

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, September 22, 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, Ralph Reid Jr., Bessie Johnson, Dick Olsen, and Floyd Collins.

Councilors absent: Councilor Bill Coburn.

SCHEDULED BUSINESS

Public Hearings

Adopting a supplemental budget reimbursing the Capital Projects and Risk Management Funds, authorizing defeasance of callable bonds, and providing a one-time sewer rate credit by using PepsiCo settlement proceeds.

Konopa called for a staff report.

Finance Director Stewart Taylor said the City had litigation with PepsiCo and was awarded a settlement for breach of contract. The Council asked for public input over several months. On August 23, 2010, the Council directed staff to proceed with the reimbursement of funds that were used for preparation of the Pepsi site and to pay for litigation costs, and the defeasance of callable bonds. The Council has also pledged funds to the East Thornton Lake Natural Area (ETLNA) project. The ETLNA project is not part of the public hearing this evening because there was a number of different participants and agencies involved. It will come back at a future date for a public hearing.

Taylor said this public hearing satisfies Oregon local budget law. The Council adopted the budget with the PepsiCo money in a single fund and in order to move the money to the other funds a public hearing is required, because it is greater than 10% of the fund.

Taylor said staff needs direction for the sewer rate credit in three areas: what are the eligible accounts (single family residential or SFR, multifamily residential, commercial, and industrial); how the credit should be calculated (a flat rate of \$35 or based on the actual annualized rate increase for each account); and the method of delivery (a credit on the monthly statement or a voucher or other type of reimbursement.) Taylor suggested using Chamber Dollars as reimbursement, which can be spent at local Albany businesses.

Taylor said crediting just SFR customers would cost less than the amount listed in the resolution. The \$850,000 in the resolution would provide credit for all four customer classes. The estimated cost to credit SFR only would be \$550,000. There could be some costs involved for software programming depending on what the Council decides. There are five billing cycles but they are not divided by customer classes so targeting specific classes will involve programming. The printing and mailing of bills is contracted out, so there would also be costs to include a voucher or Chamber Dollars with utility bills.

Of the methods described, Taylor recommends applying a direct credit to the bills since it provides the greatest control. The Chamber Dollars provides for economic stimulus in our community; though staff would not be able to verify claims of missing vouchers. If the Council does choose the voucher approach however, Taylor recommends Chamber Dollars.

Konopa asked if this decision had to be made at this meeting or if it can come to a work session. Taylor said working out the details could wait especially since there is a Councilor absent tonight.

Councilor Bessie Johnson said she thought the credit would be simpler to implement and is bothered that there may be extra costs involved. It's a small amount to begin with. She asked, do we have to go through all this extra cost for such a small credit? She thought the motion was to just not implement the next rate increase. Taylor said the motion was to provide for a sewer rate credit. He said not implementing the rate increase was discussed, but cannot be done since it would violate the conditions of the City's coverage requirements because the sewer rate has to be sufficient to provide a percentage of the annual debt payment.

Public Hearing

The public hearing was opened at 7:28 p.m.

David Renly, 320 Charlotte Street, was signed up but intended to speak on a different subject.

No one else wished to speak.

The public hearing was closed at 7:29 p.m.

Councilor Jeff Christman said the resolution being considered just makes the allocations for funding; details can be worked out later.

MOTION: Christman moved to adopt a supplemental budget reimbursing the Capital Projects and Risk Management Funds, authorizing defeasance of a callable bond, and providing a one-time sewer rate credit by using PepsiCo Settlement proceeds, and Councilor Floyd Collins seconded it.

Christman doesn't think the motion that was made on August 23, 2010, included this level of detail but does not think the decisions to be made are insurmountable either. City Manager Wes Hare agreed and explained that staff brought the question of how to make credit to the bills in order to get the Council's feedback; however if the Council directs staff to just pick a reimbursement method and make it happen, they can.

Collins recalled that the purpose of the original motion approving the credit was to credit all customer classes.

Assistant Public Works Director/City Engineer Mark Shepard said that \$550,000 covers \$35 for the SFR and \$840,000 covers credits of 7% to all customer classes. The \$35 credit is based on the League of Oregon Cities (LOC) reported average winter usage of 8 hcf for Oregon cities. Albany's actual customer average is probably lower than LOC's benchmark. The \$35 represents the revenue generated over one year by the 7% rate increase.

Councilor Dick Olsen asked if staff calculated what \$840,000 would be if it was applied only to SFR accounts. Shepard said staff had not made that calculation. There are about 14,000 SRF accounts.

Johnson said she is not against giving the credit, but she thinks it should be applied across the board. The amount, however, is so small; but perhaps it will at least make customers aware of how little 7.5 % really is when they see it on their bills.

VOTE: The motion passed 5-0 and was designated Resolution No. 5945.

Amending the Albany Municipal Code Title 12, Chapter 12.35, Grading, to prevent dual regulation of grading activities in the floodplain and on steep slopes and declaring an emergency.

Konopa called for a staff report.

Shepard said this is a housekeeping item.

Assistant City Engineer Jeff Blaine said newly adopted Albany Municipal Code (AMC) regulations require that grading fill excavation be included in a floodplain permit. The purpose of the amendment is to remove the dual regulation and divert to the floodplain development permit only.

Shepard said another area is fill or grading on steep slopes. The current AMC includes it as what needs to be reviewed, but the changes under the exemptions makes it clear that the fill permit is not required when they have already been reviewed as part of a land use proceeding.

Public Hearing

Konopa opened the public hearing at 7:38 p.m.

There were no comments.

Konopa closed the public hearing at 7:38 p.m.

Deputy City Attorney Andy Noonan read for first time in title only, "AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE TITLE 12, CHAPTER 12.35, GRADING, TO PREVENT DUAL REGULATION OF GRADING ACTIVITIES IN THE FLOODPLAIN AND ON STEEP SLOPES; AND DECLARING AN EMERGENCY."

MOTION: Councilor Ralph Reid moved that the ordinance be read for a second time in title only. Johnson seconded it and it passed 5-0.

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

MOTION: Reid moved to adopt the ordinance and Collins seconded it. The motion passed 5-0 and was designated Ordinance No. 5747.

Business from the Public

Bruce Gonzales, 270 NE Charlotte Street, handed out documents to the Councilors (see agenda file). He said he is here concerning the AMC that requires Oregon state licenses on vehicles that are in a person's private backyard. Oregon law gives exclusive rights for licensing and regulation of motor vehicles to the state. The City of Albany does not have the right to make laws for the license plate itself when the state has the only jurisdiction. He said that the first page of the paper he handed out is a statement; the second is what might be considered an eyesore by the Council; and the next six pages are definitions of things that the Code Enforcement officer wants him to license. They are highlighted in areas where the officer highlighted them. She highlighted language about boats, ATVs, light trailers, heavy trailers, and descriptions of abandoned vehicles. He said the vehicles were in his backyard and were not abandoned. They run. The only difference is they didn't have a license. He spent \$86 on several and the rest of them were moved off the property. He doesn't understand how this changes them from junk to treasure. The Council has the power to change this law and be in compliance with Oregon state law. Councilor Dick Olsen is the only one that called him back. He called the other Council members too but they did not call back. Konopa also called him back.

Deputy City Attorney Andy Noonan gave a summary of the City's laws. There are two ordinances for vehicles. One is for abandoned vehicles and the other defines certain categories of junk. He said the abandoned vehicle ordinance does not allow the City to enforce a declaration that a vehicle is abandoned if it doesn't otherwise have to have a license as required by law. So, if it is exempt from licensure by the Department of Motor Vehicles (DMV), then it doesn't fall under abandoned vehicles under this ordinance.

Noonan explained that the other issue is that the abandoned vehicle ordinance, unlike the junk ordinance, deals primarily with those vehicles that are in the public right-of-way (ROW) or left on the street. A person could have another vehicle characterized as junk under the junk ordinance, on another part of their property. So if a person has vehicles that are exempt from licensure under the DMV, and they are not in the ROW - or even if they are in the ROW - they would not constitute an abandoned vehicle.

The second ordinance defines junk and has a broad scope. It tends to be enforced for garbage, debris, waste, things that cause a health or safety hazard, or blight. The definition of junk under that ordinance does include abandoned automobiles. It can also include vehicles that have been unlicensed for 30 or more days. But if a vehicle does not require a license by DMV then the City is not going to enforce it under the junk ordinance. Under the junk definition there is a determination provision that allows for the matter to come before the City generally through the Municipal Court as a citation, if there has been a petition process. Three or more citizens can petition and the case can be abated or cited; or, if the City Manager or their designee (usually Police and or the City Attorney's Office) determines it is a junk vehicle. If it is simply unlicensed, it is generally not pursued. If it is abandoned or parted out, they are concerns because citizens complain about blight and property values.

Gonzales said the officer said he had to license all the vehicles on his property regardless of their condition. She went into boats, utility trailers, heavy trailers, etc. The definition she sent to him has all of them highlighted. That is what she is telling him he has to do, that they have to be licensed.

Noonan said under the City ordinance if a vehicle is exempt from licensure then they won't qualify it as abandoned. It is reviewed by the City Attorney's Office if it comes to them by a complaint. There are times when a vehicle may come before them and if they find that it is exempt, or otherwise does not fit within the definition, then they do not prosecute.

Gonzales said, as a law-abiding citizen, if an officer comes to my residence, and tells me what to do to not receive a citation, then I do it. He thinks this ordinance is farfetched by making him license vehicles in his backyard that do not fall under junk. The vehicles are not missing pieces. He said she insisted he had to do this. They had a phone conversation, which was recorded. He wants this changed. He has other witnesses that will say she pressured them. He doesn't want to go through the court system; he wants to be in compliance. He wants the Council to make the law just for all.

Noonan said, for the benefit of the Council, the condition described by Gonzales involving vehicles that are not on the street, would not constitute an abandoned vehicle. That is in Chapter 13; they would have to be in an alley or left on City property. The junk issue is a separate issue. When the City gets a report, they enforce it either through the Police or the petition process. As a reminder, when the Council came up with the junk ordinance in 1993-94, it was because the City was getting widespread complaints from citizens and they needed to come up with an objective standard that was enforceable. The problem cities have with junk ordinances is that they are contested routinely based on their vagueness. So the City tried to create categories of junk based on what other cities found to be defensible. They put it in the definition, and then beyond that to safeguard citizens they put in a determination provision that allows for consideration of categories of alleged junk either on a designee basis or a prima facie evidence (three or more adjacent neighbors have complained).

Gonzales said the officer is not enforcing according to the intent of the rule, and that is why he is here. He doesn't understand why buying the license would change anything.

Konopa said she is not clear what Gonzales would like to see happen. Is he suggesting that the City allow unlicensed vehicles that are classified as junk under the junk ordinance?

Gonzales said he would like the Council to remove the 30-day license and go with the rest of the ordinance. The rest of the ordinance is fairly clear about what a junk vehicle is. But they are trying to enforce that just because it is not licensed, it is a junk vehicle and must be removed. He never saw anything in the ordinance about boats and the officer wants all the boats licensed. The off-road vehicles and boat are not on his property. He also has two quads that he runs on private property. He also has utility trailers that he uses in his construction business. When they are on job sites they don't require a license because they are on private property but the officer wants him to license them anyway even though they are not required by the DMV. The City should not be able to require, it since the DMV has that sole responsibility.

Olsen asked, in times that are hard like this, why should a person have to keep vehicles licensed all the time? He is looking for the logic of the rule. The City's business is health and safety and he is not sure how a trailer in a backyard, with or without a license, is unsafe. He thinks there should be a work session on this subject.

Collins agrees. He thinks the license issue is a surrogate for the state of repair. He asked, at what point do we draw the line? The assumption may have been, if it has a license it is road ready but that may not be true.

Collins said a utility trailer is a good example. Collins said, we have to find the line between a trailer that is productive for business and another trailer where someone has the wheels off and it's been cut in half; one might be junk but the other would not. We need to find where to draw the line. He said, but we are not going to solve it in a meeting like this – it should be discussed in a work session. He thinks the license was used to serve as the fine line but it has turned out to be an inaccurate benchmark.

Gonzales said, if you drive around and look in back yards and driveways, you will see lots of them. There are lots of people out of work and people do not have the money right now.

Noonan said the City had a concern when this came up because these situations could become defacto unlicensed wrecking yards. So that is a matter of degree in many cases.

Collins said that by his house there were 18 vehicles on one family lot. All were all licensed and in all stages of repair. But when does it go from being a hobby, to being an abandoned vehicle, to being a wrecking yard?

Gonzales said there are county regulations that address the issue too.

Johnson also supports this item coming to a work session.

Dick Owen, 810 Cox Street, said he read an article about Gonzales. Owen said he personally was criminally charged. Konopa reminded him that that case was dismissed.

Regarding junk regulations, Owen thinks the 30 days and licensing should be removed. He said he was charged criminally for junk at an address that doesn't even exist. He paid \$15 to find out who reported it. It bounced around the court so far and so much from one thing to another. The Judge, City Attorney, and himself met and they agreed to Spanish law that Owen would have to prove that the cars weren't junk and that they would run. They were licensed and insured after the citation. The agreement was that he had to start up the cars. He had until April 30 to get the cars running but they never showed up. Then the police showed up to take a picture of his car.

Konopa asked Owen if he had any new information, as the Council has heard this testimony several times. Owen said no. He said, but the attorney never showed up and the case was over one inch of moss on the back of his car.

Owen continued. He said another thing is that there was a case of a woman who was in her nightclothes and an officer knocked on her door and arrested her for drunk driving. Owen said he called the Police Chief who said he would look into it. He called back 2.5 weeks later and he was hung up on. He wants City Manager Wes Hare to tell the Chief that he wants to talk to him.

Larry Nelson, 920 13th Avenue NE, said he likes to keep lots of things to fix. He got a citation today for \$2,500 for keeping junk. Much of his items are like Gonzales' things. They may not need to be licensed because he only uses them on his own property. He has nine acres in the city limits. He has trailers and a pickup truck that he never takes off his property; in fact he doesn't even have a title for the truck. According to the officer, who has been to his house three times now, anything that isn't licensed has to be removed. He can't get a title for this truck but he doesn't even take it off his property anyway, so why does he need it licensed? Why is it junk if it runs? Also he has commercial trucks that are not licensed but if he wants to use them he buys a trip permit from DMV. The cost is \$350 per year per truck for a license yet he seldom uses them so it doesn't make sense to buy a license for each truck. With a trip permit to be used anytime, the cost is \$30 for each vehicle for two

weeks. The City wants to tell him what to do with his nine acres, but they won't let him build a house because it is zoned for a five acre minimum and has no sewer. It is in farm deferral and he has to show income which he does by boarding horses. He said, if you are going to let me be on a farm then leave me alone and let me be a farm, but if you want to treat me like a city lot, then let me subdivide and build houses. He said, it seems like you want me to have nine acres and just mow the grass and make it look pretty for the neighbors. He pays his taxes and should do what he wants to with his property.

There was a discussion about how trip permits work.

Nelson said the \$2,500 citation seems excessive. The officer came out, told him there was a problem, and he started cleaning up and hauling things away. But then she came out again and gave him a citation. It seems it could have been done a different way. He is not trying to break laws; he is a good neighbor.

Johnson asked, what happened first in the process? Nelson said first he was notified he had junk. He said he acknowledges that and knows that it needs to be cleaned up. But he also has nine acres and wouldn't have bought it if he didn't want a lot of stuff around. But the process seems harsh and if he is going to pay taxes on nine acres he should get to use it like acreage, not like a city lot. He has 30 days to get into compliance according to the citation he got today. If he complies in three weeks they will dismiss it but if not then he will have to go to court. Nelson said the officer gave him a definition of junk 4 – 7 days before he got the citation. Also she wouldn't tell him exactly what he needed to do, for example, with a storage box.

Noonan said he ends up prosecuting many of these so is familiar with the process. He said when they get complaints, the first step is that an officer checks the property. Before issuing a citation the officer will almost always talk with the person. Junk cases are generally dismissed if they are corrected before the arraignment date. If they are not and it comes to him, he reviews it and they almost always give another 30 days to come into compliance. The City works with the citizens to get into compliance with not only the letter of the law but the spirit of the law, too.

Olsen asked why he can't get a truck license. Nelson described how he tried but is unable.

Olsen said, it is not fun to hire an attorney and get called into court and see your name in the paper. He asked, are we doing backyard checks citywide looking for junk? Hare said no. For years there has been tension among neighbors over junk. This is a complaint-driven process. Sometimes staff gets a flurry of complaints and the police will investigate. The problem is that people have different standards about what is acceptable. Staff has heard over and over that one neighbor's property can hurt the property value of others. Most cities have standards and there will always be someone that doesn't like those standards. Hare said that it seems that a review of Albany's code is the right thing to do; but he asked the Council to bear in mind that, if you lived in a historic neighborhood and your neighbor parks 12 pickup trucks in the front yard in various states of repair, you probably aren't going to like it, particularly if you are trying to sell your house. Staff runs into that type of situation routinely. It is difficult for officers in the field. If they see something that is in violation, then they issue a citation. He can't say how many have actually had to pay a fine over junk and trash, but he suspects the number is very small because the City goes out of its way to help. In fact staff and some Councilors have spent their Saturdays actually helping folks clean up on City-financed clean-up days. The City tries to be considerate that folks sometimes end up with junk they can't get rid of. Albany does as much or more than most cities to help citizens clean up their properties.

Olsen pointed out that some of the complaints tonight are about backyards.

Nelson said he agrees he has a lot of junk on his property. He said that the officer told him that his firewood would not be in compliance until it is split and stacked. Hare said he doubts anyone has been made to pay a fine for unstacked firewood. Noonan said that is a stand-alone and doesn't constitute a violation of the junk ordinance nor would it be prosecuted by the City Attorney's Office. Noonan's experience is that Municipal Court has dealt with a large number of junk cases, and as many as 90% have achieved compliance and the City is happy to dismiss them.

Johnson asked, were these started because of a citizen complaint? Staff said not always, though usually it is in response to a neighbor's complaint. Other scenarios are if an officer or employee becomes aware of a serious problem, they will turn it in. Staff is charged with trying to enforce as best they can the ordinances that the Council has passed. What the level of tolerance is for junk, is decided by the Council.

Johnson said she has been campaigning and has seen some safety hazards that she will be turning into Code Enforcement. She looks forward to reviewing the ordinance. She thinks folks should be able to do what they want with your property but the City also has to look out for their neighbors.

Reid asked Nelson why he cannot divide his nine acres. Nelson said, because they have to be five acre minimums. He is inside the City limits but does not have sewer service.

Collins said that for the work session he wants to look at what other cities do. He said he knows Nelson as a former neighbor and he was tidy. His new property is in Benton County and is urban reserve residential. There

are floodplain and other issues and Benton County doesn't want to issue a permit. It is an unusual situation for North Albany. He wants to find a reasonable solution.

Judy Byers, 35555 Circle Drive, said it is hard to believe that this Council is so protected from reality. She strongly objected. She said during these high times of unemployment, that the City demand that they license everything, is unreasonable.

Nick Bruno, 1931 47th Avenue SE, said he has been reading about this in the paper and he doesn't understand why the fine is \$2,500. He has been unemployed for a year and a half and there are others in his situation. He thinks it is a ridiculous amount.

David Renly, 320 Charlotte Street, said he also got a notice. When called he was told it was for his horse trailer that was on his side yard. It was at his brothers but he can't keep it there because the house had burned down. There are also four tires and wheels stacked on the side. They are not junk. He said the Council needs to do something about this. If there aren't people complaining within three houses away, why does it matter? They chose this neighborhood for a reason and they like living there.

Paul Gonzales, 310 Charlotte Street, said that the AMC says in 30 days, the car is junk. The only people exempt are wrecking yards. But all the car lots sell cars without licenses. The City wouldn't pick on a new car dealer. The state says they can have five vehicles on their property. The Council needs to look at the code.

Gloria Hernandez-Soto, 270 Charlotte Street, is here because of the hot air balloons. She has pictures to show that they were flying really low. She is afraid because she already had a fire and what if one of these lose gravity and have to come down. All she is asking is for the balloons to stay up in the sky. She asked, when does my privacy and safety come in?

Regarding junk, Hernandez-Soto said, before the Council starts casting stones they should know that she drove through some of their neighborhoods and they have neighbors with junky cars on the road that should not be there; but she doesn't care, because it's not her neighborhood. She submitted pictures of the hot air balloons into the record (see agenda file). She has lived there since 1983 and the house burned down in 1986. They have a 1952 Chevy with compound gear; her brother died in it and she will not get rid of it yet because she made a promise to her sister-in-law.

Adoption of Resolution

Supporting designation of the Albany-Corvallis Highway in Downtown Albany as a special transportation area in the Oregon Highway Plan.

Shepard said they are at the second step in a three step process. The first step was inclusion in the Transportation System Plan (TSP) adopted in February. This resolution will go to the Oregon Department of Transportation (ODOT) Transportation Commission. They will designate it as a special transportation area. The designation provides more flexibility in transportation planning (such as on-street parking and driveway access) which will enable the City to meet ODOT's mobility standards.

MOTION: Johnson moved to adopt the resolution supporting designation of the Albany-Corvallis Highway in downtown Albany as a Special Transportation Area in the Oregon Highway Plan and Reid seconded it. The motion passed 5-0 and was designated Resolution No. 5946.

Johnson thinks this is a great idea; we should do anything we can to protect the downtown.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) August 23, 2010, Regular Session.
- 2) Adopting an updated investment policy. RES. NO. 5947
- 3) Accepting a Recreation Trails Program grant from the Oregon Parks & Recreation Department for the proposed rehabilitation of Periwinkle Creek Trail. RES. NO. 5948
- 4) Approving the following liquor licenses:
 - a) Brewster's, 640 Hickory Street NW.
 - b) House of Noodle, 2025 Santiam Highway SE.
- 5) Authorizing the City of Albany to submit a grant for application to the Oregon Department of Transportation for transportation enhancement program funds and a commitment to provide the required local match. RES. NO. 5949
- 6) Directing staff to execute a property line adjustment consolidation deed. RES. NO. 5950

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

Appointment

Appointing Hal Schalles to the Albany Arts Commission

Konopa said this particular appointment was handled differently. Usually the Mayor makes an appointment but Konopa isn't familiar with art so they accepted applications instead, and the Arts Commission interviewed people and made a choice. They want to keep the applications on file in the event another member resigns soon.

MOTION: Johnson moved to approve the appointment of Hal Schalles to the Albany Arts Commission and Collins seconded it.

Reid said that on his application Schalles suggested using the old downtown fire station as an art gallery. But the building is seismically unsafe so he doesn't see that as an option.

VOTE: The motion passed 4-1 with Reid voting no.

Reports

ST-07-03, 53rd Avenue Bridge and Roadway Improvements, Wetland Bank Settlement

Shepard is requesting Council authorization to enter into a settlement agreement with Oregon Wetlands LLC. This stems from the work done for the PepsiCo site, and meeting the City's obligations of the development agreement to get the site ready. The City had to show the Division of State Lands (DSL) that the City had locked up wetland credits for the wetlands that would be impacted by the new roadway. The City made an earnest money down payment of 10% and the contract called for six months to finalize the purchase. If the City did not purchase the credits in that time then interest would start to accrue at 12%. Over the life of the project, construction was delayed by PepsiCo and also by Larry Epping, who owned 95% of the land. The City couldn't execute the agreement and get the DSL permit and now that PepsiCo isn't coming, the issue needs to be cleaned up. Under the contract terms it would be \$122,000. It was determined that a negotiated settlement was the best avenue. Oregon Wetlands LLC originally offered \$100,000 and the City was able to get them to drop it to \$75,000. Staff wants Council authorization to work towards closure of this obligation.

Reid said first he wants to discuss if the City is going to finish a portion of the 53rd Avenue bridge because it might include some of these wetlands. Shepard said there is only one acre out of the ten acres that would have been impacted by the 53rd Avenue overpass. If they moved forward they would have to mitigate that one acre. The asking price from Oregon Wetlands LLC is \$1.50 a square foot. He discussed with DSL that because construction has slowed the cost of wetland credits has dropped to \$1.00 a square foot. Since there doesn't appear to be support for constructing the 53rd Avenue project, it would be best to close this out now.

Collins asked, given what he and Olsen are about to pursue with the Council of Governments (COG) regarding wetlands processes, how do we deal with industrial land? He is not sure the City should give up the wetland credits. He asked, if we had ten acres of credits could they be applied to other developing parcels and not just the PepsiCo property? Shepard said that is hard to answer. DSL previously didn't allow agencies to purchase credits in advance of a project that was under permit review. Just recently they have allowed jurisdictions to prospectively purchase wetland credits. The problem is that what DSL will allow or require for mitigation is continually in flux. Five years ago, wetland bank credits were a last resort and now, they are DSL's first choice. There is risk; if we purchase the credits, will we actually be able to use them? He can't answer that and suspects DSL could not either. If the Council wants to reserve the rights to the credits, Shepard thinks the bank would want the \$75,000 and a new contract. They had discussed a payment of \$160,000 to keep them open and \$30,000 a year for two years but with development where it is and wetland bank credits having more availability now, staff didn't think it is economically feasible to tie the money up.

Hare said the bottom line is that the City can get a better deal now. When the credits were purchased development was at a feverish pitch, the City was under the gun to meet PepsiCo's deadlines, and there were no other wetland credits available. What was a good deal under those circumstances is no longer a good deal today. Hare said, staff's suggestion gets us out from under this obligation and if we need to buy credits again we will have more options.

Collins said that pricewise, he agrees; though as individual projects come up and we have to negotiate with DSL and the banks, the cost is both capital and time. If the City did have something in hand, they could avoid spending six months arguing with DSL, and that time savings may be worth something. Shepard said, if we were still in a state where development was high and bank credits were limited, he would agree; now though, in talking with DSL about what is available and given that other cities are soliciting bids from banks for wetlands credits, it is different. The negotiation with the wetlands bank is actually quick; and we would still have to go through the permitting process for every project anyway. This would not save time in that way. Collins hopes his and Olsen's work with COG will help to streamline the whole process. Discussion followed.

Olsen asked if these wetlands will interfere if the Council does choose to finish a portion of the 53rd Avenue overpass. Shepard said when that road is built the wetlands will need to be mitigated at that time. The issue is if the City buys these credits now and doesn't build the project, we don't get our permit from DSL. To do it now

would mean to do some sort of construction right away so that DSL can say how it impacts and how it can be mitigated. The other issue is that wetland delineations have a shelf life so in about 2013 the current delineation would be invalid.

In terms of saving the credits, Shepard said the wetland bank credits need to match the form and function of the wetlands that a specific project is disturbing. He said, if we bought them now, we don't know what they would be good for and they would have to be used soon.

Johnson noted that we are paying 12% currently, and staff seems to have been able to negotiate a good settlement. It is better to pay \$75,000 than to pay 12% on \$122,000.

MOTION: Johnson moved to authorize a settlement payment of \$75,000 to Oregon Wetlands LLC for dissolution of the contract to purchase wetland bank credits, to be paid with PepsiCo Settlement proceeds. Christman seconded it and it passed 5-0.

Oregon Department of Environmental Quality 1200-C permits

Blaine said this item was discussed at the August 23, 2010, Work Session. At that time staff promised to bring back a draft permit and Intergovernmental Agreement (IGA) with the Department of Environmental Quality (DEQ) once it became available. It is available now and in the Council packet. Staff is requesting that the Council authorize the City Manager to execute the IGA.

Blaine said these documents will remove duplicate language about erosion prevention and sediment control in Albany and in other jurisdictions that are named in the permit. The removal of the language will affect about 60% of all the development activity and would cover almost all of our capital projects. It will reduce the overall permit cost for the City and for the development community and will improve time and project management.

Blaine said page three of the permit shows all the agencies that are covered because their local permitting meets the criteria. The language is clear that it does not place any additional regulations on those agencies listed.

Blaine said the City will need to provide DEQ with an annual report showing how many permits were issued and how many inspections were conducted.

Shepard added that the City Attorney approved the IGA.

Christman noticed that several expiration dates are five years from issuance. He asked if the City would have to apply again. Blaine said it is not a permit for the City of Albany but rather it is a general permit that the state reviews every five years. They open it to public comment, modify language, then the Environmental Protection Agency reviews it. Construction activity registers under this permit. The expiration date applies to DEQ. It could potentially not be renewed.

Collins asked, if we didn't do this and the state implemented their 1200-C permit and a local developer had to apply, what would the cost be for both permits for a typical five acre development? Blaine said the state's fee is about \$1,500 for the first year and \$765 for each additional year. The City's cost is \$1,100. This change means the developer would be avoiding the state's cost and getting better service. Shepard added that it also saves soft costs because developers do not have to pay their engineers to fill out applications and other paperwork.

Collins said this savings will be important to the development community in Albany.

MOTION: Collins moved to authorize the City Manager to execute an intergovernmental agreement with the Oregon Department of Environmental Quality. Johnson seconded it and it passed 5-0.

ST-09-03, Oak Street Local Improvement District

Shepard said that during the formation of the Oak Street Local Improvement District (LID) the Council had expressed input about design elements. Before staff spends a lot of time on design they would like to get general direction from the Council.

Civil Engineer III Chris Cerklewski said normally during the course of a street design in already established neighborhoods, staff tries to meet with all the residents. They ask neighbors what they would like to see out of the project, though of course they can't make everyone happy.

There are several main points staff would like to discuss with the Council before going to the neighbors:

- Design speed: The current speed is 35 mph and staff plans to work with ODOT to get it repealed and changed to 25 mph. This would be more in character with the neighborhood and is in line with it being a minor collector.
- On-street parking and parking in general: Staff would accommodate parking needs when feasible with on street parking or widening driveways. They will not be able to provide on street parking everywhere because of the requirements for the Lowe's frontage.

- Traffic calming: Lowering speed limits and other features to slow drivers down such as curb extensions, narrower lanes, and chicanes. Another option is a mini roundabout at Oak Street and 14th Avenue. They will also consider turning restrictions to deter cut-through traffic.
- Street trees: Landscape strips will have street trees except for in areas where there needs to be center turn lanes.
- Stormwater quality improvements: The City is not currently required by DEQ to do this but will be requiring it in the next few years so it is prudent to incorporate them now.

Christman asked if these recommendations are within the budget for this project. Cerklewski said that any of the options do not have a significant cost.

Johnson is against the mini roundabout. Regarding street trees, she asked, won't that take away on street parking? Cerklewski said it depends on the width of the street and the lanes. Staff used an overhead to show the potential turn restrictions (see agenda file). Discussion followed.

Johnson asked if speed bumps could be added. Cerklewski said they discourage speed bumps on collector streets because the traffic volume is higher. Also Lowe's customers will likely have trailers that are not conducive to speed bumps. Speed bumps are not a good fit.

Konopa wanted to make sure that Sherman Street is included when staff goes out to the neighborhood.

Staff would like a general consensus from the Council tonight about the overarching direction.

Collins said if the roundabout is a solid concrete structure it will attract skateboarders. The right turn at Queen Avenue would be better served by a traffic signal; he asked, at what point is a signal warranted? Shepard said the volumes are so low that they likely will not meet the threshold. Discussion followed.

Transportation Systems Analyst Ron Irish spoke to the volume and potential for a cut-through. The Transportation System Plan (TSP) modeling work assumed the Lowe's punch-through and two new lights. They also had model runs that did not include the punch through. What they saw when adding the punch-through is a diversion of trips from Geary Street to Oak Street that was almost entirely in the northbound direction. Drivers chose to take Oak Street to avoid the series of lights on Geary Street. It didn't however happen in the southbound direction because when drivers got to Queen Avenue they couldn't make the left hand turn, yet there wasn't enough traffic to warrant a signal. Primarily it would be the local neighborhood that would be impacted by the restriction, not the larger area. There are some pros and cons for the neighborhood with that restriction: they would have more access off-peak, but there would be more trips on the road overall without the turn restriction.

Collins asked, if we initially had a right turn restriction, would there be a point in time to reevaluate? Irish gave options that would redirect traffic including a signal. The downside of a signal is there is not a lot of demand and a signal placed on Oak Street will impact other signalized streets. Shepard said that a potential unintended consequence of adding a signal would be more southbound trips on Oak Street.

Johnson asked if a three way stop would work. Irish does not recommend it. It could create a gridlock at the Queen Avenue and Geary Street intersection.

Olsen asked if it is possible to phase the lights at Hill Street and Geary Street so there is a break in traffic. Irish said that when the red light stops north-south traffic it opens up east-west traffic, and vice versa; so there is almost never a time when there would be a gap. It would be easier if it were a one-way street system. Discussion followed about if Olsen's idea could be modeled. Olsen does not like the idea of prohibiting left turns from Oak Street. He also does not like mini roundabouts.

Johnson asked if the City pays for widening the driveways. Shepard said the City has at times paid for them as a part of mitigating the impact to private properties. Widening a driveway is less expensive than building an additional eight foot lane for on street parking, so there is a cost savings both in construction and ongoing maintenance.

Christman objects to the roundabout because it may turn into a skate park. He doesn't object to the other ideas because he thinks the City needs to take as many options as possible to the neighborhood. He thinks that residents from 9th Avenue to Queen Avenue, and Oak Street to Hill Street should be included, not just those that live on Oak Street.

Konopa said 34th Avenue meanders and the meandering does help to discourage truck traffic.

Shepard showed two roundabouts (see agenda file). They are mountable by big trucks. Bricks could be added to discourage skateboarders. It could be built without any ROW acquisition.

Collins thinks that with the pedestrian volume, especially kids from the park and the Boys & Girls Club, the more that is there to create confusion, the more it puts people at risk. Johnson agrees.

Reid commented that on page 40 it refers to a “standard” roundabout, but Albany only has two so we don’t have a standard.

Reid said the street trees on Lowes are necessary so the neighborhood has some sort of visual blockage of the Lowe’s building. Staff said that as part of the land use permit Lowe’s will be dedicating ROW so there can be setback on their sidewalk frontage.

Hare said the City will be confronting the issue of roundabouts more and more. They are different so they are inherently suspicious. This was true in North Albany but we have found since that it is safer than traditional intersections. Traffic studies show they do function more safely than intersections. He suggested the roundabout be presented to the neighbors to see what they think. Christman said to go ahead and present it as an option to the neighbors, though he is not convinced they will want it.

Reid said if there is no left turn, then the neighbors will have to go onto 9th Street to get to the grocery stores.

Staff will present options except for the turning restriction at Oak Street and Queen Avenue. It may also be wise to eliminate the roundabout just so there are less options and it will be quicker to gain consensus with the neighbors. Shepard reviewed the Design Element table on page 80, not including these two items, and the Council agreed to present it to the neighbors.

Council directed staff to present the options to the neighborhood on Oak Street, Hill Street, and Sherman Street. Staff will bring back a final version after the neighbors have selected options.

BUSINESS FROM THE COUNCIL

Christman used the testimony tonight as an example for why he wants to put Business from the Public first on the agenda.

Konopa said this has been discussed many times over the years; but doing so delays everyone else that might actually be there for an item on the agenda. For example, the Oak Street residents in the audience tonight left early because it was so late and we still weren’t to that item. Discussion followed.

Hare said he remembers a city that had Business from the Public first on the agenda, and for precisely the reason that Konopa explained, people got tired of making the effort to be scheduled on the agenda, showing up, but then having to wait for people under the Business from the Public to speak on items that were not on the agenda. So that particular City Council directed him to do the opposite. He agrees with Konopa that there were many from Oak Street that left early tonight. It is a balancing act.

Collins suggested putting a limit on testimony during Business from the Public to three minutes; or perhaps set a total of 15 minutes for testimony and if it exceeds that then it is moved to the end of the agenda.

Hare will be conducting a session at the League of Oregon Cities (LOC) Conference on dealing with angry citizens. He discussed a recent Vancouver, Washington City Council meeting where a tense scene occurred. Discussion followed.

Reid will not be at the next work session or Regular Council meeting.

Collins will not be at the October 27, 2010, Regular Council meeting.

Olsen said Business from the Public used to be last on the agenda and folks got really mad they had to wait that long. He thinks it is better to be held early in the meeting; but if folks have been invited to attend a public hearing, then that should take precedence over Business from the Public. He likes the way the agenda is being set now.

Olsen asked why Nelson got a citation if there were no complaints about his property. Staff said there must have been complaints or the City wouldn’t go there. Olsen said he is surprised that a person might be cited for unstacked fire wood. Noonan said it may fall under scrap lumber but he doesn’t want to comment since he doesn’t know the facts about the case.

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:11 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director