

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, February 10, 2010
7:15 p.m.

AGENDA

CALL TO ORDER

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

SCHEDULED BUSINESS

Public Hearing

ST-09-03, Oak Street Local Improvement District (LID), adopting engineering and financial investigation reports, authorizing to secure easements, to obtain bids, and to issue debt for construction.

Konopa explained the public hearing process and asked the audience not to repeat testimony already given.

Konopa opened the public hearing at 7:21 p.m.

Staff Report

Assistant Public Works Director/City Engineer Mark Shepard said the report in the agenda is based on the last direction received from the Council. He explained the choices the Council would have after receiving testimony from the audience. Some include deciding if the City will participate in the LID and if it does, how much; the Council could choose to modify the boundaries; they could ask staff for a new engineers report; or they could choose not to proceed with the LID.

Civil Engineer II Jeff Woodward said staff and the Council have been working on this project for over a year. He gave some background and dates of the neighborhood meetings. One comment from the neighborhood meetings was regarding the Linn County street funds that were transferred to the City in 1990. Woodward said there are three basic cost components; a water line, street and storm drains, and a street extension. For this report, the Council chose a trip methodology for the LID assessments with no City participation. He provided the Council with funding options including using Capital Reserves and Transportation System Development Charges (SDCs). The schedule would be for design and bidding this year and the LID process may be able to be completed in the fall of 2011.

Testimony

George Heilig, 310 NW 7th Street, Suite 100, Corvallis, the attorney for Mr. & Mrs. Ping Lee, objected to the formation of the LID and if the LID is formed they object to the initial Engineers Report and Financial Investigation Report. He provided the Council with written testimony (in the agenda file). Heilig said the LID should not be formed because the conditions of approval for Lowe's require Lowe's to construct the improvements and be financially responsible for the improvements. If the LID is to be formed, all the properties fronting Oak Street, both on the east and west side, should be included in the boundaries of the district. If not all the properties are to be included, the district should be just the properties south of Lowe's and limited to those improvements south of Lowe's. The improvements adjacent to Lowe's should be paid for by Lowe's. Heilig said the property that benefits most should pay for it. Regarding the waterline the Lee's should only be responsible for half the cost of the 8 inch line. Lowe's is not shown as paying anything for water and the over sizing to the 12 inch specification should be assessed to Lowe's because the Lees are already connect to the 12 inch line in 9th Street. Regarding the Oak Street improvements, it should be designed to not require the closing of the restaurant driveway from 9th Street nor require acquisition of right-of-way from the restaurant side of Oak Street. If necessary, additional right-of-way should come from the Lowe's side of Oak Street. Heilig mentioned that the City received money from Linn County in 1990 to upgrade Oak Street, which was originally \$376,300; it has a value now of \$470,000 and should be used for City participation in the LID. They also believe the City should participate to the maximum extent in the redesign of the intersection as it is a citywide safety and infrastructure improvement. Also, in terms of funding, they believe it should be a collector street. Regarding Kinder Park, they feel the number of trips in the report is understated. He explained how they believe the trip numbers were created.

Councilor Christman asked, are you saying that the trip generation estimate for Kinder Park is too low? Heilig thinks it is too low.

Councilor Collins asked staff if given the conceptual layout would it require additional right-of-way from Pings Restaurant or could it be from Lowes. Shepard said that on the east side, the Lowe's side, there is a concern about the Perlenfen building needing to be removed. But there needs to be a more defined configuration.

Margaret Styler, 1320 Oaks Street, doesn't want to be part of the LID. She said she doesn't need the new street and she and her neighbors do not gain any benefit from it. She believes there will be an increase in traffic that will cause the property values to go down.

Mary Ann Abraham, 1330 Oak Street, doesn't feel there is any benefit for her either. There was money given for the upgrade of the street and the City should use that. She has no use for the road. Those getting a benefit should pay for the street.

Jim Conser, 3439 NW Eagle View Drive, a property owner, said he and his family own most of the site that is being put together to be sold to Lowe's. He has been bringing projects to the community for over 30 years. He thought LID improvements were funded by frontage assessments, not trip assessments. Off of Oak Street, the City received property from the Boys & Girls Club for a park. After receiving the property the City changed how assessments would be applied in order to benefit Kinder Park. Under this methodology \$3.5 million would be assessed on their property, for a half mile of street. That is 95% of the cost of the project. He feels it is unfair. The City should be participating in the improvement. The Consers have worked for two years with adjacent property owners and the City to make this project happen. He explained the history of the property from the original apartments to being zoned commercial.

Tom Meagher, 1690 SE Oak Street, agrees with Mr. Heilig and is not in favor of the LID. He was concerned about how much it will cost the property owners.

Mathew Conser, 1010 Airport Road, representing Conser Inc., said they own the property that Lowe's will be built on. He provided written testimony (in the agenda file) regarding their property participation in the LID. Conser provided a history of the area saying that the improvements have been planned for many years. They are not happening because of Lowe's. He said that in 2006 the project was only going to be the Sherman Street modification that was needed for the traffic approval for the Lowe's project. The existing traffic issues were the real reasons for the changes. It was City staff that suggested the Oak Street extension. He believes it was the Lowe's team that found ways for it to work without tearing down buildings and displacing businesses. He said the proposed LID has been structured to limit the expense to Kinder Park. He quoted staff from a report dated October 21, 2009, regarding the trip generation assessment methodology being developed to minimize the assessments levied against Kinder Park. Also, the City collected \$376,300 for the improvement of Oak Street in 1990. Using just 3% interest, those funds would be worth a little over \$1 million in today's dollars. He believes the improvements are a safety benefit to an existing Oregon Department of Transportation (ODOT) problem, an improvement to the central transportation corridor, and have a citywide benefit. He said it would be a shame to see this improvement to the City and this company willing to invest in the community, lost to unfair and burdensome assessment methods. He said the City can earmark the SDC's needed to make the improvements to Oak Street by adopting the Transportation System Plan and by diverting some other funds from projects that will find relief from this improvement. It could be done in two phases: The extension could be financed at 100% of SDCs and the 9th Street to Queen Street improvement at 65% SDCs. Couple that with a development agreement between Lowe's, the City, and the Perlenfeins. The funding for the Kinder Park assessments could come from Parks SDCs. He suggested that Central Albany Revitalization Area (CARA) funds may be available to use. Conser said the total assessment against their property is unfair and they object to the methodology. He asked the Council to continue the hearing to consider the complexities of the LID.

Jack Mandel, 1530 Faraday Avenue, #140, Carlsbad, CA, Senior Site Development Manager for Lowe's, thanked the Council for the land use application approvals. He agrees with the items Mathew Conser brought up. He provided written testimony (in agenda file) with suggestions for expedient creation of the LID that would allow Lowe's to build its store. They originally expected to take 6-8 months for the build, it has been 18 months and there is no store. They are under budget constraints like everyone else. Their window of opportunity is closing and they do not seem to be making any headway. He believes the project will not move forward under the proposed assessment plan.

Jerry Bassinger, 1006 SE Grand Avenue, Suite 300, Portland, spoke on behalf of Lowe's. He agrees with Mathew Conser's testimony. They are looking for a partnership with the City that has the least impact on the property owners and the neighborhood.

Mike Styler, 1320 Oak Street, said the improvements are not being driven by resident requests, but the City wants them to pay for the road because the bond measure failed. The entire City will use that road. The residents can't afford to pay. They don't even get to see the design of what the City wants them to pay for. Under the proposed plan, they would lose parking and they have already had water and sewer ungraded. Why do they need to pay again? It would encourage traffic day and night. Currently, Oak Street is being using for a short cut for Hill Street and Geary Street users. What they really need is a light at the end of Oak and Queen Streets. He believes getting out of their driveways will be an issue.

Ron Schwab, 1670 Oak Street, said this is not the time to be upgrading the street. The economy has not recovered and the property owners can't afford it. He would like to see some restraint. He and most of his neighbors live on a limited income. It is not an improvement to the residents in the neighborhood. He thinks the only reason it has become an issue is because Lowe's wants to build on the corner property. He can see no benefit to the neighborhood. He doesn't object to Lowe's, just feels they need to find a better spot to build.

Gary Fickenscher, 1110 SE Oak Street, said he can only access his house from 11th street and therefore he would like his trip generation cut in half.

Dennis Glaser, 31915 Seven Mile Lane, Tangent, said his parents own a piece of undeveloped property on Oak Street. He agrees with Mr. Heilig. They are asking for fairness. His parents' property has an assessed true cash value of \$106,000 and the proposed assessment would be \$67,000. He feels that is insanity. Most residents are long term and retired. Fairness is when the City pays for their share. Everyone in the City is going to use that street at one time or another.

Michael Robinson, 1120 Couch Street, Portland, representing Lowe's, asked the Council to leave the record open. They want the opportunity to talk to staff and the neighbors to consider suggestions and options.

Ed Schultz, PO Box 660, Albany, representing the Perlenfein Trust, said under the plan presented their building and property would be gone and there would be almost \$550,000 assessments. They want to resolve this issue. He feels confident that staff, the neighbors, and Lowe's can work something out.

City Attorney Jim Delapoer said the Council has considered making a contribution to this project. By not putting any City contribution into the proposed assessments, they were anticipating getting testimony from the neighborhood. The Council was interested in what the neighborhood had to say and if they would bring forward options for funding. There has been a lot of written material submitted that the Council needs to read. He suggested the Council continue the hearing to a date certain, with notice to all present that the Council may reopen the hearing so anyone wishing to participate may have the opportunity and for staff response, and not receive any new written material. They would have the option to reopen the hearing to receive more information.

City Manager Wes Hare said that staff had always intended to come back with a recommendation to the Council that had incorporated the audience recommendations.

Robinson asked if members of the audience would be able to respond to the new staff recommendations. Delapoer said it is a Council call. Robinson asked the Council to consider allowing responses. Delapoer said his request is reasonable and suggested the Council allow limited testimony.

Delapoer explained to the audience that the entire process is a two step process. He said that the Council makes a tentative decision to move forward with the improvements and sets an assessment boundary. They make a preliminary decision about what the assessment methodology will be. Then the Council authorizes going out to secure contracts to get the work done. When the work is done and the total dollar amount is known, there is another public hearing and the process is started all over again. Everyone who is being proposed to be assessed is given a notice to see what their proposed assessments would be and at the hearing the Council can revisit any decisions that had been made previously and make changes.

Konopa said that the design of the street would also be a public hearing.

Delapoer suggested the Council consider continuing the public hearing to receive the staff's response with limited testimony from the audience, and not receive any new written material.

Shepard asked, what options would the Council like to see? What he heard was the City funding the project at 100% of SDC for the punch through, 65% for the remainder of the project (between 9th Street and Queen Street, which would be based on trip generation), and minimize or eliminate any costs to residents. What the Council had before them tonight was no City participation. What else would the Council like to see? If there is some other middle ground, he would need some direction.

Councilor Coburn said he would like to see maximizing the City's participation. He said he clearly sees a benefit to the entire City. He appreciated the citizens coming out tonight and believes they made their point of how unfair it looks.

Councilor Johnson agreed with Coburn and praised Matt Conser on his research. She believes the City does need to participate. Johnson commented that when the Council started this process it was with the frontage of the development. Then all that was required was a little adjustment at Sherman Street. Now it is a much bigger project. She thinks they have created a monster with this project. She thinks they need to look at it again.

Delapoer cautioned the Council about making judgments before hearing the staff response and not to expect too much from staff in the form of giving solutions. There is no comfortable solution. If the Council decides

this is to be a City paid project, the Council will hear from other citizens regarding other projects that will not be able to be funded because all the available money has been spent on this project.

Collins asked if the Council decides to commit the SDCs that Shepard has described, using the future adopted Transportation Plan, how does the City document using funds not yet established? Delapoe responded that there needs to be methodology and this is a preliminary recommendation only. It is reasonable to consider an assumption of what would be available in that fund. Whatever would not be available could be written to be covered under a plan the Council would be comfortable with. At this stage of the LID the Council could adopt a methodology with an approximate number for how they anticipate that would work out. At this stage there is never exact numbers because there is no way of knowing the final costs.

Collins clarified that the staff report says 100% up to \$2.13 million for the punch through, when the total estimated costs are \$2.5 million, so there will be a potential gap subject to the bidding climate. In response to some of the testimony, one of his questions is what parcels along Oak Street were actually developed in response to the Linn County road transfer money. He would like a map included in the staff report, because he thinks the commitment to the parcels that were developed when the City received the money might be different than the parcels that were vacant at that time.

Councilor Olsen asked if SDCs are set to fund all street projects. Shepard said no, there is a methodology adopted by the Council to determine what projects are eligible and what the total value is, then an SDC amount is set, which currently is not carrying the full funding burden of those projects. If it were, it would be incredibly high. Olsen doesn't feel it is realistic for the City to pay the full costs.

Olsen asked for a review of the water pipe portion of the project. Shepard provided a map with the proposed improvements to the water line. Discussion followed regarding water lines on the south end of Oak Street.

Collins would like staff to include a response to the 8-inch to 12-inch water line concerns from Pings Restaurant in their report.

MOTION: Councilor Reid moved to leave the public hearing open to date certain March 10, 2010, with notice to all present that there will be limited testimony received and no new written material accepted, and have staff prepare a response to the issues presented tonight. Johnson seconded the motion and it passed 6-0.

Business from the Public

No one wished to speak.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) August 18, 2009, City Council/Planning Commission Joint Work Session.
 - b) August 27, 2009, City Council/Planning Commission Joint Work Session.
 - c) January 11, 2010, Work Session.
 - d) January 13, 2010, Regular Session.
- 2) Supporting a Microenterprise Assistance grant submitted by Willamette Neighborhood Housing Services for the Linn-Benton MicroBusiness Program. RES. NO. 5887
- 3) Accepting the Benton County Victim Impact Panel grant. RES. NO. 5888
- 4) Accepting the following easements:
 - a) The state of Oregon acting through the Oregon Youth Authority RES. NO. 5889
 - b) Donald G. Loring. RES. NO. 5890
- 5) GIS-10-01, 2010 Aerial Mapping Update, authorizing award of contract.

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

Award of Contract

WWTP-08-02. Wetlands Talking Water Gardens Project.

This item was moved to be the first item on the agenda to accommodate representatives and staff.

Coburn declared a conflict of interest as the company he works for subcontracts with C&M Construction and withdrew from the dais.

Civil Engineer III Peter Harr provided some background on the Construction Manager/General Contractor project delivery approach that was approved by the Council in September. Based on evaluations C&M Construction was selected as the preferred CM/GC and they are now ready to provide a Guaranteed Maximum Price (GMP) as described in the agenda. Staff recommends the GMP be awarded to C&M Construction.

MOTION: Reid moved to award a "Guaranteed Maximum Price" (GMP) contract to C&M Construction, Sherwood, Oregon, in an amount of \$6,677,299, for the Wetlands Talking Water Gardens Project in accordance with the provisions of the Construction Manager/General Contractor (CM/GC) project delivery approach. The motion was seconded by Johnson and passed 5-0.

Appointments

City Boards, Commissions, Committees.

There was a revised memo on the dais that included a recommendation to the Human Relations Commission.

MOTION: Johnson moved to approve the following appointments to City Advisory groups:

Albany Arts Commission

Liz Montague (Mayor's new appointment)

Human Relations Commission

Tina Dodge Vera (Councilor Christman's new appointment)

Planning Commission

Dave Wood, *Ward III* (Councilor Christman's new appointment)

Public Safety Commission

Lucy Hughes (Councilor Johnson's new appointment to fill vacant position for term that expires December 31, 2010)

Reid seconded the motion and it passed 6-0.

Hospital Facility Authority

MOTION: Christman moved to approve the re-appointment of Colleen Keller and newly appoint Wendy Kirbey as the Budget Committee members to the Hospital Facility Authority. Johnson seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Johnson passed to the Council copies of the "Oregon 2010 Events Calendar" that was provided to her by the Albany Visitors Association (in the agenda file).

Reid mentioned that a few months ago CARA had provided funding to Crabtree Auto for updating of their new facility. There were concerns at the time from the neighborhood that the business would be intrusive. A follow up survey by staff indicates that there are no major problems or concerns by the neighborhood about the business.

Hare mentioned that he has held a meeting to explain the separation incentive to employees. The Human Resources Department has received one application so far. Hare is also in discussions with one of the bargaining units regarding a proposal for expense reduction.

NEXT MEETING DATE

The next scheduled Work Session of the City Council will be on Monday, February 22, 2010, at 4:00 p.m., in the Municipal Court Room, at City Hall.

The next scheduled Regular Session of the City Council will be on Wednesday, February 24, 2010, at 7:15 p.m., in the Council Chambers, of City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:27 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Wes Hare
City Manager