

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, August 25, 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, Ralph Reid, Jr., Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson

SCHEDULED BUSINESS

Adoption of Findings

HI-08-10, 808 Elm Street SW; appeal decision findings.

Community Development Director Greg Byrne explained that the Council had asked staff to prepare findings regarding their decision on August 11 to approve replacing all of the windows on the house at 808 Elm Street SW with new wood windows. Those findings and conditions of approval are in the Council agenda.

City Attorney Jim Delapoer explained that once the hearing is closed the Council should not be hearing new evidence. He asked the Council to disregard an email they received from Oscar Hult regarding this appeal, after the record was closed.

Delapoer read Albany Municipal Code Section 7.120 (1c), "The proposed alteration is not visible from the street." This is relevant because questions were raised by some Councilors regarding windows visible and not visible from the street. He said if the Council wants more information or testimony regarding this code, reopen the hearing.

Councilor Olsen asked, if the Council chooses to reopen the hearing, can we listen to more evidence from the Landmarks Advisory Commission (LAC) regarding how they came to their decision? Delapoer said yes, any evidence that comes in at the reopened hearing can be considered.

Councilor Coburn said he was not interested in reopening the hearing.

Olsen is concerned about the findings. He thinks they imply that all the windows are unrepairable and believes that contradicts the staff report.

MOTION: Olsen moved to reopen the hearing to receive additional information regarding the conditions of the windows and the disposition of the windows. The motion died for lack of a second.

Councilor Christman said that, under conditions of approval, condition 5 on page 4 of the agenda, he believes that at this point it is impossible for them to do that. Byrne said for the windows that had not been purchased yet, staff wanted to make sure they conform to the conditions. Christman was concerned about windows that had already been purchased.

Delapoer explained that the Council is not locked into these findings. Staff submits draft findings and the Council has the authority to make changes.

Christman doesn't believe it is possible for the applicant to meet condition five. He believes condition one will satisfy condition five and would like to drop condition five.

Councilor Johnson asked if the requirements are the same as what was discussed at the public hearing and if the applicant feels they would be able to meet the conditions. Staff said yes, the applicant testified that they could meet the conditions.

MOTION: Coburn moved to adopt findings and conclusions recommend by staff in the agenda with the exception of the deletion of condition number 5 on page 4 of the agenda. Christman seconded the motion and it passed 4-2, with Olsen and Councilor Reid voting no.

MOTION: Johnson moved to reverse the Landmarks Advisory Commission decision and approve the replacement windows applied for by the applicant. Christman seconded the motion and it passed 4-2, with Olsen and Reid voting no.

Konopa explained that within five days of the decision, the Community Development Director will provide written notice of the decision to the applicant and any other parties entitled to notice. A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a Notice of Intent to Appeal not later than 21 days after the decision becomes final.

Coburn asked, is there a way to refund their filing fee for the appeal, because they have basically won? City Manager Wes Hare said he didn't believe so, but the Council has the discretion to do that.

Communication

Albany Municipal Airport, Fixed Base Operator.

This item was listed as the first item on the agenda, but was moved to after Adoption of Findings.

Delapoer said that the Council has given him two directions to proceed regarding the Fixed Base Operator (FBO) at the Albany Airport. One is to file a suit over back rent and the other is to evict Reliant Aviation from the City's facilities. Litigation has commenced, the notice of eviction has been sent, and he is ready to start procedures at the Council's direction. In the meantime, Reliant's attorney, Pam Hediger, has requested to speak to the Council on the applicants behalf in hopes that Councilors will change their direction to him.

Pamela Hediger, 745 NW Van Buren, Corvallis, representing Reliant Aviation, said Reliant's lease was entered into in 2000 and they have been at the Airport for over 38 years. The rent was increased in the 2000 lease because of the expected increase as presented in the Airport Master Plan. They accepted the increase in rent and the expectations and understanding of the Master Plan. There were expectations in the Master Plan that affected the FBO, including a promised remodel of the building and a Council commitment to the Airport. They haven't paid their rent and they are not contesting that, but they feel the City has fallen short in their promises. They believe the economic recession has affected them. The renovations never took place and there continue to be maintenance problems with the building that they occupy. They have lost the flight school and the ability to attract additional flight students. The City took over the sale of fuel; therefore they have no way to make an income usually available to FBOs. They feel they do not have the support of the City because of recent newspaper articles about their business problems. They are asking the Council to appoint members to work with Reliant and put the litigation on hold. They would agree that if they are unable to come to an amicable negotiation, they would vacate the Airport within two weeks. She said, that as their lawyer she has advised them that they could walk away without any personal liability.

Christman asked, can Reliant explain why there were significant late payments before that agreement was negotiated? Hediger said it is a hard business to make a living, being an FBO.

Delapoer said this presentation is unusual. Staff has a different perspective than what Hediger has said. The Council could hear from staff tonight or schedule a meeting for a report from them. He explained that the Council does not have to take any action and his office would follow the last direction they received, which was to follow through with the litigation. If the Council wants to discuss litigation, he prefers they schedule an Executive Session. If there is no motion tonight, he will assume the Council wants him to continue on the path previously laid out.

Olsen asked if they would have a chance to hear from the current Airport Commission and the new Airport Manager on staff. Hare said the last two staff Airport Managers are here and can answer any questions. Delapoer said the current Airport Commission has been looking at other issues concerning an FBO at the Airport, not the legal issues surrounding Reliant.

Councilor Collins asked, if Reliant vacates the building, what about the back rent? Hediger said they are offering to leave the building without the City having to file another law suit for eviction and they agree to any negotiated payment for the back rent.

Delapoer said he would recommend to the Council that if they want to go with what Reliant is asking tonight, they set a time line for negotiations. What he understands Reliant to be asking is to have a meeting and if the meeting fails to result with a negotiated agreement, Reliant would vacate the Airport voluntarily.

Coburn said he would like to hear from staff regarding the July 28 letter from Reliant (in agenda file).

Hare suggested that Project Coordinator Guy Mayes shed some light on the amount of investments that have been put into the Airport in the last five years.

Mayes, the former Airport Manager, said there has been a significant list of things that have been done at the Airport using grants and those projects not funded by grants were dependent on the annual budget. Buildings have been repaired or built and the runway has been upgraded. The Master Plan has a project list. There is an annual \$150,000 Federal Aviation Administration (FAA) allocation that covers some of them and then a "wish list" of others that need to find funding elsewhere. Therefore, there is never an expectation by staff that projects not covered by the allocation will get finished, as they recognize the shortfall in local funding. The City has received a \$1.5million discretionary grant for overlays.

Hare asked if there have been other investments over the years. Mayes said there has been an increase in hangar buildings at the Airport in the last five years. There are only three buildings that are City owned. Over the last 10 years there has been an increase in private investment. One of the options given to Reliant was to rent ground at the Airport and build their own facility. Other businesses are doing that. Requests to repair the City building were very costly. No increase of rent would have been able to recoup the investment in the repairs. Per the current lease with Reliant, the items mentioned regarding repairs, painting, etc. were their responsibility, not the City's. Also, their lawyer mentioned income from fuel sales and there was no expectation that the FBO would receive income from fuel sales and it is not in their lease. Mayes mentioned that the Airport is governed by FAA rules and must be run the same as other airports in the Northwest. He added that the size of the building they are leasing is 9,000 square feet, and includes car and airplane parking spaces.

Coburn said, the July 28 letter, includes accusations of neglect of repairs by the City including the leaking roof, mold and mildew, missing tiles, etc. He read parts of the letter that said the City didn't participate in repairs. He asked Mayes, did you say in the terms of the lease it was the tenant's responsibility to do the repairs, except for the leaking roof? Mayes said yes, the lease does say that and the leaking roof would have been a structural concern so it would have been the City's responsibility.

Airport and Transit Manager Chris Bailey, current Airport Manager, said the current lease states that major structural components of the building are the City's responsibility and improvements are the tenant's responsibility. The City did do some mold and mildew repair on the south side of the building. Regarding the letter before the Council, she said before the 2005 lease was signed the rent was \$1,200. The lease went into effect July 1 but wasn't signed until December and their first payment wasn't made until December. There were five months that they were paying at the \$1,200 rate, so there is a \$300 per month difference. That put them at \$1,500 that they technically owed the City. The City sent them a letter telling them that they could use that \$1,500 towards improvements to the building, which included those items listed in the letter. So, the statement that the City didn't participate is not entirely correct.

Delapoer spoke to the issue of publicity and the paper reporting Reliant's troubles, commenting that the City conducts its business in the public arena. They have no control over what the newspaper reports.

Olsen asked for examples of other airports in Oregon that have FBOs and how they are doing. Bailey listed some other cities with airports similar to Albany's including Creswell, Portland-Mulino, Madras, etc. She said other airports FBOs consider it a slim profit-margin business. Some airports spell out the responsibilities of the FBO, but Albany's lease doesn't specify what the responsibilities of the FBO are.

Olsen questioned having someone there and felt it was important to have a "face" at the Airport. Bailey explained what other airports do. She said it is possible to have a locked facility with no FBO. The pilots would have cards, like gas cards, in order to access the facility. It is workable.

Hare mentioned that some of the other duties are to write grants and produce reports.

Delapoer commented that it is one discussion to consider what should be in a future contract with an FBO, and it is another discussion to evaluate the current contract and if it was fair or unfair. The discussion tonight should be regarding the current contract.

Johnson would like to meet with the City Attorney in an Executive Session. Coburn agrees.

Christman asked how that would affect the 30 day notice. Delapoer said no action would be taken until the Executive Session is concluded.

COUNCIL CONSENSUS: The Council agreed to schedule an Executive Session at the next Regular Council meeting to discuss Airport litigation options.

Legislative Public Hearing

CP-01-10/DC-04-10, amending Ordinance No. 4447, which adopted the City of Albany Comprehensive Plan and map, and amending Ordinance No. 4441, which adopted the City of Albany Development Code by amending the Comprehensive Plan text and map and Development Code text relating to floodplain management, adopting findings, and declaring an emergency.

Konopa opened the public hearing at 8:17 p.m.

Staff Report

Planning Manager Heather Hansen explained that the public hearing is necessary because the City participates in Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP), which enables residents in flood prone areas to purchase flood insurance. Floodplain regulations are about public safety and protecting life and property. FEMA recently updated their floodplain maps, which the City uses for floodplain management under the NFIP. The maps become effective on September 29, 2010. The City cannot change the maps, only FEMA can. If there are any property owners who think their property is actually higher than the 100-year flood elevation, there is a process they can go through with FEMA to have their property removed from the floodplain. FEMA will send them a letter, which removes the property from the floodplain by reference. The letter remains associated with the maps and with the land. There are hundreds of these in effect in Albany. She said the City is required to adopt the new maps, and amend our Development Code so it is in compliance by September 29, 2010. The City also participates in FEMA's Community Rating System program, which enables property owners to get a discount on their flood insurance premiums. The more the City does above and beyond the minimum NFIP standards to protect the community against flood hazards, the higher the discount property owners get. Properties in flood prone areas are currently eligible for a 15% discount, and staff is working toward a 25% discount at the City's next five-year review.

Hansen said overall, there are fewer properties in the floodplain in Albany than before. Development can occur in the floodplain, but the City is required to review more development activities than in the past to ensure it will not increase the risk of flooding or increase the hazard to life and property during a flood. The City will still allow fill in the floodplain. The majority of the amendments presented in the agenda are meant to clarify existing regulations and a lot of definitions were added. One substantive change that was needed to meet minimum NFIP requirements was the Floodplain Development Permit. FEMA defines development broadly, including all types of structures, such as fences, and development activities such as grading and fill. Questions regarding pavement and retaining walls will come with more specific language to the ordinance.

Hansen outlined the notice and hearing process. She said at the Planning Commission public hearing one person testified, Jack Burrell, of K&D Engineering. He was supportive of adopting the maps and the higher regulatory standards that would enable the community to get a higher discount on flood insurance but he requested that the Floodplain Development Permit portion be pulled from the Ordinance and be put on a different timeline to enable a more thorough review. Staff responded that the Floodplain Development Permit is a minimum requirement of the NFIP, and if it were not included in the Ordinance adopted by September 29, 2010, the community would be at risk of being suspended from the program. Hansen said during the process it became evident that some changes needed to occur. So, the proposed amendments in the agenda packet include revisions to the amendments reviewed by the Planning Commission. They clarify language and procedures and address customer service improvements. The proposed amendments had been posted online since July 19, 2010.

Hansen said the staff met with Collins regarding some questions and suggestions. Collins suggested: Making sure the definition of flood fringe and floodway are consistent in the Comprehensive Plan and the Development Code; adding a "de minimus" standard for retaining walls; adding paving to the regulations, or removing it from the definition of development; and adding "unless otherwise exempted" to policies in the Comprehensive Plan.

Konopa said the City received a letter from FEMA on August 17, 2010, which reminded the City that it had until September 29 to adopt the ordinance and have FEMA Region 10 approve the floodplain management measures to comply with the NFIP regulations, to avoid suspension from the program. If suspended the community becomes ineligible for flood insurance through NFIP, new insurance policies cannot be sold, and existing policies cannot be renewed. Without flood insurance it would be nearly impossible to get financing for the purchase of homes or other structures in the floodplain. Also, the community would be ineligible for disaster assistance.

Regarding the permits, Byrne said they asked FEMA what criteria that wanted and they said to come up with something. It is a requirement of the program.

Christman asked if sheds would be allowed. Hansen said they are allowed to be built; they just need to be vented.

Christman asked, how are you going to let people know about the new regulations? Hansen said there is an education requirement. They will be posting, sending notices, and holding informational meetings.

Delapoer reminded the Council that they have to adopt the ordinance or people will lose their flood insurance.

Christman feels the language is hard to follow and asked is there an easier way to word it. Delapoer suggested memos to explain requirements to customers.

Reid said it only references Linn County flood insurance, but the City is in two counties. Hansen said the Benton County portion is in the Linn County study.

Johnson asked, has anyone ever had their property revised? Byrne said yes, and staff is willing to help with that process.

Collins commented on his own experience of changing his property and how the data is acquired. Hansen said the zero point, or beginning point of measurement, has changed. She said page 18 of the agenda defines and explains the Datum reference.

Testimony

Jamie Morgan-Stasny, 17933 NW Evergreen Parkway, Beaverton, representing TriCities Investment, said they have floodplain property in Albany. They had questions for staff and were grateful that they took time to explain the ordinance. She mentioned that they would be coming back regarding the Goal 5 hearings.

Dan Watson, 710 East Thornton Lake Dr, an Engineer with K&D Engineering, appreciated staff's willingness to take suggestions from him and Jack Burrell. They were concerned about the definition of "floodway", on page 19, of the agenda, because it doesn't seem clear. They were also concerned about the definition of "hazardous material", and would prefer to use the Oregon Department of Environmental Quality (ODEQ) definition. The "Variance" standard in 6.089 (page 27) was very restrictive and they would suggest using the Oregon Model Codes which are less restrictive. Regarding 6.095 (5), page 29, there is a statement "...when combined with all other existing and anticipated development...". He doesn't think that is very clear and feels it is open to interpretation. But, they feel the biggest issue that will affect the community is the rules that were adopted with the fencing standards. Watson said fencing requirements as written, look appropriate to him for the "Floodway" but for the "Floodway Fringe," where most residents live, it is confusing. If adopted the way it is now, most residents will not be in compliance. He suggested permitting all fences except cement blocks.

No one else wished to speak.

Deliberation

Christman suggested changing 6.160, page 18 of the agenda, to "Floodway Standards" instead of "Floodway Fringe."

Coburn asked if the Council has time for the staff to make changes. Delapoer said yes, there will be Council meetings where this could come back before the September 29th deadline.

Johnson agrees with Coburn and would like staff to come back with changes.

Delapoer suggested the Council recess the hearing to the next meeting.

MOTION: Reid moved to recess the public hearing to the next Regular Session. Johnson seconded the motion.

Collins wanted staff to look at retaining walls, Municipal Code coordination, and paving.

Coburn suggested that staff take a look at sketches for fencing.

VOTE: A vote was taken on the motion and it passed 6-0.

City Attorney Jim Delapoer read for the first time in title only, "AN ORDINANCE AMENDING ORDINANCE NO. 4447, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN AND MAP, AND AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE BY AMENDING THE COMPREHENSIVE PLAN TEXT AND MAP AND DEVELOPMENT CODE TEXT RELATING TO FLOODPLAIN MANAGEMENT, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY."

Assistant Public Works Director/City Engineer Mark Shepard mentioned that if the Council approves the ordinance, staff would be bringing to them changes to Title 12 of the Municipal Code dealing with the floodplain.

Business from the Public

Dave Sullivan, 208 6th Street, provided some new information regarding lead paint. He related a personal story of a child that had tested positive for lead, which came from his historical home in Albany. The family ended up moving. In his house, the windows tested positive for high lead paint also. He provided a handout regarding lead poisoning and said that it is an urban myth that children get lead poisoning by

eating the paint. They get it from the dust. He provided a picture of his window and explained how opening and closing the window will expose his grandchildren to lead paint dust. They have installed air conditioning and a central vacuum, which has helped. Sullivan said the Council told him to bring his concerns to the LAC, who refused to meet with him. He is here tonight requesting that the LAC begin a discussion on this subject.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) August 9, 2010, Work Session minutes.
- 2) Authorizing a capital purchase for an additional K-9/traffic vehicle. RES. NO. 5940
- 3) Accepting a Target Corporation donation for \$700 for an Albany Police latent fingerprint dusting station. RES. NO. 5941
- 4) Authorizing appropriation of unappropriated beginning fund balance in the General Fund. RES. NO. 5942
- 5) Approving an extended property tax abatement agreement between the City of Albany, a cosponsor of the South Santiam Enterprise Zone, and EnerG2. RES. NO. 5943

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

Award of Bid

WL-10-03, Baker Street water line.

Shepard explained that they added in a 10% contingency to cover any unforeseen items that may come up. It is a normal procedure.

MOTION: Collins moved to award the contract for WL-10-03, Baker Street Water Line, to the low bidder, Pacific Excavation Inc of Springfield, Oregon, for \$172,545. Reid seconded the motion and it passed 6-0.

Report

Human Relations Commission annual report.

Chair Kim Whitley was available to answer questions. Hare thanked the Commission for their planning of events.

BUSINESS FROM THE COUNCIL

Coburn asked Byrne what it would take to have staff look at the lead paint issue brought up by Sullivan. Byrne said there is a code review process. They generally do it on a schedule and take recommendations from Council members, the Planning Commission, citizens, and staff. It isn't reasonable to respond to every request they get. He said they do not have the staff to respond instantly to requests. They will do whatever they are directed by Council to do, but feels they do not have the time to look at a refit of Albany's historic standards.

Coburn said he struggles with what it takes to get information in order to make an intelligent decision. Now he has new information. He was a little bit familiar with the lead problem as they have dealt with it in his business. He had some concerns about the LAC or others making decisions without having all of the current information or background certifications. He feels it should have a high priority and is worth looking into. He had some concerns regarding statements allegedly coming from the LAC. Byrne would suggest the Council meet with the LAC.

Delapoer suggested staff make inquires to the state for information.

There followed Council discussion regarding lead paint, reviewing the use of lead paint, and applying conclusions to homes in Albany.

Christman said the Council's original intent was to have Mr. Sullivan go to the LAC to start the process for some sort of communication. He thinks a Work Session with the LAC is a good idea.

Collins was concerned about the perception of a potential problem. He suggested staff ask questions of pediatricians and the County Health Department, while gathering information.

Coburn suggested checking with the state so the City doesn't have to reinvent the wheel. He mentioned that they are not challenging anyone's background on the LAC.

Hare suggested the Council schedule a Work Session and he will do some research.

COUNCIL CONSENSUS: There was Council consensus to schedule a Work Session with the Landmarks Advisory Commission for October 11, 2010, and have the City Manager research information regarding lead paint.

Olsen asked if there are any plans to replace the 8th Avenue pipe in the canal. He said 20 years ago it ruptured. Shepard doesn't recall if that is in the Capital Improvement Program. He will get back to him.

COUNCIL DIRECTION: Collins requested that staff move forward on the Oak Creek Urban Renewal District. The Council agreed.

Hare said that in light of discussions the Council has had for facility needs for the Police and Fire Departments, he is proposing an internal analysis of facility needs. It would include, what are the concerns? What are the policies? What are the current operational problems because of current facilities? It has been on the agenda as a high priority item for the Council for a long, long time. It would take 60 days to do an analysis and he suggested not closing the option of using some of the remaining settlement money.

Christman agrees and believes they could get some realistic options of proposals all ready presented, like Mike Quinn's proposal.

Hare said they will be criticized for being biased and will probably be challenged, if they do it in house. The alternative would be to contract it out. But, he believes it can be done in house.

COUNCIL DIRECTION: The Council agreed and directed staff to move forward on the analysis.

Hare will be out of town for the next City Council meeting.

COUNCIL CONSENSUS: There was Council consensus to schedule an Executive Session regarding Airport litigation for September 8, 2010.

Public Information Officer/Executive Assistant Marilyn Smith said that City Hall Day has been scheduled for September 15, from 8:00 a.m. to 10:00 a.m.

NEXT MEETING DATE

The next Regular Session of the City Council is scheduled for Wednesday, September 8, 2010, in the City Council Chambers, at City Hall.

The next Work Session of the City Council is scheduled for Monday, September 20, 2010, in the Albany Municipal Court Room, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:00 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director