

CITY OF ALBANY  
CITY COUNCIL  
Council Chambers  
Wednesday, February 23, 2011  
6:45 p.m.

**MINUTES**

CALL TO ORDER

Mayor Konopa called the meeting to order at 6:48 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor 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

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

The Regular Session was recessed into an Executive Session at 6:48 p.m.

RECONVENE

The Regular Session was reconvened at 7:19 p.m.

SCHEDULED BUSINESS

Communication

Accepting resignation from John Vandepas from the City Tree Commission.

MOTION: Councilor Johnson moved to accept the resignation of John Vandepas from the City Tree Commission and send him a letter of thanks for his service. Councilor Reid seconded the motion and it passed 6-0.

Business from the Public

No one wished to speak.

Adoption of Resolutions

Establishing system development charges (SDC) for impacts to the Albany Transportation System, establishing an appeal fee, and repealing Resolution No. 5806.

Konopa explained that this resolution was carried over from the February 9, 2011, City Council meeting. A motion to adopt had neither passed nor failed as there were not four votes either for or against it and it takes four votes of the Council for a successful decision on a motion.

MOTION: Councilor Christman restated his motion to adopt the resolution as presented. Councilor Olsen seconded the motion and it failed 3-4, with Reid, Councilor Collins, Councilor Coburn, and Konopa voting no. Konopa explained her vote saying that she didn't like waiting the 18 months for implementation.

MOTION: Olsen moved to amend the resolution to include changing the review period to six months rather than 18 months. Johnson seconded the motion.

Johnson asked what the Councilors that voted no on the first motion objected to.

Collins said he was concerned about the message that goes out the door. If the economy starts to turn around, he agrees the City should start the ramp. But if not, he wants the opportunity to vote on not initiating the ramp-up in fees. He suggested staff return to the Council for review in six months with the possibility of raising the fees.

Public Works Director Diane Taniguchi-Dennis said she thinks some of the concern the Council has is that the resolution implies the ramp-up will happen if the Council takes no other action and that is not a message that folks want to give to the community. She said there are two options for the Council; a flat fee and implement increase on a ramped approach with Council approval, or the ramp with a condition that the increases can happen only with Council approval.

Coburn would prefer to look at the fee resolution in 18 months rather than automatically implementing the ramp-up. He doesn't believe the economy will change enough during those months that it would warrant an increase in fees. He already has a hard time with the methodology.

Konopa said it was a complete process with a number of people participating and with projects identified; adopting the fee in order to fund the transportation plan was the natural next step.

City Manager Wes Hare said the Council had differing opinions during the process. As the Mayor said, it isn't just a question of methodology. The project list has been developed over a very long period of time and the Council has identified projects that need to be done in order to accommodate growing transportation needs. He mentioned that Albany is one of the faster growing cities in the state according to the census. A plan was developed and adopted by the Council, and it needs to be funded. The question is when the Council would want to set the SDCs so that plan could be accomplished. What is proposed is a start date of July 1, 2012, and the plan is based on that date.

Olsen said the plan is based on the transportation system currently in the City. If the City continues to grow, there will be a need for additional projects like street lights, streets, sewer, etc. to meet that growth.

Taniguchi-Dennis suggested that new language be incorporated into the fifth "WHEREAS" in the resolution on page four of the Council agenda, to strengthen it. It could read, "WHEREAS the future annual fee increases envisioned in the ramp-up will only be implemented with Council action based on an analysis of economic indicators." It doesn't lock the Council into any future ramps other than that they would be considered.

Collins said he can't support the motion but is willing to support an amendment to the resolution as suggested by the Public Works Director.

Konopa asked if any site plans had been filed with the Building Department lately. Community Development Director Greg Byrne said they have been doing six or seven homes, two large big box projects that are in building review, and then some smaller commercial projects. That characterizes the activity level that they have had for some time; it is fairly low.

Olsen asked, would you consider that an increase in activity? Byrne said it is a decrease over the last few months in the case of single family homes, in large part because the federal tax credit expired in the spring.

Konopa asked what the proposed increases would be. Taniguchi-Dennis explained that the proposal in the resolution starts the year with a first step at \$1,716.83, and then an increase in July 2012. She reminded the Council that the Oak Street project is dependent on some action by the Council.

Collins went through the timeline that the motion addresses. It would be 18 months before implementation.

VOTE: A vote was taken on the motion and it failed 1-5, with Christman, Reid, Collins, Coburn, and Johnson voting no.

MOTION: Collins moved to amend the resolution to include language in the fifth "WHEREAS" to read "future increases will only be implemented with Council action based on a review of economic indicators." Coburn seconded the motion.

Taniguchi-Dennis clarified that a new resolution would come to the Council in February 2012 to consider an increase to take effect in July 2012. In other words, a specific action by the Council would be needed to make any increases.

Christman said he would like to see what economic indicators would be chosen before any work on changing fees were to start. A list brought to the Council before staff starts work would be sufficient.

VOTE: A vote was taken on the amending motion and it passed 5-1, with Reid voting no.

Granting the Airport Manager specific authority with regard to aircraft that are not airworthy or for which the appropriate fees have not been paid.

MOTION: Reid moved to adopt the resolution granting the Airport Manager specific authority with regard to aircraft that are not airworthy or for which the appropriate fees have not been paid. Coburn seconded the motion.

Coburn questioned the sixth paragraph, second sentence, which says "...the Airport Manager is authorized to require the removal of any aircraft in open storage at the Albany Municipal Airport or stored in a City-owned "T" Hangar if the aircraft is not airworthy. An aircraft will be deemed not airworthy if, in the reasonable judgment of the Airport Manager, the aircraft is not eligible for an airworthiness certification by appropriate regulatory officials and if that condition has continued for 90 of the previous 180 days...". He said that he doesn't know the qualifications of the Airport Manager to make that judgment. Airport and

Transit Manager Chris Bailey said they would most likely hire someone who has the expertise and can judge the airworthiness of an aircraft.

Hare said the Airport Commission approved this language and that for the most part the Council would be relying on the judgment of staff as they do for many things in the City.

City Attorney Jim Delapoer said in this particular case, it is obvious that the aircraft is nonairworthy. The Airport Manager will most likely rely on advice from third party experts in future cases. Every judge who decides a case is not an expert on that case. His decision is based on evidence. If it is not obvious, the City will do the same, gather evidence. The Airport Manager would engage technical expertise to provide evidence regarding airworthiness. "Airworthiness" is a recognized standard in the industry.

VOTE: A vote was taken on the motion and it passed 6-0, and it was designated Resolution No. 5983.

#### Adoption of Consent Calendar

- 1) Approval of Minutes
  - a) January 24, 2011, City Council Work Session.
  - b) January 31, 2011, City Council Work Session.
  - c) February 9, 2011, City Council Regular Session.
- 2) Approving a liquor license for Clemenza Café & Wine Shop, 236 First Avenue SW.
- 3) Appropriating a special purpose grant from the Fiscal Year 2010 State Homeland Security Grant Program to provide for the services of an Americorps VISTA (Volunteers in Service to America) member and materials to assist the Linn-Benton Vulnerable Populations Committee in developing a Linn-Benton Vulnerable Populations Plan. RES. NO. 5984
- 4) Appropriating a special purpose grant from the Fiscal Year 2010 State Homeland Security Grant Program to provide phase two of a regional urban search and rescue exercise. RES. NO. 5985
- 5) Granting a temporary easement to Northwest Natural Gas. RES. NO. 5986
- 6) Municipal Court Judge.
  - a) Approving contract renewal for Municipal Court Judge Robert Scott for CY2011.
  - b) Appointing Municipal Court Judge Pro Tems, and repealing Resolution No. 5883. RES. NO. 5987

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

#### Appointments

##### City Tree Commission and Traffic Safety Commission.

MOTION: Reid moved to approve the appointment of Orlando Gonzales to the City Tree Commission and Greg Hamann to the Traffic Safety Commission. Olsen seconded the motion and it passed 6-0.

#### Reports

##### Police and Fire Facility Assessments and Evaluations.

Police Chief Ed Boyd asked the Council to look at the proposal as an "a-la-carte" menu rather than the whole package.

Scott Souder, General Manager, and Russ Carter, President of ZCS Engineering Inc. explained their *Statement of Qualifications and Fee Proposal for Facilities Assessment Preliminary Planning and Design*. Carter said that Part A identifies needs for each of the departments, then establishes programming for each of the facilities that will move forward in evaluating the different options for different sites regardless of which site is chosen. They would evaluate current needs and out to 20, 30, and 40 years for both facilities.

Christman asked, can you give a ball park range for costs if only Part A is completed? Souder said around \$25,000 for the Police Department assessment and around \$22,000 for the Fire Department assessment. He said they would not move into Part B without the Police and Fire Chiefs' approval, which is to take the information from Part A, look at the properties, and apply the information to the properties.

Carter said Part A is the normal step that would take place for a design of a project. It is not specific to a site or property.

Konopa mentioned that she would like to see the needs applied to Fire Station 11, if it is doable on that site.

Souder and Carter reviewed the Summary of Fees on pages 61 and 80 of the agenda file.

Collins said the needs assessment is what he was asking for. He supports that. He is not in favor of expending the total \$300,000. He doesn't want to complete all the options offered by ZCS Engineering.

Carter mentioned that sometimes it is fairly simple to identify what property wouldn't necessarily work for an essential public (safety) building.

Collins said yes, he agrees. Codes have changed for public safety buildings; requirements are stricter.

Coburn asked how this particular consulting service was chosen. Assistant Public Works Director/City Engineer Mark Shepard said consulting services selection is based on the value of the services. For a contract under \$50,000 the City can select any consultant. For a contract over \$50,000 and less than \$150,000 the City can go to the Consultant of Record list. The list was compiled through an open public process in which consultants submit their statement of qualifications in specific fields. They were reviewed to make sure they meet the City's standards and then added to the list. If it is over the \$150,000 the process requires a public request for qualifications.

Coburn said he was considering Hare's recommendation in his memo not to spend additional resources to analyze potential Police and Fire facilities, but to proceed with construction of the Police Station and look for property for a new Fire Station. He was thinking of supporting a cheaper, easier process. He said the City did a "Needs Study" in 2003 for the Police Department and doesn't think it has changed much. He does support a "Needs Study" for the Fire Department.

Collins said the Council can stop at any time in the vertical progression timeline. He thinks a "Needs Analysis" is a valid step for both facilities.

Johnson thought the City had already done an analysis. She feels this is repetitive. She thinks the Chief has done everything the Council has asked and she does not support more consulting reports.

Boyd said their study will only confirm what he has been telling the Council for the last 18 months. But if the Council and the community feel more comfortable and feel it needs to be done for due-diligence, he will support it.

Olsen said he has no doubt that the Police Chief knows the needs of the department but there are buildings in town that may fit the purpose and he would like to know if they could work. He would also like someone who could give an estimate on repairing the existing Fire Department building or has a background regarding historical buildings.

Christman asked what the reference to relationship diagrams and site area requirements would be. Souders said they are models that identify individual space needs within the building and how they work together. They would then be programmed onto the individual sites.

Souders spoke to the work already done by the Police Department saying their intent is not to redo what has already been done. They will take Chief Boyd's information and incorporate what other needs they find or are required and bring their additional information to the Council.

MOTION: Christman moved to authorize spending funds for Part "A" under the scope of work for both the Fire and Police Stations (around \$50,000). Coburn seconded the motion.

Carter said their work will be defining pieces of the puzzle, the shapes and needs. They may be assembled differently from site to site.

Collins commented that when they toured the Police Department the Council recognized that when the building was built the number of personnel was projected to be much less. Under today's standards, given the number of employees, they would be looking at a different configuration. Given the standards for a public safety facility, you need so many feet in the configuration, proximity, etc. What these folks would be doing is basically, configuring the spatial relationship. That is some of the information that Boyd's report doesn't have. The standards for each work area. Collins believes defining these kinds of issues upfront will save money in the long run.

VOTE: A vote was taken on the motion and it passed 4-2, with Olsen and Johnson voting no.

Takena Street, Queen Avenue to 12<sup>th</sup> Avenue.

Transportation Analyst Ron Irish said the staff report was discussed at the work session on Monday. He gave some history of the street and the concerns of the residents with parking and speeding. Specifically, the section of Takena Street between Queen Avenue and 12<sup>th</sup> Avenue. Staff held a neighborhood meeting and met with a few volunteers from that meeting, formed a Design Team, and met a couple of times to review options. They then took the issues to the Transportation Committee. He said two changes have already been made on the street as a result of the design team meetings: the reduced speed school zone for Takena Elementary School has been extended south to 13<sup>th</sup> Avenue, and the parking restriction signs south of 14<sup>th</sup> Avenue have been pulled. The change to the boundary of the reduced speed school zone is permanent. The removal of parking restriction signs is a test and was done in an attempt to verify the current level of overflow parking generated by West Albany High School. Some of the problems that remained on the street revolved around the width of the street. The street is very narrow, so narrow that there was a Council

resolution to authorize residents to park up on the curbs. The residents would periodically receive tickets for doing that from Officers unaware of the resolution. The problems that the Design Team focused on were related to vehicles that park over the curb and block the sidewalk (mainly tickets and ADA issues) and the limited ability of Fire trucks to provide emergency vehicle service to the residents. The neighborhood Design Team recommended: better identify allowable shoulder parking areas; restrict parking along one side of the street and prohibit "shoulder" parking; or a configuration of having every other space being no parking allowed on both sides of the street. There were two options not favored by the Design Team or the Transportation Committee: do nothing or reconstruct the road.

There followed Council discussion regarding making changes to the shoulder area between the curb and sidewalk in order to better identify the area of the street where parking is allowable.

Michael Baker, 1550 Takena Street, said she doesn't like the every other block suggestion. She is concerned that her visitors would not be able to park in front of her house. She would prefer to leave it the way it is. She would prefer the Council initiated an education plan.

Hare mentioned that if the Council does nothing, they will be dealing with this problem periodically.

Kathy Lyons, 1229 Takena Street, said expansion of the driveways is what she heard the neighborhood to favor most. She thinks speed bumps would be appropriate. She said there is a lot of traffic on the street.

Irish mentioned that on past projects where parking is removed System Development Charges money have been used. The Council is not obligated to use it, but the opportunity is there.

Collins commented on the public safety access element. For him it is the most important. He would support increasing driveways and removing parking.

There was continued discussion regarding how often the residents get ticketed and if an education program for the neighborhood would be sufficient.

MOTION: Coburn moved to do nothing at this time. Reid seconded the motion and it passed 5-1, with Christman voting no.

#### Lowe's project update.

Delapoer provided the Council with a "Summary of City/Lowe's Infrastructure Funding Agreement" (in agenda file). He said he and the City Manager had been tasked to work with Lowe's and the Perlenfein property owners to craft agreements to implement the Council's decision to provide public funding for the Oak Street punch-through to facilitate the location of the Lowe's store in Albany on 9<sup>th</sup> Avenue. Because of three varying concerns, there will be simultaneous closings regarding the properties and agreements. The City and Lowe's will sign the Infrastructure Funding Agreement, Lowe's will purchase the property from the Conser's, and the City will purchase the Perlenfein property. He provided a copy of the Oak Street punch-through proposed drawing and a "Summary of City/Perlenfein Legal Purchase Agreement" (in agenda file). The approximately half acre of property will be purchased for \$1.6 million and the agreement is complicated by the fact that the land is subject to past petroleum contamination and the need to move the building currently on it. He had a copy of an environmental assessment available for the Council. He said the Perlenfeins have spent hundreds of thousands of dollars remediating the property. Delapoer said the Department of Environmental Quality (DEQ) said they have a "no further action" letter pending. It is only waiting for signatures. He explained the risks the City would be taking with a contaminated site. Delapoer added that if the whole deal falls apart, the City will lose the costs spent on design.

Konopa commented on the high cost for a building the City intends to tear down.

There followed discussion regarding contamination testing under different levels.

Collins asked, is Lowe's in agreement with the draft agreement? Delapoer said yes. Collins said this is consistent with past action; for instance, when the City negotiated the parking lot at the train station. With the conditions that the City Attorney has discussed, the City is protected.

Coburn is comfortable with what Delapoer is negotiating.

Reid was concerned on how deep the City would have to excavate for the DEQ. Delapoer said he based his information on the most recent study provided by Cascade Earth Science. They told him the worst case scenario would be \$10,000 for soil testing.

Shepard added that the City is buying the right-of-way prior to design and it is based on a sketch, but the exact location of the right-of-way line on the east side may move, depending on what's required from the Oregon Department of Transportation. In addition, more right-of-way may be required for a signal pole.

Ed Perlenfein, part owner of the property to be purchased for the punch-through, gave some history regarding the property saying they had a Phase One contamination test done when they bought the property.

No contamination was found. Cascade Earth Science ran down 20 to 30 feet in 1990 and found very small areas of limited contamination, none on the property that the City is receiving.

Ed Schultz, lawyer for Lowe's and Perlenfeins, said that in November final samples were taken and tested. The DEQ reported that they were eight times less than the base standard.

Shepard mentioned that if the City encounters contamination, they would still have to treat it in a very specific way.

Delapoer said \$25,000 has been indemnified. It is more than enough to remediate contamination if the worst case scenario is encountered.

#### BUSINESS FROM THE COUNCIL

##### Councilor Olsen: Albany Municipal Code 6.18, Dangerous Dogs.

Olsen introduced the dog ordinance and said he felt the current ordinance gave the Judge no alternatives except euthanasia.

MOTION: Olsen moved to adopt the ordinance that amends language to AMC 6.18, Dangerous Dogs. Coburn seconded the motion.

Collins was concerned about notifying potential adoptive owners that the dog was declared dangerous and not have it be adopted by anyone with children.

Delapoer explained that this ordinance was not written for any specific case currently being litigated. The case regarding the dog "Blue" may or may not be affected by the amendment. He also commented that the concerns that Collins has are a moral value or judgment that is impossible to track legally. All policies have potential risks.

Christman said this gives the judge a lot of leeway to an alternative. He thinks the Council is opening up a huge door and Court clients could potentially go in front of Judge Scott and if they do not like his decision bring it to the Council and it then becomes a front page story in the newspaper.

Coburn doesn't think it is bad to give the Judge options. He is comfortable with this amendment.

Johnson said it seems this amendment would need a lot of monitoring to be effective. She feels the Police are overworked now and no one will be able to follow up on it. She said the current ordinance does enough and is not in favor of changing the ordinance.

Konopa said as circumstances change, ordinances need to be changed. It is always possible to improve an ordinance.

Boyd said the department does not support changes to the ordinance. They feel it is inappropriate to declare a dog dangerous and send it to another community, where it could possibly offend again.

Olsen commented on the process he went through to ask Delapoer to draft the changes. He recommends the revision to the ordinance.

Reid said he agrees with Christman and Johnson.

Ellen Hamill, 2042 Hill Street, said there are backgrounds on all dogs that need to be considered when adopting. She asked the Council to loosen up the ordinance. Potentially, all dogs are dangerous.

VOTE: A vote was taken on the motion and it failed 2-4, with Christman, Reid, Collins, and Johnson voting no.

Reid thanked the City Sewer Department crew for their prompt attention to a problem encountered by one of his constituents.

Christman provided a spreadsheet regarding his thoughts on funding a Police and Fire Station. His calculations include leaving the Fire Station in the downtown area. He asked that the Council be able to review the spreadsheet at a work session. The Council scheduled to review it at the March 21 Council Work Session.

##### Appointments to Council of Governments (COG) Regional Wetlands Board.

MOTION: Johnson moved to reappoint Councilor Collins as the City's representative, Councilor Olsen as the alternate, and Community Development Director Greg Byrne as the staff lead to the COG Regional Wetlands Board. Coburn seconded the motion and it passed 6-0.

Albany City Council Regular Session Minutes  
Wednesday, February 23, 2011

NEXT MEETING DATE

The next meeting of the Council is a Work Session scheduled for Monday, March 7, 2011, at 4:00 p.m., in the Municipal Court Room, of City Hall.

The next Regular Session is scheduled for Wednesday, March 9, 2011, at 7:15 p.m., in the Council Chambers, of City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 11:06 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC  
City Clerk

Stewart Taylor  
Finance Director