

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, July 14, 2010
7:15 p.m.

MINUTES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge allegiance to the flag.

ROLL CALL

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

Councilors absent: None.

Councilor Ralph Reid introduced Andrew and Christopher Reid, his son and grandson, in the audience.

SCHEDULED BUSINESS

Legislative Public Hearing

DC-03-10, amending Ordinance No. 4441, which adopted the City of Albany Development Code and Zoning Map by amending the Development Code text related to adjustments, special status properties, allowing gymnastics-type uses in the light industrial zone, adding vocational schools in industrial zones, updating use categories and definitions, adopting findings, and declaring an emergency.

Open Public Hearing

Konopa opened the public hearing at 7:18 p.m.

Konopa asked for a staff report.

Staff Report

Planner III Anne Catlin said this is a legislative public hearing to highlight amendments to the Albany Development Code. The package includes mostly clarifying edits and redundancy removal and some policy related changes that were requested by the public. Staff sent notice of the public hearing to interested parties, published notices in the *Democrat-Herald*, and posted the proposed changes to the website. The Planning Commission met twice to discuss the proposal and on June 21, 2010, voted unanimously to forward the proposed changes to the Council for approval.

Catlin explained there are two review criteria that must be met for Development Code amendments to be approved. The first is that the proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language. Most of the proposed amendments are to clarify the intent of existing standards, and to remove duplication and inconsistencies within the Code. The proposed changes support two policies related to development review:

- To ensure the City's land use planning process and policy framework are workable and understandable for local officials, staff, and the public.
- To encourage design innovation but ensure the site design considers site characteristics, potential impacts on surrounding areas, and applicable Comprehensive Plan policies.

Catlin said amendments in Article 2, Review Criteria (Exhibit B), include changes made to coincide with the recent changes made to Article 1, Administration and Procedures, with the adoption of Ordinance No. 5728. Amendments will remove duplicate review criteria within Article 2 and inconsistencies between Articles 1 and 2.

Catlin said an issue that staff has struggled with over the years is common terms such as setbacks, yards, setback yards, and required yards. Staff has gone through Articles 3, 4, 5 and 22 (Exhibits C through G) to make sure the Code was clear when using those terms.

Catlin said all of the uses and definitions in Article 22 were reviewed for accuracy and consistency. Staff found a few errors that need to be fixed and definitions are recommended to keep the Code current.

The second criterion pertains to policy amendments requested by the public and relate to the following economic policies:

- Economic Policy 13: Support the area's educational resources as vital to the social and economic well-being of the community. Encourage opportunities for increasing skill levels of local workers.
- Economy, Land Use, Commercial, Policy 1: The size and type of future commercial sites should be proportional to the area to be served and located so as to be easily accessible by the service area.

Catlin said the first request from the public was to add gymnastics, tumbling, and cheerleading as an allowed use in the Light Industrial (LI) zones. This came about because a gymnastics business and a cheerleading business wanted to use industrial sites because of their large, open spaces. Staff concluded that the request made sense; but the request was originally introduced in more general terms as indoor fitness centers (such as gyms.) Staff evaluated the indoor fitness center use and determined that they are more commercial in nature and may not be a good fit, so proposed to limit the recreation uses in LI to accommodate gymnastics and cheerleading but not gym use.

Catlin said another request from the public was regarding vocational schools; right now they are not allowed in industrial zones. Vocational schools typically support and train students to work in industries. Therefore, staff proposes that they be allowed as educational institutions to be processed through site plan review. This would better achieve the policy to provide training for a skilled workforce.

Catlin said another public request came from the hospice industry, to allow pharmacies in the Neighborhood Commercial (NC) zones. The NC zone's purpose is to provide uses for the nearby residences so staff concluded that pharmacies would be appropriate.

Catlin said the last request was for a Bathroom Retrofit. It has been on staff's list for a while to allow bathrooms to retrofit for persons with mobility impairments such as wheelchairs or walkers, when existing bathrooms are too small for walk in showers. Staff met with the Building Official and determined they could consider it through the amendment process. They would require an application, which would be routed through different departments and review criteria to evaluate the request on a case by case basis, to allow minimal encroachment in the set back and a minimum of a three foot setback from the property lines. She said there are several policies that cater to this request:

- Recognize groups needing specialized housing such as the elderly, handicapped, homeless, and other disadvantaged groups when identifying housing programs and opportunities.
- Encourage innovation in housing types, densities, lot sizes, and design to promote housing alternatives. Examples include: other actions directed at reducing housing costs which conform to the Comprehensive Plan, including innovative Development Code regulations.
- Encourage design innovation but ensure the site design considers site characteristics, potential impacts on surrounding areas, and applicable Comprehensive Plan policies.

Catlin said staff also verified the proposed changes are consistent with the purpose of the Development Code and zoning district purpose statements as well as the Comprehensive Plan policies.

Councilor Floyd Collins explained that the setbacks were to ensure that there is fire separation between buildings and access for rear entry. Also, it provides for Public Works crews to be able to access rear lot line sewers. He asked, would they be considered in your review criteria? Catlin said yes; the site, floor plan, and individual needs would be considered. If there were no other way to get to the back of the house, causing issues with fire safety between buildings, then the City would have to deny the application. Also, building over easements would not be allowed. In some cases the retrofits may not be possible.

Community Development Director Greg Byrne said the Bathroom Retrofit applications would be treated as a type two land use approval, so Public Works, the Fire Department, and the Building Division would all weigh in just like with other land use issues. Catlin corrected the statement and said that it was proposed as a type one review. A variance would be a type two. Byrne added that this is a fairly small addition to a home, so the City doesn't want to over-process and make the review more costly than the improvement itself, but at the same time make sure the improvement is not imposing on utilities or neighboring properties. A type one review keeps the request at the administrative level and provides an opportunity for someone to weigh in, if they see a problem.

Councilor Jeff Christman asked, does the type two land use approval process include neighborhood notification? Catlin said type one includes the City notifying neighbors within 100 feet. The adjustment criteria require that it be the minimum necessary to accommodate the mobility issues. If there is another bathroom that could be retrofitted, we would look at that first before allowing encroachment into the setback. There are other certain building features such as porches that are allowed to encroach already, so staff thought it was reasonable to consider this type of request.

Testimony

Konopa said, if anyone wishes to enter an exhibit into the testimony, please briefly describe it and hand it to the Clerk.

Bob Alexander, 560 SW #B Avenue, Corvallis, said he instigated this request because he feels they are seeing just the tip of the iceberg with elderly folks that want to stay in their house or with relatives, as opposed to going out to care facilities. They can stay in their house for considerably less money than a care facility. As far as encroaching into setbacks, in this case he has a bunch of houses with bathtubs at the end of the bathroom on the outside wall. These changes were proposed specifically to address this problem. There is not enough depth to accommodate a wheel chair or walker. An additional 2-3 feet in depth would be adequate. Without this change in the Code, they would have to tear up (usually) the bedroom, to accommodate the extra space, which is expensive and wasteful.

No one else wished to testify.

Close Public Hearing

Konopa closed the public hearing at 7:31 p.m.

Deliberation

City Attorney Jim Delapoer read for the first time in title only, "AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO ADJUSTMENTS, SPECIAL STATUS PROPERTIES, ALLOW GYMNASTICS-TYPE USES IN THE 'LI' ZONE, ADD VOCATIONAL SCHOOLS IN INDUSTRIAL ZONES, UPDATE USE CATEGORIES AND DEFINITIONS, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-03-10)."

MOTION: Reid moved to have the ordinance read for a second time in title only. Councilor Bill Coburn seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Reid moved to adopt the ordinance and Coburn seconded it. The motion passed 6-0 and it was designated Ordinance No. 5742.

Christman asked if staff resolved what type of noticing area the Bathroom Retrofit application would require. Catlin said it is a type one, which includes notice within 100 feet, or the Community Development Director can expand the notice area.

Business from the Public

There was no business from the public.

Adoption of Consent Calendar

On the dais was a document titled "Exhibit A-1" (see agenda file), which is to replace the map in the statutory warranty deed from Ohanamula, LLC (item 8 on the Consent Calendar).

- 1) Approval of Minutes
 - a) June 7, 2010, Work Session.
 - b) June 9, 2010, Regular Session.
 - c) June 21, 2010, Work Session.
- 2) Extending City of Albany's workers' compensation coverage to volunteers for policy year 2010-2011. RES. NO. 5929
- 3) Approving modification of Enterprise Zone requirements for Allvac (Oremet) Albany as allowed by HB3609 by cosponsors of the South Santiam Enterprise Zone. RES. NO. 5930
- 4) Awarding the police vehicle maintenance contract to Nissen Motor Company.
- 5) Approving a liquor license for Vault 244, 244 First Street SW.
- 6) WWTP-08-02, Talking Water Gardens at Simpson Park, accepting additional revenue from Teledyne Wah Chang. RES. NO. 5931
- 7) Granting an easement to Northwest Natural Gas. RES. NO. 5932
- 8) Approving a statutory warranty deed from Ohanamula, LLC. RES. NO. 5933

Councilor Dick Olsen asked for Item 3) to be removed for discussion.

MOTION: Reid moved to approve the Consent Calendar with Item 3) removed for discussion and Collins seconded it. The motion passed 6-0.

Olsen asked if Item 3) allows Oremet to escape the requirements of their Enterprise Zone agreement. He asked, do they go back to the old rules if the economy recovers?

Christman thinks there are provisions in some new legislation that changes the Enterprise Zone when certain factors in the economy change. Reid thinks one reason is the number of employees and due to the economy they

are adding less than they intended. Olsen thinks that with the bad economy the City should make them take on more employees, not less. He thinks they are asking for relief since the company is not doing well, and he wonders if they should be asked to take back more employees when business improves.

Konopa said this request was made because of the new Oregon House Bill that was passed. Oremet is currently in an Enterprise Zone, but didn't reach their employee goal, so they are asking it to be waived. She thinks Christman is correct, that there are some restrictions written in the bill. Discussion followed.

Delapoer said it is an additional two-year waiver; it gives them an additional two years to reach the employment level they agreed to. It is a policy judgment for the Council if they want to grant this extension.

Konopa said Oremet is Albany's biggest private industry and given the economy, we need to help them.

Olsen said when he was on the Council years ago, the homeowner used to pay 60% of the tax load and business paid about 40%. He heard recently that the homeowner now pays 90% and businesses pays 10%. He wants to make sure that those businesses asking for relief really need it.

Delapoer reminded the Council that several years ago when the City looked at incentives for businesses to come to Albany, one of the things that the City Manager brought to the Council's attention was the additional investment that was being made at Oremet. They have made millions in investments in the community without government assistance. In many ways they have provided a measure of economic support to this community that others have not.

Collins said Oremet has already made significant investment and the market dropped out of their product; not because of poor business decisions, but because of the economy. They have had layoffs but are also having call backs just as fast as the market recovers. He supports their request.

MOTION: Olsen moved to adopt Item 3) and Councilor Bessie Johnson seconded it. The motion passed 6-0.

Amendment of Contract

WWTP-08-02, Talking Water Gardens at Simpson Park

Konopa said that staff and the Joint Water-Wastewater Management Committee recommend that the City Council adopt the resolution in the agenda packet which authorizes staff to accept an additional \$47,800 from Wah Chang for the Talking Water Gardens.

Utility Engineer Chip Ullstad asked if there are any questions.

Coburn said he has a possible conflict of interest. His company is a subcontractor for the electrical portion of this project, although he is not directly involved because it is a different department. He recused himself from voting.

Collins said that a \$766,000 change in the contract is being offset by the same amount coming from WahChang, so it is a wash. Revenues and Expenditures are being raised by the same amount.

Public Works Director Diane Taniguchi-Dennis said there are two elements for construction and design efficiency to build the pipelines in a common trench with a single contractor. WahChang is contributing \$747,800 and is also funding two additional water features in the upper wetlands to provide more treatment, and it will create better aesthetics. The second item is to add back two of the maintenance access bridges to the upper wetland. The City did not get all the money they had hoped to from the Department of Environmental Quality (DEQ) so as part of value engineering, they reduced project elements. At certain milestones in construction, such as this juncture, features are reconsidered. These two bridges are necessary for staff access and also to provide access to the public.

MOTION: Collins moved to authorize staff to execute Contract Amendment No. 2 for WWTP-08-02, and Reid seconded it. The motion passed 5-0.

Appointment

Appointing Julie Jones to the Human Relations Commission.

MOTION: Collins moved to appoint Julie Jones to the Human Relations Commission and Johnson seconded it. The motion passed 6-0.

Report

2011 League of Oregon Cities legislative priorities.

Finance Director Stewart Taylor said that each year, prior to the legislative session, the League of Oregon Cities (LOC) requests local jurisdictions to identify their priorities. At the last work session the Council was given LOC's list of topics. Albany is supposed to pick four. Discussion followed.

Johnson said Item F, the overhaul of the state property tax system, was discussed at the LOC Tax and Finance Commission of which she is a member. The main goal was for cities to have a better chance of getting something started and have the capacity to get out to schools and counties. All three revenue legs will be considered: state, city, and federal funding.

Olsen said, Albany has it pretty good compared to a lot of cities across the nation. Some cities are turning off street lights, discontinuing the maintenance of parks, and police are not responding to burglaries. Albany is a long ways from that.

The Council consensus was to recommend four priorities from the table provided in the packet: Issues F (state property tax system overhaul), BB (water rights), H (transient room tax), and O (healthcare cost).

BUSINESS FROM THE COUNCIL

Johnson said that a year ago, the Council told the Ermine Street neighborhood residents that the closure of the access to South Albany High School would be revisited in the summer of 2010. She got a call today from neighbors asking when that will happen. She thinks 99.5% would say it has been a good move, but they want to be here when the Council reviews it. She said the review should not be scheduled for a work session since most in the neighborhood work during the day. Staff will schedule the subject for a future agenda.

Coburn said that after sitting through the Airport Commission meeting and reading the minutes, he thinks it is time to have Delapoer start the eviction process against the current Fixed Based Operator (FBO). The City will be going out for a Request for Proposal (RFP) soon and there is some value in having the facility vacant. This Council discussed the FBO eviction a while ago, and at that time Coburn said he thought it was better to have someone in the building rather than be vacant. But things have changed, and he thinks it is time to evict.

MOTION: Coburn moved to direct the City Attorney to start the eviction process against the current Fixed Base Operator at the Airport and Reid seconded it.

Delapoer gave an update on the lawsuit. He said if the Council wants to proceed with Coburn's recommendation, it would be easier for him to amend the lawsuit now. From a legal standpoint, this is the right time.

Johnson agreed that it is timely.

Olsen asked what services the FBO provides currently. Taniguchi-Dennis said the FBO greets visitors, provides a flight training school, and some mechanical services.

Olsen asked, does the FBO pump gas for the aircraft? Taniguchi-Dennis said no; it is self-serve, payable with a credit card.

Delapoer said the eviction would result in a timeframe when there would be less service at the Airport, but the vacancy would provide an opportunity for the City to make some changes and upgrades. Vacant space would allow easier painting, etc. Discussion followed. For the past due balance the FBO owes the City, a judgment would eventually be filed against the corporation.

Collins asked staff to come back with a proposal to keep someone out there in order to meet and greet visitors and to maintain a presence at the Airport.

Christman said that he learned a great deal about the Airport by attending the Airport Advisory Commission meeting. He asked, if we evict the FBO can the City enter into a contract with someone to provide mechanic services? Delapoer said yes. Christman said, we don't have to have an FBO, or we could have multiple FBOs. He thinks there is a lot of flexibility in what the City can do. If the eviction process is started now, the City will have even more flexibility.

Collins is in favor of the motion. The current FBO is \$34,000 in arrears over a two-year period. This is a substantial amount and it does not make good business sense for the City to continue to carry the FBO.

Johnson said it is fiscally irresponsible for the City to have let it go for this long.

Reid thinks the Budget Committee and the City Council will be surprised with the replacement potential.

VOTE: A vote was taken on the motion to direct the City Attorney to start the eviction process against the current Fixed Base Operator at the Airport and it passed 6-0.

Coburn asked if the City owns the property on the end of Knox Butte. Taniguchi-Dennis said yes and it should be demolished. Konopa has been inside and described that the house has been vandalized. We might know in a month or so if that property and the neighboring property together, have potential for development. Taniguchi-Dennis said that staff did an analysis of right-of-way (ROW) for the street. The existing property has enough ROW to construct the road and there will be the ability to sell the excess ROW to the adjacent property to create larger developable lots. Council asked for staff to bring back a report. Discussion followed.

Collins asked Byrne, do you have a tentative agenda for the next six months for continued review of the Development Code? Byrne said they plan to do the next round a year from now. He has scheduled a half-day session with the Planning Commission on Monday at noon to discuss commercial and multi-family issues in order to prepare for the South Albany Plan because they received the TGM Grant. With reduced staff levels, Byrne thought they shouldn't try to do another Code update; thus, they are scheduling it in a year and focusing on the other projects now. Discussion followed about changes that will be considered in the next review.

Collins asked if the next review will include the commercial design standard requirement for pedestrian oriented commercial facilities. Byrne said yes. Collins said he just went by the Twin Sequoia complex on Waverly Drive and driving by, a person can't tell what is there because the primary accesses are interior to the lot. He went inside the building and the access facing Waverly Drive is blocked off for storage. Byrne said pedestrian orientation would be part of the next review for commercial and multi-family. Byrne added that when staff and Council reviewed the small building for Walmart the same issue arose. To deal with tenants defeating the intent of the code, there was a condition of approval added that required applicants to submit interior tenant improvements on the buildings to assure the orientation was correct. Discussion followed.

Reid said the Petco store has the same issue. It is beautiful on the north side, but the entrance is on the south side.

Christman said that the Council makes many decisions and comments, and it is very easy through the internet or videotaped meetings or the local newspaper for a Councilor's name to be attached to them. He has been aggravated for awhile, but today there was a blog that really upset him. Letters to the Editor show up in the *Democrat-Herald* online, and people are allowed to make comments. For those that make comments, 99.9% do not submit their name; instead they use an alias. Usually Christman ignores letters he gets that are signed with an alias because if a person isn't going to put their name to it, then he doesn't want to read it. Today, an individual that uses the alias "Al Bany" proceeded to call the City Council "morons" on the website. It doesn't matter what the Letter to the Editor was, or the blogger's response; what bothered Christman is that he didn't add his name to it. He said, someone can call him a moron if they want to, but stand up to it and be responsible for your comment. To Christman, it is more acceptable if they put their name on it. Many times the Councilors do not agree with each other, but Christman said he knows that the Councilors all have the City's best interest at heart; so for someone out there to not take responsibility for their comments, and to call the Councilors morons, is unacceptable. Christman asked *Democrat-Herald* reporter Cathy Ingalls to relay the message to the appropriate staff member, that it would be nice if the bloggers were forced to put their names on their comments.

Public Information Officer/Management Assistant Marilyn Smith thanked Christman for his comments. She has discussed this with Graham Kislingbury, the online editor who is primarily responsible for monitoring blog comments. Smith explained that it has been a tradition at newspapers that letters to the editor should be signed and have an address attached. A couple years ago a person was continually writing letters to the City questioning decisions about the water system. Smith contacted the newspaper to track down the address but found that the person didn't exist. Yet the blog comments continue under an alias. She said Kislingbury explained to her that blog comments are considered transitory; but they are not, because they leave an impression. She thinks it is cowardice to use an alias in something that is published for the entire world to read.

Konopa said she was receiving e-mails that were unfriendly and complaining about what the City was spending money on, yet the person didn't even live in Albany.

Collins said that for controversial articles or misinformation there is sometimes the opportunity for staff to respond, yet with a blog the Council or staff cannot respond in time. They are short lived, and they leave a first impression. But, nothing can be done until a standard for blogs is set.

Smith will ask the *Democrat-Herald* to come to the Council to discuss their policy for bloggers, so the Council can hear the rationale behind it.

Smith said, there is a news release coming out that the City will not be watering neighborhood parks in the summer, as was approved by the Budget Committee for the 2010-11 Budget. This does not include regional and community parks. This action will save \$80,000 in the Parks & Recreation budget.

Delapoer announced that he will be on vacation for two weeks.

Delapoer said that the memo given to the Council at Monday's work session about Lowe's was an update to describe that staff has been working diligently with Lowe's. The memo recapped several lengthy telephone conversations and three alternative building options. Staff was struggling with the Council direction to require Lowe's to contractually commit to actually building in Albany if the City spends \$4 million in public funds for improvements, but try to avoid Lowe's demand for \$5,000 a day liquid damage liability if the infrastructure is not in, for some reason, by the time they want to open. Staff and Lowe's have been exploring alternatives that would give Lowe's a greater degree of responsibility and control over the infrastructure themselves, like a Site Improvement (SI) project. In return they would have the contractual commitment to us but we would not have a contractual commitment to them. Delapoer anticipates that Lowe's will accept one of the proposals. Often Lowe's takes several weeks to return a decision to the City, so Delapoer said it is important for the Council to know that City staff is not the cause for delay.

Collins asked, under option C, on the memo, did the City make a condition of approval that Lowe's could not pull their permits until the improvements were made? Delapoer said there is an alternative if there is a financial commitment, and

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they would require bonding. If they bond by a certain date then the City would give them the building permits because they would be deemed as satisfied. Discussion followed about the options in Delapoer's memo.

NEXT MEETING DATES

Regular Work Session: July 19, 2010, at 4:00 p.m.
Special Work Session: July 19, 2010, at 7:15 p.m.
Regular Session: July 28, 2010, at 7:15 p.m.

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:39 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director

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