

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, September 8, 2010
7:15 p.m.

MINUTES

CALL TO ORDER

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

PROCLAMATIONS

A Day to Remember.

Konopa read a proclamation declaring September 11, 2010, as “A Day to Remember.” She mentioned that there would be several events happening in Albany throughout the weekend.

Albany Firefighters’ Appreciation Week.

Konopa read a proclamation declaring September 19-26, 2010, as “Albany Firefighters’ Appreciation Week.” Fire Chief John Bradner recognized Fire Apparatus Operator Loel Trulove and Fire Lieutenant Chris Labelle for their long time efforts raising funds for the Muscular Dystrophy Association.

SCHEDULED BUSINESS

Continued 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 explained that the public hearing was a continuation of a public hearing that was opened on August 25, 2010, and recessed to tonight’s date. The ordinance was read once in title only at the August meeting.

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

Staff Report

Planning Manager Heather Hansen explained that at the August 25, 2010, public hearing the Council directed staff to make further revisions to the proposed amendments based on public testimony and guidance from the Federal Emergency Management Agency (FEMA) on floodplain development permit requirement thresholds. Staff has incorporated additional revisions from the testimony at the public hearings about streamlining and tightening up the floodplain development permit process and criteria. Input from Christine Shirley, the State Coordinator at the Oregon Department of Land Conservation and Development, was incorporated regarding minimal thresholds to the floodplain development permit. The latest version of the draft “Oregon Model Flood Damage Prevention” ordinance was incorporated. Changes requested by FEMA included: only solid fences and free standing walls will require a permit (page 16 of agenda); the only issue with paving that FEMA considers is the extent to which it changes the topography, so it was moved to the grading, excavation, and fills standards; and infrastructure improvements that do not change the topography of the land were added as exemptions. In addition, staff made changes to make the code sections easier to use, such as: sections were rearranged so it flows more logically; floodway restrictions were combined for clarity; land divisions and manufactured home parks were combined to avoid redundancy; and site improvements were added since they were missing entirely from the code sections. She mentioned that items highlighted in yellow in the agenda were the changes.

Hansen said that at the top of page 14 of the agenda, second sentence (page 8 of Exhibit C), there is a reference to “Section 6.088”, that should read “Section 6.091.” Also, she had a question from a citizen regarding the sentence at the top of page 16, “The floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter pursued to completion.” Hansen said that language is common in building permits and will vary depending on the activity and the expectation is that something will have taken place with the project involved. If there is continued activity the permit can be renewed for an additional 180 days.

City Attorney Jim Delapoer added that he would ask the Council to include the phrase “This Article does not create *any duty or* liability on the part of the City of Albany or any officer or employee thereof for any flood damages that result from reliance on this Article...” to the top of page 7, of the Revised Exhibit C (page 13 of agenda) attached to the ordinance. He also suggested that any motion include the phrase, “... amend the ordinance to conform to the recommendations of staff...”

Councilor Reid doesn't believe the definition of a “basement”, on page 7 of the agenda (page 1 of Exhibit C), is inclusive enough to include a daylight basement.

Konopa explained to the audience that if anyone wishes to enter an exhibit into the record as part of their testimony, please briefly describe the letter, photo, or map, and then present it to the City Clerk.

Testimony

Dan Watson, 710 Thornton Lake Drive NW, commended staff for their work and urged the Council to approve the ordinance. Watson said he was the one that asked about the 180 days and if he understands the answer, the permit would be left open. Hansen said yes, but the project manager would need to check in with the department.

No one else wished to speak.

Konopa closed the hearing at 7:32 p.m.

Deliberation

Councilor Collins commented that he appreciated staff going to the state for clarification. It simplified the process.

MOTION: Collins moved to amend the ordinance to conform to the recommendations of staff. Reid seconded the motion and it passed 6-0.

City Attorney Jim Delapoer read for a second 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.”

MOTION: Reid moved to adopt the ordinance as amended. Collins seconded the motion and it passed 6-0, and was designated Ordinance No. 5746.

Konopa explained that within five working days following adoption of an amendment or new land use regulation, the Director shall forward to the Department of Land Conservation and Development a copy of the adopted text and findings and notify the Department of any substantial changes which may have occurred in the proposal since any previous notification to the Department.

Business from the Public

Jo Rae Perkins, 1033 Maple Street, commented on the success of the Northwest Air & Art Festival (NWAAF).

Ray Hilts, 3012 Takena Street SW, representing the Optimist Club of Albany, said that the Sign Permit Code doesn't mention nonprofits. He was concerned that they were violating Albany permit requirements for 15 years with the Veteran's Breakfast at West Albany High School. He mentioned other events and things that they do. He asked if staff intended to bring changes to the Sign Code in the future. He would like nonprofits to be exempted from the fee requirement.

Community Development Director Greg Byrne said that staff has no plans to bring any changes to the Sign Code to the Council. He said that Hilt was correct; there is no differentiation between profits and nonprofits.

Delapoer mentioned that sign ordinances are principally to cover safety concerns. He is not sure the City could reasonably make an exception for charities. Perhaps, the fees could be changed.

Hilts said that is what he is asking for, a waiver of the fees.

Hansen said because they were for events, the criteria was the same as temporary signs. There followed discussion regarding the length of time for the signs and fees required for private property.

Shirley Hilts, 3012 Takena Street SW, said her church put on a bazaar and they too would like to see a waiver of fees. They put out signs near the highway and at intersections.

Konopa said they would look at it.

Bruce Gonzales, 270 NE Charlotte Street, had an issue with the NWAAF saying that on Saturday the height of the balloon and airplane flyovers were too close to houses in the northeast section of Albany. He said they were very low and believes they were not complying with Federal Aviation Administration rules. He also had concerns about being given only two weeks to clean up his property or be issued a \$1,000 citation. He said that he complied, but it was a burden because he was given such a short notice. He said he had to pay people to help clean up. He thinks the City should give people more time to get it done. He said the Citywide clean up used to provide a dumpster to haul trash away. He said continuing that policy would benefit the whole community.

Konopa responded that as long as you are making an effort, the City usually will work with the property owner and will extend the clean up time.

Gonzales mentioned that he builds off-road vehicles. Under state law he cannot license them, but the City requires them to be licensed, if he is going to keep them on his property. He moved them on to county property but was upset that he couldn't keep them on his own property. He said if it was a neighbor complaining he would understand, but now the City is using high resolution cameras to enforce codes. He feels he is being violated by the cameras.

Public Information Officer/Executive Assistant Marilyn Smith said that it was a neighborhood cleanup in the Draperville area that Gonzales was referring to and the Code Squad has given them extended deadlines.

Gonzales said he waited all day for the City to show up, a day he could have been working, as they said they would be issuing tickets if the neighborhood had not complied. The City never showed. He wants to be treated with respect.

Gloria Hernandez-Seto, 270 NE Charlotte, said the NWAAF planes were in the tree line on Saturday. She mentioned other instances of low flying planes. Also, when the City came to the neighborhood to tell them to clean up their yards, there had just been a death in the neighborhood as well as in her own family. She said they were rushed by the City and feels it wasn't fair to them considering the circumstances. She was also concerned with the use of overhead cameras to photograph their yards as she thought there were laws forbidding that.

Delapoer assured Hernandez-Seto that there are no enhanced overhead aerial observations from the City of Albany nor do they use high resolution cameras to spy on neighborhoods.

Councilor Johnson suggested, regarding the low flying balloonists, that there were adverse wind conditions and the balloonists were not able to go very high.

Perkins disagreed, saying that Saturday there was no flying to the north. Approximately 10 balloons went up. Perkins said they engage in a flight pattern called "tree topping", which does bring the balloons very close to trees. She will let the pilots know not to intrude upon personal space. She would like to introduce the people here tonight to the pilots.

Delapoer explained that the City of Albany does not regulate planes or balloonists.

Konopa said the Council will have staff check into the complaints.

Adoption of Resolution and Public Hearing

Adopting floodplain development permit fees to support compliance with the National Flood Insurance Program requirements.

Konopa explained that this resolution establishes floodplain development permit fees that support the City's floodplain management program requirements under the National Flood Insurance Program of the Federal Emergency Management Agency (FEMA).

Hansen explained a public notice on the floodplain development permit was published in the paper stating that a public hearing would be held to consider adoption of the resolution. She said that the fees are based on an hourly rate of \$70/hr. and fees would be different for every project. The other fees are for larger projects that would take more review. That process would involve a specialist in the Engineering Department that would specialize in hydrological and hydraulic analysis. In the past they have often found something that needed to be updated or revised on a plan submitted by the applicant's engineers, in order to comply with the program. She said not every project will need an analysis by a third party.

Councilor Christman asked, do we notify the applicant before we make that third party contract? Hansen said at the time that the application is submitted it would be evident that a third party review would be necessary.

Christman asked, does the applicant have to use the Engineering Department for that third party review? Hansen said the City could have a prequalified list.

Public Works Director Diane Taniguchi-Dennis said flood analysis can be very complex. She gave Thornton Lake and North Albany as an example. She said when it is highly complex and sensitive, they would contract it out. It would be possible to introduce some level of control for the applicant by having a roster of available engineers.

Konopa opened the public hearing at 8:18 p.m.

No one wished to speak.

The public hearing was closed at 8:18 p.m.

MOTION: Reid moved to adopt the floodplain development permit fees to support compliance with the National Flood Insurance Program requirements. Johnson seconded the motion.

Councilor Coburn said he was confused about the fees. He asked, in your example, does it translate into someone having spent close to 100 hours reviewing an Engineer's plan? Dennis said the private consultants who specialize in this, charge the higher end fees. Basically, City staff doesn't have the expertise that it takes; we would have to contract it out. It is a burden to the applicant because they do have their engineers do their designs. But these are complex plans and modeling in the sense that the "devil is in the details" of the assumptions that go into developing the hydraulic models. Therefore, it takes an expert review of those assumptions to ensure the best interests of all citizens are protected. The other option is for the City to absorb that cost, but the City doesn't have stormwater fees or any other utility to pick up the costs.

Christman said it seems like we are asking the applicant to pay twice; pay the engineer to do the drawing and pay for a specialist to review it. He would like a lengthy list of references for the applicant.

Dennis said it is a high risk situation when dealing with flooding. Experts have to be the best. The most efficient way is if the City conducts the study. However, floodplain analysis is complex and currently the City has no one on staff who is a specialist, therefore it would need to be a contracted service.

VOTE: A vote was taken on the motion and it passed 6-0, and was designated Resolution No. 5944.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) July 19, 2010, City Council Work Session.
 - b) July 26, 2010, City Council Work Session.
 - c) August 16, 2010, City Council Work Session.

Christman asked for items 1b) and 1c) to be pulled for discussion.

MOTION: Reid moved to adopt the Consent Calendar with items 1b) and 1c) removed for discussion. Johnson seconded the motion and it passed 6-0.

Christman said on page 4 of the July 26, 2010, City Council Work Session minutes, last paragraph, second sentence "COD" should be changed to "CD". The minutes will be corrected.

MOTION: Christman moved to adopt item 1b) of the Consent Calendar with the correction. Reid seconded the motion and it passed 6-0.

Christman said the minutes of August 16, 2010, list him as absent and he was there. Collins also is listed as absent and he was there. The minutes will be corrected.

MOTION: Christman moved to adopt item 1c) of the Consent Calendar with corrections. Reid seconded the motion and it passed 6-0.

Award of Bid

WL-10-01, Columbus Street and Denver Street area water line.

Taniguchi-Dennis said there is a corrected Attachment 1, page 44, on the dais (in the agenda file). There was a typo regarding the bid for Pacific Excavation, Inc. The correct amount is \$375,685.

MOTION: Collins moved to award the contract in the amount of \$359,975 to the low bidder, Canby Excavating, Inc., of Oregon. Reid seconded the motion and it passed 6-0.

Change Order

MS-09-01, Albany Transportation Center – Multimodal Phase III.

Special Projects Coordinator Guy Mayes said that there were several items that came up during the project that were unknown or unforeseen and not included in the original contract. Mayes said a summary of the major change order items were on page 46 of the agenda.

Coburn asked, can we assume none of these problems were addressed in the specifications? Mayes answered that they try to put as much responsibility on the contractor as possible but there is a reasonable window in which they cannot anticipate problems.

Reid was concerned that the City would be a poor landlord as this property was part of the City for some time and the City still allowed a hole in the roof to remain, which caused structural damage. He said the additional office space was a known project before construction and should have been included in the specifications.

Collins asked with the contingency being reduced, what happens with the unexpended amount? Mayes said part of it is spoken for as power connection costs, Information Technology wiring, furniture, and utility connections. This is a federal grant that is paying for the project and the City gets reimbursed as they spend the money. The contingency amount is allocated. If it is never spent, it goes back to the federal government.

MOTION: Coburn moved to approve the construction contract increase for Greenberry Construction in the amount of \$177,202, a 22% increase. Johnson seconded the motion and it passed 4-2, with Reid and Collins voting no.

Report

Designating Voting Delegate and Alternate for 2010 LOC Conference.

There was Council consensus to designate Jeff Christman as the voting delegate and Bessie Johnson as the alternate for the 2010 League of Oregon Cities Conference.

BUSINESS FROM THE COUNCIL

Konopa said the Council received a request from Jeff Soash to conduct a review of water rate computations. Does the Council want to respond?

Coburn doesn't want to review the water rate structure. He does not believe it is unique to any City. Numerous other utilities are structured the same way and someone will always feel that it is unfair.

Collins said the Water Task Force spent 2 1/2 years coming up with a formula fair to the majority of citizens. They knew it was not 100% equitable; someone will always be on the losing end when a formula is spread throughout the City. He doesn't want to revisit it until they redo the Water Master Plan.

It was the consensus of the City Council to not look at changing the water rate structure.

There was a discussion regarding vehicle licensing and off-road vehicles. Vehicle licensing is done by the state.

RECESS TO EXECUTIVE SESSION TO DISCUSS LABOR NEGOTIATIONS AND TO DISCUSS PENDING LITIGATION OR LITIGATION LIKELY TO BE FILED IN ACCORDANCE WITH ORS 192.660 (2)(d)(h)

The Regular Session was recessed into an Executive Session at 8:51 p.m.

RECONVENE

The Regular Session was reconvened at 9:45 p.m.

Coburn suggested that when the City is ready to go out for a Request for Proposal (RFP) for a Fixed Base Operator for the Airport, that they consider asking for a business plan in addition to conforming to the requirements and specifications of the RFP and leave it as wide open as possible.

Delapoer suggested the Council have additional discussions with the Airport Advisory Commission.

Coburn said he would not be available for the September 22 meeting as he would be out of town.

Albany City Council Regular Session
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Delapoer will be out of town that meeting as well.

NEXT MEETING DATE

The next Council Work Session is scheduled for Monday, September 20, 2010, at 4:00 p.m., in the Municipal Court Room at City Hall. The next Regular Session is scheduled for Wednesday, September 22, 2010, at 7:15 p.m., in the Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:47 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director