher interest rate for future loans and as well as compromising the City's ability to get money in the future. He supports this increase. There is much at stake.

Taniguchi-Dennis said that the Wetland Treatment Project, to address the temperature TMDL requirements, is also pending. The City has applied to the Department of Environmental Quality Clean Water State Revolving Loan Fund for a \$5 million stimulus loan with 50 percent principal forgiveness and no interest over 20 years. The city of Millersburg has applied for the same loan and is eligible for 75 percent loan forgiveness based on their population. The two cities would use the combined loans to complete project.

Taniguchi-Dennis said that in addition to the nine percent increase for sewer effective July 1, 2009, rates will need to be increased incrementally over the next three fiscal years, 2010-11 through 2012-13, with seven percent July 1, 2010, six percent in July 1, 2011, and then five percent in July 1, 2012. These increases are needed to close the gap to meet the City's debt service obligations. This is predicated on the City controlling operation and maintenance costs at 2.3 percent and that revenue is received as planned.

Delapoe said that part of the SVC/Pepsi-Co litigation is lost revenues for water and sewer that would have been available for future capital programs. Part of that was included in the analysis being used in the litigation. The City is now facing a difficult situation that would not be so dire, if SVC/Pepsi-Co had kept its contractual commitments.

Finance Director Stewart Taylor said the City has a good financial plan. The scheduled sewer rate increases are an example of continuing with a forward-thinking plan. The City's Standard & Poor's rating is A+ because of this type of strategy. As a City, we want to maintain those high ratings. Taylor defined the City's three financial obligations: principal and interest, cash reserve (which is a percent of principal and interest), and the debt coverage requirement.

Collins said, we need to be careful what is done with sewer revenues. They should not be used to fund non-Public Works staff.

The next action will be in January 2009 to consider the adoption of the three-year rate plan for FY 2010-11 through 2012-13, when the City proposes the increases to the DEQ.

COUNCILOR COMMENTS

Christman said he will be in Portland on June 24 so will likely be late to the Council meeting.

Johnson said she will also be late to that Council meeting.

Olsen handed out documents regarding Pet Overpopulation Prevention Advocates (POPPA) Inc (see agenda file). He is unclear about the amount that remains in the fund for spaying and neutering. He recalled seeing a spreadsheet during the Budget Committee meetings that showed there was \$4,500 remaining. He contacted POPPA and they said they could use more money. Olsen wants to restore that line item to \$10,000. He thinks POPPA provides the best value for the dollar and is doing something for the community. He will bring this item to the next Council meeting.

Hare said Allied Waste was scheduled for the next Council meeting, but asked to have a work session on July 6 instead.

Coburn asked, has staff found out if other waste management vendors are interested in providing this service? Hare said no. The Council discussed what a reasonable rate of return is during a recession.

CITY MANAGER REPORT

There was no report from the City Manager.

ADJOURNMENT

There being no other business, the Work Session adjourned at 6:20 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director