

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, May 12, 2010
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

Konopa led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Dick Olsen, Bill Coburn, Bessie Johnson, and Floyd Collins (via phone)
Councilors absent: Ralph Reid, Jr. (excused)

Konopa explained how Councilor Collins would participate and asked anyone who would testify during the public hearing to speak clearly into the microphone. She also told the audience that tonight's meeting would not be videotaped as the replacement part for the camera had not arrived.

PROCLAMATIONS

National Salvation Army Week.

Konopa read the proclamation declaring May 10-17, 2010, as National Salvation Army Week.

Public Works Week.

Konopa read the proclamation declaring May 16-22, 2010, as Public Works Week.

SCHEDULED BUSINESS

Communication

Accepting the resignation of Jason Desler from the Traffic Safety Commission.

MOTION: Councilor Johnson moved to accept the resignation of Jason Desler from the Traffic Safety Commission and send a letter of thanks for his service. Councilor Coburn seconded the motion and it passed 5-0.

Continued Public Hearing

ST-09-03, Oak Street Local Improvement District (LID).

Konopa reopened the Oak Street LID public hearing that was continued from the March 10, 2010, City Council meeting.

Staff Report

Assistant Public Works Director/City Engineer Mark Shepard explained that there are two proposals from the Lowe's development team. They are a response to the Engineers' Report the Council received on March 10. They are significantly different from the Engineers' Report. The options offered are unusual and those are explained in the staff report in the agenda packet. Attachments "1" and "2" are spreadsheets comparing LID costs that were offered in the Engineers' Report with the options that Lowe's is proposing.

Shepard described Attachment "1" (page 11 of the agenda) as the "punch-thru" project and includes the Lowe's frontage on Oak Street. In the Lowe's proposal the costs for the new section of Oak Street between 9th Avenue and Pacific Boulevard would be funded with \$2.1 million from the Transportation System Development Charges (TSDC) fund (the maximum allowable by law) and an additional City contribution of \$95,500. After the application of the TSDC funds and the additional funding, the balance of the costs would be split between the Lowe's team and the Kinder Park property. Full street improvements on Lowe's frontage on Oak Street would be covered by Lowe's under this proposal. Attachment "1" is the comparison of the initial LID funding distribution, including the use of System Development Charges (SDCs), the shaded columns, and Lowe's proposal, the unshaded columns, and shows a total Lowe's contribution of around \$710,900.

Shepard explained that Attachment "2" (page 12 of the agenda) is also a comparison and includes proposal "A" with development south to Queen Avenue. In the Lowe's proposal the costs for the improvement of Oak Street between Pacific Boulevard and Queen Avenue would be funded with \$3.5 million from the

TSDC fund with additional City funds of around \$83,700. This proposal includes participation of around \$227,100 from other east-side Oak Street property owners and Kinder Park in the amount of \$306,200. There would be no west-side assessment under this methodology.

Shepard said that the City used a trip methodology and Lowe's is proposing funding by agreement. He added that under "A" Lowe's wants to bid and build their Oak Street frontage with their contractor, not under the City's contract to build the punch-thru. It would require extra coordination with the state and City, but he believes it could be done.

Shepard said staff received an email from Diane Hunsaker (in agenda file) regarding this issue.

Coburn asked why Lowe's options show higher costs for the "punch-thru?" Shepard said because of a difference in right-of-way acquisition.

Councilor Olsen asked, does the City pay 80% if the Oak Street improvements are from Pacific Boulevard to Queen Avenue? Shepard said the City would be paying the Parks proposed amount, the SDCs, and the additional funding. It ends up being around 81%. The City normally does not pay on an LID except for over sizing and potential SDC contributions.

Councilor Christman asked for verification that just the east side of Oak Street was being assessed. Shepard said yes.

Coburn asked, is this agreement methodology defensible? City Attorney Jim Delapoer said that staff understood that all the property owners, except one, were agreeable to this methodology. It could be problematic if the City gets challenged. It is very unusual to do an LID by stipulation.

Testimony

Ed Schultz, PO Box 667, Albany, representing Lowe's, said everyone has an opinion about this project. He is going to describe how they reached these two proposals. He provided overheads (in the agenda file) for the Council as follows:

- A. Two decisions to be made: Is the Council going to form one LID or more? How is a LID to be funded?
- B. The private sector proposes two alternative solutions:
 - 1. Form one LID for the project to extend Oak from 9th Street to Pacific Blvd.
 - a. Fund LID by agreement
 - b. Lowe's completes reconstruction of both sides of Oak Street not included in LID, to north line of City Park
 - c. Funding agreement
 - 1. City Street SDCs, \$2,130,000.00
 - 2. Lowe's Property Group., \$266,884.00
 - 3. Other City Funds, \$221,116.00
 - Total, \$2,618,000
 - d. City estimate of Lowe's cost to reconstruct all of Oak Street, \$440,000.00
 - e. Total street contribution by Lowe's Group, \$710,884.00
 - f. Additional SDC fees to be paid by Lowe's:
 - 1. Traffic SDC, \$472,776.00
 - 2. Utilities SDC, \$206,131.00
 - 3. Site development, building, and other fees, \$104,384.00
 - Total of SDC and other fees to be paid by Lowe's, \$783,291.00

Schultz said the only coordination with the City's contractor would be during the punch-thru. This option has no assessments against residential property owners. There would be less risk of an appeal.

Johnson asked if the punch-thru was a City requirement or an Oregon Department of Transportation (ODOT) requirement. City Manager Wes Hare said when the City evaluated the original proposal, the project proposal created a traffic weaving safety hazard in the area. ODOT agreed. The punch-thru was a better alternative than the Sherman Street proposal. Lowe's is not entirely responsible for the problem.

Schultz said it is not a standard development project. There are a variety of things involved. They tried to reach a financial decision that everyone could accept. He mentioned that Lowe's will be paying for other fees as well.

Schultz continued his presentation with:

- 2. Form two LIDs for the project from Queen Avenue to Pacific Boulevard
 - a. Form the north LID from Pacific Boulevard to 9th Street
 - b. Fund by agreement
 - 1. City Street SDCs, \$2,130,000.00
 - 2. Lowe's property group, \$434,258.00
 - 3. Other City funds, \$53,742.00
 - Total, \$2,618,000.00

This portion would be an agreement framed LID for the punch-thru.

- c. Form the south LID, 9th Street to Queen Avenue
- d. Fund by assessment – the average of front footage and area; east side of Oak Street omitted
 1. City Street SDCs, \$1,417,000.00
 2. Lowe's property group, \$229,773.00
 3. City Park, \$306,184.00
 4. Church, (originally \$47,663.00) \$15,887.00
 5. Glaser, \$28,119.00
 6. Sadri/Grazul, \$151,261.00
 7. Lowe's Property Group, \$31,776.00 (a portion of the Church's)Total, \$2,180,000.00

Under this method, the Church of Christ's assessment would be the only one to increase from the original. Because the Church has said they do not have financial resources to afford this, Lowe's agreed to pay 2/3 of their assessments by charitable contribution, if the costs should become fixed.

Schultz said the trip methodology was so significantly unequal that it wasn't acceptable. Their assessment is based on available sums, including the maximum use of the SDCs, and an average combination of frontage assessment and area assessment. This proposal is also based on assuming that the City should pay a portion of the project and the rest of the costs be based on a proportionate share.

Coburn asked, would the Perlenfeins bear the costs of tearing down the building for the punch-thru? Schultz yes, and they have gotten cost estimates for property, relocation, and rebuilding.

Christman asked, are the Pings giving the property for the road expansion to the City? Schultz said yes.

Christman asked, for the assessment methodology that is being proposed by Lowe's, must the City defend it and hold Lowe's harmless? Delapoer said if the Council elects to go all the way to Queen Avenue under Lowe's proposed plan, and some properties challenge the assessments, it would probably go to court. If the property owners are successful the City would have an option to reassess the costs as directed by the court. But, yes the City would have to defend it. Delapoer explained about higher or lower costs or if the court orders a change.

Coburn asked if Lowe's had a preference of the two plans. Schultz said he believes they would prefer the first option. It gives the parties of the transaction a degree of certainty.

Olsen asked, is there no way to remonstrate against this project? Delapoer said yes, property owners can but legal appeals are taken up at the end of the project.

Delapoer said the only decision the Council will make tonight that is final, is whether to build a road or not to build a road. The decision as to whether the cost of the road is to be assessed to private property owners is only a tentative decision tonight as well as the methodology that will be used. Those decisions will not be final until the project is completed, the total project costs are known, and the neighborhood has had a chance to voice their opinion at a public meeting. Delapoer explained the remonstrance process for the audience.

Delapoer asked if Lowes is being assessed with these options. If they are, then it will satisfy the land use approval for the LID. Shepard said that Lowe's is offering to pay an assessment on the punch-thru portion, but the improvement along their frontage is envisioned as outside the LID as a private improvement. Delapoer said to satisfy the land use approval requirements, it's important that within the single LID that gets approved, it includes that the punch-thru and the other requirements are being paid for through the LID mechanism.

Coburn said his first concern was Lowe's contribution and then they mentioned SDC contributions. He is confused. Schultz directed Coburn to the graph in the staff report and the SDC contribution amounts there. Coburn asked, in addition to the \$710,000 what would Lowe's be paying in SDCs? Shepard said they would have water, sewer, and transportation SDCs. Additional fees would be around \$782,291.

Christman asked if the property owners on south Oak Street on the east side were upset that the west side wasn't being a party to this agreement. Schultz has letters to provide regarding contacts. He said hundreds of hours have been involved in getting input from them; not all of which has been successful. But if the City wants to build a street, the Council needs to either absorb the full costs or form an LID. Schultz said if they can find a way for the project go forward, the street will be built.

Collins asked if option 1 or 2 modifies the boundary. Delapoer said yes, both modify the boundary. He also mentioned that everyone's proposed costs have gone down.

Schultz provided copies of letters he sent regarding their proposed LID to Asghar R. Sadri & Dorothy Grazul, the Pastor at the 9th and Oak Church of Christ, and Dennis Glaser (in agenda file). They are the three property owners on the east side of Oak Street.

Jack Mandel, Senior Site Development Manager, Lowes Western Real Estate Office, 1530 Faraday Avenue, Suite 140, Carlsbad, California, read a letter (in the agenda file) to the Council. He said that staff took their

first draft of a LID proposal and prepared a final report from it. As a result, the Council has a report that contains misunderstandings and factual errors that need to be rectified. He said that in March 2008 they initially began consideration of the site. In May 2008 they received authorization from Lowe's management to proceed with the Albany project. They then started what was expected to be a six month process. Since then they have spent the past two years processing "entitlements for this project" and managing their budget and have yet to have a land closing or start of construction. He said the staff report includes, in a reference to Oak Street, a statement that says, "If Council wants to accommodate the Lowe's development requirements and make the improvements ODOT demands in order for that development to occur..." Mandel said, to set the record straight, the Oak Street punch-thru was neither a demand of Lowe's or ODOT, it was the City that opted for that plan to solve a greater City problem. It is an improvement that corrects current safety conditions that exist on the Highway-99 couplet. He believes there were other much simpler and less costly solutions to meet the needs of the Lowe's project, including the Sherman Street improvement. He said the punch-thru is what the City wanted.

Coburn commented that the punch-thru traffic improvement probably would not be there except for the increase of traffic because of Lowe's coming to that area. Mandel said he thinks the weaving problem was overblown. He thinks the City traffic would function fine without it. Coburn said he objected to Mandel minimizing the responsibilities of the store in terms of improvements to the street. The Council's job is to do what is best for the community, not what is best for Lowe's.

Mandel said another traffic mitigation measure required of the project is the improvement of the Oak Street frontage of the Lowe's site. Initially it was only to be a half-street improvement of Oak Street in front of the Lowe's project. Today, Lowe's plans on providing a full-street improvement of Oak Street in front of the project. In the City's staff report dated May 5, it states "However, the Lowe's development team has said that a single project managed by the City does not meet their requirements." He said Lowe's has never stated that a single project managed by the City doesn't meet their requirements, in fact it is their preference.

Another item Mandel feels there is a need to clarify is the Oak Street south improvements. Their traffic study concluded that no improvements south of Lowe's on Oak Street were necessary as only 10% of the total trips will use that section of road. This again is another project the City wants in order to meet a greater City need. They don't object to these improvements but don't believe they should pay for any part of them as they are paying for the frontage improvements. However, in order to get the project moving, Lowe's has agreed to contribute financially to the Oak Street south improvements if the City chooses to improve Oak Street to Queen Avenue.

Mandel said that included in the staff report is an explanation of the history of Albany requiring a developer to make or fund any necessary improvements for utilities, including improved streets. He wanted to say again that Lowe's position is that they developed with the City traffic mitigation measures prior to the redesign and inclusion of the "punch-thru", which was not a design requirement of Lowe's but of the City. He listed the Oak Street improvements that Lowe's is paying for and said that in addition they are paying \$320,000 in other infrastructure impact fees and City permits. He feels they are going beyond what they originally agreed to. He said they are not asking for special treatment.

Christman said he understood that two years ago the mitigation that would take place would be regarding Sherman Street. The Council decided not to use that plan because it would have an impact on the site. From there, the idea formed to make a street change decision that would be the best for the area. The Council has already approved Lowe's coming to the community. He objects to the implication that the City is trying to off-load their traffic issue on to Lowe's. That is not the intent of staff or the Council. The Council is trying to create a good traffic situation for that area. The question is who is going to pay for the traffic issue.

Mandel said the improvements are good and they are committed to Albany, but do not want to pay the lion's share of the improvements.

Olsen doesn't believe 20% is the lions share.

Shepard was concerned that the Council was revisiting a land use issue that has been resolved. Lowe's has already agreed to pay for the punch-thru and the frontage. The question for this public hearing is how much Lowe's should participate in the LID.

Coburn feels he is getting two conflicting stories. Did Lowe's agree to pay for the punch-thru?

Mandel explained that they had several options on the table including the Sherman Street option, but went with the punch-thru option because that is what the City wanted and it became a condition of approval. He thinks they have a workable proposal.

Delapoe reminded the Council that the land use approval says that Lowe's will fund the whole thing, unless they participate in a LID.

Transportation System Analyst Ron Irish said that at the pre-application meeting staff told Lowe's what they anticipated they would need when submitting an application. Lowe's was told they would need a traffic

study, they would have to do at least partial street improvements along Oak Street, and they would have to deal with ODOT for access to 9th Street. Staff also suggested that there was a need for a punch-thru and described what that would entail, and pointed out that the City had an accident problem at the couplet specifically due to weaving. After the pre-app, they had a meeting with ODOT as to what the traffic study should look at. ODOT suggested that the analysis look at a punch-thru. The developer was reluctant to look at it at that point. After two full traffic studies and several appendices, one of them was the Sherman Street option. That was brought to a Council meeting. The owners of the property along Sherman didn't like it; they thought it impacted their businesses including the concerns of a gas station business's trucks existing onto Pacific Boulevard and locking up traffic that resulted in the Police being called to direct traffic. The Council agreed with them and the Sherman Street option was rejected. Lowe's revised their traffic study to look at the punch-thru. The punch-thru ended up being the only mitigation suggested that would deal with the weaving issues, and the traffic volume surrounding the intersections at the project. Staff always knew it was a larger and more costly project than Lowe's would be able to deal with just a land use decision. At that point staff was also developing a new Systems Transportation Plan that they thought may provide some SDC funding. In order to get the land use approval, the punch-thru had to become a condition of the development.

Hare was concerned that the hearing was getting caught up in the history of the project and not getting to the basis for a decision. There has been consistent recommendation to approve the punch-thru as proposed.

Collins said the punch-thru is necessary no matter who is there. They need to get beyond the history, as Hare has mentioned.

Johnson agreed and asked Delapoer if the Council can make a decision to go ahead with the LID but not actually make a decision on the specifics tonight. Delapoer said no, decisions must be made. His prior response was only about appeal rights. The concern tonight is extending the improvements to Queen Avenue, committing SDC funds, and which LID funding methodology to use.

Matthew Conser, 1010 Airport Road, provided a prepared statement (in agenda file) saying that the costs to the property owners have come down from the original methodology. He doesn't believe anyone will appeal if the Council accepts the proposal. This project could become a reality by concentrating City funds on the improvements of Oak Street. SDCs are available to contribute funding to this project. He believes there are advantages to completing the project. He mentioned that Lowe's would generate around \$300,000 in property taxes, 41% of which would go directly to the Central Albany Revitalization Agency (CARA). \$300,000 a year in estimated tax revenue equates to a 10 year payback for all the City funds invested today. The Council has three decisions: The first is, should they improve all of Oak Street or just the northern section; and if only the northern, will it be one LID; and if all of Oak Street, will it be two LIDS: The second decision is accepting the assessment methodology proposed. And the third decision is how soon to get started.

Kent Wilson, 930 Hill Street, owner of "At Home Furniture" store, encouraged the Council to move forward and said he welcomes Lowe's in the community even though they are his competition.

Jo Rae Perkins, 1033 Maple Street, believes the City should pay for the improvements on Oak Street.

George Heilig, PO Box 456, Corvallis, representing Pings Restaurant, said that the design of the road is important to them. They would like it to have a minimal impact on Ping's parking lot and not lose access off of 9th Street to the parking lot.

Michael Robinson, 1120 Couch Street, 10th Floor, Portland, representing Lowe's, thinks there is a solution here. He thinks the punch-thru LID is a good one and that the second option is a risk worth taking. He said there is a \$60,000 difference between the City's proposed methodology and Lowe's methodology.

Mike Styler, 1320 Oak Street, said he has heard people say that it is not necessary to complete the improvements on the south end of Oak Street. He disagrees. He believes there are safety and traffic issues on Oak Street for both children and adults that improvements would address. He said there is a need to complete Oak Street.

There being no other testimony, the public hearing was closed at 9:53 p.m.

Recess

The meeting was recessed for a brief break at 9:54 p.m.

Reconvene

The meeting was reconvened at 10:00 p.m.

Collins wanted to take a "straw vote" on support for Option 1 or Option 2.

Christman said he has always been in favor of fixing Oak Street all the way to Queen Avenue. If he were going to Lowe's from his house the route he would take would be to come up Oak Street. With minor modifications, he would accept Lowe's Option 2 proposal.

Olsen said that before the couplet project he used Oak Street regularly and agrees with Christman that people from the south east will take Oak Street rather than 9th Avenue. He believes Oak Street needs to be improved and is in favor of Option 2.

Johnson said she is not in favor of doing the trip methodology. She too is in favor of Option 2.

Coburn also is in favor of improving Oak Street all the way to Queen Avenue.

Collins agreed but also mentioned that the project will take a greater component of City resources and the loss to other projects will have an impact.

Christman was concerned that there were property owners that were left out of the option that would benefit from the improvement and the east side property owners would have to pay. He suggested that the City somehow come up with funds for those property owners, the three on the eastside (Glasser, Sadri/Grazul, and Ninth & Oak Church of Christ), that would require them to be part of the project, but not to be part of the financial costs.

Collins asked, would there be a connection fee later if those properties got developed? Shepard said yes.

Collins asked if there was some way to have Lowe's continue to pay the dollar amount they offered to pay for the Church. Delapoer said the Council can include a condition that Lowe's continue to pay what they offered to pay on behalf of the Church.

Johnson asked if there was any history of benefitted property within a LID that didn't have to pay. Shepard doesn't believe it has ever happened. She said she is worried about setting a precedent.

Olsen said that after considering the use of SDCs, he wondered what it would take to have the whole City pay for this project. He considered the process of going out for a bond. With that in mind, he has calculated that it would be around \$320 more a year in taxes, per household, for this project. He thinks it is too much money for the City to spend in order to have another retailer in town.

Coburn said he prefers to look at the project as an investment that would pay itself back. Lowe's would pay taxes. They would employ around 300 people who would pay taxes and spend money on other businesses.

Olsen commented on the other hardware stores in town. He thinks some will gain and some will lose.

Johnson said that Lowe's handles different products. She believes the competition would be good for the consumer.

Konopa said picking up the costs of the LID from the property owners would be setting a precedent. The Council may have to defend this decision when other LID projects come forward.

Collins said one defense is the recently completed Transportation Plan; money was allocated to that.

Irish said the maximum amount eligible is 65% to this project.

MOTION: Coburn moved to adopt Option 2 (Oak Street from Pacific Boulevard to Queen Avenue, Option "B" in the staff report) using Lowe's methodology, with the two residential properties and the Church property excluded, and the amount that Lowe's had agreed to pay for the Church (\$31,776) to be paid by Lowes. Johnson seconded the motion.

There followed a discussion of several financing packages and where the revenues should come from to support the project, but no decision was made.

Olsen said he will vote no on the motion because he believes \$6,000,000 is too much for this project.

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

Business from the Public

No one wished to speak.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) April 26, 2010, Work Session.

2) Annual liquor license renewals.

MOTION: Coburn moved to adopt the Consent Calendar as presented. Johnson seconded the motion and it passed 5-0.

Appointment

Appointing David Smith to the Traffic Safety Commission.

MOTION: Coburn moved to appoint David Smith to the Traffic Safety Commission. Johnson seconded the motion and it passed 5-0.

Report

Government Financial Officers Association (GFOA) Award for Comprehensive Annual Financial Report (CAFR).

Senior Accountant Mike Murzynsky was recognized for being awarded the Government Financial Officers Association Award for the CAFR. Albany has received this award every year for the last 25 years.

Hare commented that obtaining the GFOA's CAFR and Budget awards are a benchmark in the City's Strategic Plan. They reflect Albany's high standard of work.

BUSINESS FROM THE COUNCIL

Johnson mentioned last Friday's Upstairs Downtown event, saying that it was well attended and a lot of fun.

RECESS TO EXECUTIVE SESSION TO DISCUSS LABOR NEGOTIATIONS IN ACCORDANCE WITH ORS 192.660 (2)(d)

The Regular Session was recessed into an Executive Session at 10:45 p.m.

RECONVENE

The Regular Session was reconvened at 11:13 p.m.

NEXT MEETING DATE

The next City Council Work Session is scheduled for Monday, May 24, 2010, at 4:00 p.m., in the Municipal Court Room, at City Hall. The next City Council Regular Session is scheduled for Wednesday, May 26, 2010, at 7:15 p.m., in the City Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 11:14 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director