

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, March 9, 2011
7:15 p.m.

MINUTES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

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

SCHEDULED BUSINESS

Legislative Public Hearing

Development Code Amendments.

Konopa explained that she would be abstaining from discussion and voting because she owns property with Forslund Construction. She stepped down from the dais.

DC-06-10, amending Ordinance No. 4441, which adopted the City of Albany Development Code and Zoning Map by amending the Development Code text related to allowing electric fences in the Light Industrial and Heavy Industrial zones, allowing barbed wire on livestock fencing, and clarifying the fencing standards, adopting findings, and declaring an emergency.

Council President Floyd Collins opened the public hearing at 7:18 p.m.

Staff Report

Planner II Anne Catlin said this package of legislative amendments includes the following changes to Albany's fencing standards:

- Allow electric fences up to 10 feet tall in the Light Industrial and Heavy Industrial zones, where the Code currently does not allow any fences that will do bodily harm, such as "electric fences", and fences are limited to 8 feet;
- Allow barbed wire on livestock fencing in residential zones;
- Clarify where fences over 6 feet tall may be located; and
- Consolidate the fencing standards into one location.

Catlin said all required notices for the public hearing were sent and advertised.

Catlin said that two people testified in favor of electric fences at the February 7, 2011, Planning Commission hearing; Michael Pate of Sentry Security Systems and Kami Forslund-Soehl, of Forslund Construction.

She explained that the Albany Development Code (ADC) contains the following criteria that must be met for these amendments to be approved:

- (1)The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language; AND
- (2)The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

Catlin reviewed a few of the applicable Comprehensive Plan goals and policies. She mentioned that one economic development policy says, "*Recognize the special needs of the area's existing industries.*" The request to allow electric security fences would provide another option for security. There are several goals, policies, and implementation measures related to urban design and community aesthetics including "*With good design, the overall business climate may be enhanced by reducing residential and industrial conflicts.*" She said the Plan notes it is important to emphasize good aesthetics along visible corridors, major streets and highways, and within Albany's major commercial centers.

Catlin explained that staff reviewed the zone purpose statements to determine where it would be appropriate to allow electric fences up to 10 feet tall. Due to the wide range of uses allowed in Albany's commercial and mixed use zones, their visible location, the electric fences are not appropriate in these zones. The electric security fence is consistent with the purposes of the LI and HI zones. They are

intended for a wide range of uses, including manufacturing, warehousing, shipping, outside storage, or stockpiling of materials. Due to the high visibility of Albany's commercial, mixed use, and Industrial Park zones, the amendments are to allow 10-foot-tall electric security fencing in the LI and HI zones only. The standards would also require that electric fences be located outside of the front setback, which is the current requirement for all fences over 6 feet tall.

Catlin said the way Albany has developed over time, there are numerous industrial properties that share property lines with residential properties, primarily east of Ferry Street. Currently new industrial uses must be setback from residential property lines 30 to 50 feet, depending on the zone. Screening and a landscaped buffer yard are also required. Staff found that the intent of the Plan and the Code standards is to provide separation between residential and industrial uses. Therefore, staff presented two setback options for electric fences installed along property lines adjacent to residential zones and recommended a solid fence along residential property lines to limit penetration and visibility through the fence. After hearing testimony, the Planning Commission determined that a pulsed electric security fence was a safe product and no setback from residential zoning districts was needed for safety. They modified the standards to require that electric fences be a pulsed system, and when installed along residential property lines, require a solid perimeter fence and more warning signs.

Regarding clarifying Standards for Fences between 6 and 8 Feet, staff has interpreted the current Code language to mean that fences up to 6 feet tall are allowed in the front setbacks and on front property lines. Fences taller than 6 feet must be located outside of the required front setback. In zones with a zero minimum setback, staff proposes fences taller than 6 feet be located a minimum of 3 feet from the property line, to provide a small separation between the sidewalk and the fence.

Catlin reviewed the Development Code policies relate to these amendments. One is that the "...*protects the health, safety, and welfare of the citizens of Albany.*" The proposed standards would require that electric fences be:

- a product that is tested and approved by a State of Oregon approved testing laboratory;
- that the fence be installed in accordance with the Oregon Electrical Specialty Code, the listing, and the manufacturer's installation instructions;
- electrical and building permits will be required; and
- the product must be installed by a licensed Oregon electrician.

Catlin continued by saying the Police Chief did not have an issue locating electric security fencing on industrial or highly vulnerable sites. He thought the fences would be helpful in preventing crime. He expressed concern with them being located directly adjacent to residential neighborhoods without ample safeguards to ensure inadvertent contact with the fence system. The Fire Department's main concern with allowing electric fences is easy access in the event of an emergency. The amendments include revisions recommended by the Fire Department for access.

Catlin said the amendment to allow barbed wire on top of a fence used to contain large animals will help to contain the animals and reduce damage and loss to the owners. The location of the barbed wire would be out of reach for small children. The proposal to codify the current interpretation of where to allow fences over 6 feet tall will clarify the Code. The Planning Commission recommends that the Council approve the amendments, as modified.

Councilor Coburn said one of the items Catlin mentioned was that the fence would be tested and approved by a state of Oregon laboratory. He asked, are there people out there who test? Catlin said yes there is and she provided the name of a company. She commented that a few other cities have allowed these fences, including Portland, Eugene, and Tangent.

Testimony

Michael Pate, 7608 Fairfield Road Columbia, South Carolina, representing Sentry Security Systems, said they have current businesses in Oregon, including the ones Catlin mentioned. They have some concerns about the solid wall requirement for the boundaries of a residential section. They don't understand the requirement and feel it is very expensive to build and it provides cover for potential break-ins. They would prefer something like a chain link fence. Pate continued by saying that currently, there is no standard in the nation to list to, regarding testing. They use international standards. He would like part changed. He said a motorized gate for backup isn't necessary and the Albany Fire Department agrees with him. He also believes a certified electrician installer is too much. Since they use a battery, it is never hooked up to the infrastructure. He feels removing that requirement would be fairer and less expensive to the business community.

Councilor Christman asked, regarding the testing, how is it worded in other cities? Pape said he is not sure. There are 14 nationally recognized labs that do this testing, but no standard.

Councilor Reid said if they had corrected the language through the Planning Commission hearings, he would have supported it. He can't support the changes tonight.

Kami Forslund-Soehl, 3323 Alexander Lane, one of the owners of Forslund Construction, said they are asking the Council to pass the electrical fencing amendment. They do have concerns about the solid fence as such a fence could be used to jump over the electrical fencing, and people could get caught in the space between the two fences. Otherwise, they approve the changes.

No one else wished to speak.

Catlin mentioned that the solid fence is already a requirement when adjacent to a residential neighborhood. The term "listed" was changed to the electrical fence to "be tested and approved," because there is no "listing" standard.

Coburn said he understood Pate's concern as his system works on a battery, but that the Council needs to be careful since the City doesn't want the language to be tailored to a specific company. It needs to be generic. The solid fence does bother him. It seems to be possible to breach the electric fencing with the solid fencing requirement. But if the Council wants that changed, he believes it should be run by the Planning Commission.

Reid asked for Exhibit A, item 1.2, last sentence, on page 7 of the agenda, to be changed as follows: "Concertina wire is permitted on top of fences in high security areas provided warning sign are posted at intervals not ~~less~~ **more** than 15 feet."

City Attorney Jim Delapoer said staff can bring the ordinance back to the next meeting with revisions, if the Council chooses.

Councilor Johnson asked, did you say a cyclone fence with slats would be okay? Byrne said no, it doesn't provide a visual barrier. You can see through the slats.

Christman asked for an example of a solid fence. Byrne said a cedar fence is an example.

Catlin reminded the Council that the south fence would only be required along the property lines that are shared with residential neighborhoods.

Pate said their electric fence is 10 feet so no one can step over it.

Reid said if an electric fence is 18 inches away from a wooden fence, he believes maintenance would be difficult.

Collins asked if any staff member wished to respond to any other testimony presented. No one did.

Collins closed the public hearing at 8:00 p.m.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO ALLOWING ELECTRIC FENCES IN THE LIGHT INDUSTRIAL AND HEAVY INDUSTRIAL ZONES, ALLOWING BARBED WIRE ON LIVESTOCK FENCING, AND CLARIFYING THE FENCING STANDARDS, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY."

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

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

MOTION: Johnson moved to adopt the ordinance. Coburn seconded the motion and it passed 4-2, with Reid and Councilor Olsen voting no.

Collins explained that a decision of the City Council may be appealed to the Land Use Board of Appeals by filing a Notice of Intent to Appeal not later than 21 days after the decision becomes final.

Konopa returned to the dais at 8:03 p.m.

DC-01-11, amending Ordinance No. 4441, which adopted the City of Albany Development Code and Zoning Map by amending the Development Code text related to providing an alternative perimeter landscaping plan when landscaping can be placed in excess public right-of-way, adopting findings, and declaring an emergency.

Konopa opened the public hearing at 8:05 p.m.

Staff Report

Byrne explained that these amendments have the same criteria as the other public hearing. Staff is proposing a Development Code amendment to allow the Director to permit alternative landscaping in public right-of-way. He reviewed a couple of examples.

Reid asked if staff was advocating for an encroachment permit. Byrne said it would be with written permission of whoever owned the right-of-way. The written permission would be required before the City granted the improvement.

Reid asked, what about having them buy it in order to get it on the City tax rolls? Byrne said in some cases that may be an option. There followed discussion regarding property rights.

City Manager Wes Hare said this ordinance helps cut the costs and reduces redundant landscaping.

Reid said he doesn't want the City taking over jurisdiction of state lands.

Testimony

No one wished to speak.

Konopa closed the public hearing at 8:15 p.m.

City Attorney Jim Delapoe read for the first time in title only "AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO PROVIDING AN ALTERNATIVE PERIMETER LANDSCAPING PLAN WHEN LANDSCAPING CAN BE PLACED IN EXCESS PUBLIC RIGHT-OF-WAY, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY."

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

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

MOTION: Coburn moved to adopt the ordinance. Collins seconded the motion and it passed 5-1, with Reid voting no.

Konopa explained that a decision of the City Council may be appealed to the Land Use Board of Appeals by filing a Notice of Intent to Appeal not later than 21 days after the decision becomes final.

Public Hearing

Appeal of dangerous property designation for 117 Main Street NE.

Konopa explained this public hearing was to appeal the Building Division's Dangerous Property Notice and Order for 117 Main Street NE in Albany. The appellant is Michelle Schoning. Staff recommends that the Council conduct a de novo hearing on the matter.

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

Delapoe said the City received a letter from Michelle Schoning requesting a postponement of the public hearing. Through the City Attorney, staff denied that request. He said there is another letter requesting a postponement on the dais (in agenda file) from Michelle Schoning. Building Official Manager Melanie Adams will tell the Council why staff doesn't support a postponement. The representative for Schoning can present their case and the Council can decide if they want to hear the matter tonight or grant a postponement.

Adams said this case has been under appeal since the declaration of a dangerous building was made on November 4, 2010. The property is currently occupied by tenants. Schoning appealed to the Building Board of Appeals and they issued a decision on February 9. She then appealed to the City Council. On February 18 staff notified the owners that the appeal hearing was scheduled for tonight, March 9. On February 23 Ms. Schoning said she would be out of the country and wanted to reschedule. The next available date was in April. Staff believes that is too long to delay. The City Attorney's office sent a letter to her advising that the hearing would be held tonight and the City received a reply yesterday, March 8, saying neither she nor her husband would be here. Staff believes it is important for the hearing to be conducted as scheduled. The notice has been under appeal since November 18, 2010, and it has been difficult scheduling hearings when Schoning is available. Further delay puts tenants and neighbors at risk. Each day there is a delay there is a risk that someone will be electrocuted or the home will catch fire. She

provided two photos (in the agenda file) of electrical concerns in the house. She said the major concern is the electrical wiring.

Derrick Dustman, 1612 NW Harrison, Corvallis, introduced himself as Schoning's representative and asked to have the hearing continued until April because Schoning is out of the country for medical reasons.

Collins asked, if we proceed are you prepared to be the representative on the case? Dustman said he is not.

Collins said he would like to continue tonight, considering the chronology of what is in the staff report. It has gone on since July of 2009. It has been a series of meetings back and forth, scheduled and delayed. He doesn't think the City should be put in a position where taking care of our citizens is postponed because of the non-availability of an absentee landlord.

MOTION: Collins moved to deny the request for postponement and proceed with the hearing, based on safety concerns surrounding the building. Johnson seconded the motion and it passed 6-0.

Dustman, the Schoning representative, left the Council Chambers at 8:32 p.m.

Staff Report

Adams entered the formal record (in the agenda file) from this case into the hearing record. It is all of the correspondence, photos, orders, and other reports and records. She said over the course of 16 months, the Building Division received and investigated a number of complaints alleging that the property in question was dangerous and in need of repair. These complaints included concerns about a lack of basic sanitation, rat infestations, electrical hazards, mold, and general concerns that the structure was not safe for human habitation. The concerns were investigated and as a result the Building Department concluded that the property was dangerous and subject to such classifications under the Albany Municipal Code. She explained that any property can be declared dangerous, whenever any building, premises, structure, or portion thereof meets any of the criteria listed in Albany Municipal Code (AMC) 18.28.010 "to the extent that the life, health, property, or safety of the public or the building, structure, or premises' occupants are unreasonably endangered." The property maintenance standards in AMC 18.30 comprise the majority of the violations cited in the Order of the Building Official on this property. The specific criteria used by the Building Official in making the decision to declare this property dangerous are listed in Appendix A, of the Notice and Order, starting on page 33 of the agenda file.

Code Compliance Inspector Mary Gaeta went over the chronology associated with this building and Building Inspector Joel Heenan provided pictures of some of the issues on the house (in record that Adams entered). Discussion included concerns about rotting wood, holes, rat and mice holes, water moisture infiltration and plumbing issues, roof leakage, windows not maintained or in disrepair, electrical wiring, outlets, the garage is not secure, and no permits on record. Tenants have been using space heaters for a source of heat.

Adams said that at the time the Notice and Order was issued, staff identified that the building was in structural failure, there was standing gray water, windows that wouldn't stay open, exposed raw power, and the garage was too close to the property line.

Testimony

Gary Schoning, 3622 , brother of Kip Schoning, said his brother told him that an electrician had gone through the building and signed it off. The electrician said there wasn't a problem. He was concerned that the testimony included pictures of mice droppings taken when the house was empty. There is a working source of heat, a gas heater in the living room. The tenants chose not to put the heat on in order to save money. He added that this is what his brother has told him, he has not been to the house.

Schoning said he was disappointed how the house looks, but doesn't think it is a dangerous house. He knows Kip Schoning, the owner, submitted some pictures and he hopes the Council reviews those. To him it seems the City wants everything brought up to current standards. That would be too expensive. It is an older house; everything would need to be replaced. He knows that his brother submitted and addressed all the issues. His main concern is that this sets a precedent for all older homes to be considered dangerous. He also owns rentals and understands that they can be in some disrepair at all times.

Konopa said staff is only asking for it to be brought up to code for life and safety issues.

Olsen asked, has your brother said he is going to make repairs? Schoning said he knows that Kip has a crew and was dealing with the issue.

Delapoer reminded the Council that their responsibility was to decide whether the decision to classify this property as dangerous was correct under the provisions of the AMC as of the date the Order was issued.

Reid said the hearing tonight is to decide if the noticed issued in November is correct and asked staff to clarify that they had not inspected the property or enforced the action during the appeals. Adams said that is correct, the Code says they must “stay” all other actions while the order is under appeal.

Adams said they are only asking for the electrical in its entirety to be brought up to current code, not necessarily the rest of the house. Declaring the house “dangerous” requires by AMC that deficiencies be brought up to code. She said at the hearing Mr. Schoning had a letter from an electrician and they don’t believe that the letter says what Schoning says it says.

Delapoer asked Adams if all of the conditions that were testified to tonight were present when the order was issued on November 4, 2010. Adams said yes.

No one else wished to speak.

Konopa closed the public hearing at 9:31 p.m.

There followed questions and discussion regarding when materials were sent to the Schonings.

MOTION: Collins moved to find that there was sufficient evidence on November 4, 2010, to designate the property at 117 Main Street NE as a dangerous building and the order was appropriate. Coburn seconded the motion.

Olsen was concerned that the owner would have no other recourse.

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

Business from the Public

No one wished to speak.

Adoption of Resolutions

Authorizing the City Manager to sign an Intergovernmental Agreement with Greater Albany Public Schools, revising a prior agreement authorized by Resolution No. 5897.

MOTION: Coburn moved to authorize the City Manager to sign an Intergovernmental Agreement with the Greater Albany Public Schools, and revise a prior agreement authorized by Resolution No. 5297. Christman seconded the motion and it passed 6-0, and was designated Resolution No. 5988.

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

MOTION: Collins moved to adopt the resolution establishing system development charges (SDCs) for impacts to the Albany Transportation System, establishing an appeal fee, and repealing Resolution No. 5806. Christman seconded the motion.

Public Works Director Diane Taniguchi-Dennis explained that following discussion of fee options at the February 2, 2011, meeting the Council directed staff to bring the ramped fee option from the January public hearing for consideration. The resolution includes a statement that future fee increases envisioned in the ramp will only be implemented with Council action based on an analysis of economic indicators to be used as a basis for future annual step decisions. Staff will return to the Council in April or May with a report on potential economic indicators that might be used to decide future fee adjustments.

Olsen was concerned that the Lowe’s project might “eat-up” the SDCs.

VOTE: A vote was taken on the motion and it passed 5-1, with Reid voting no, and was designated Resolution No. 5989.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) February 2, 2011, City Council Work Session.
- 2) Accepting a Benton County Victim Impact Panel grant. RES. NO. 5990
- 3) Approving a liquor license for Forsman Inc., D/B/A Ma’s Dairy Farm, 3411 Pacific Boulevard SW.
- 4) Accepting an easement from Albany Industrial Properties, LLC. RES. NO. 5991

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

Award of Bid

Parks & Recreation mowing contract.

Parks & Recreation Director Ed Hodney explained that they followed the normal bid process and the recommendation is for the successful bidder to be awarded the contract on the base bid amount, Chorak Mowing. Chorak Mowing is the City's current contractor for mowing.

MOTION: Coburn moved to award the contract for mowing services to low bidder Chorak Mowing and authorize the Director of Parks & Recreation to execute contract documents on behalf of the City. Reid seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Christman asked to include a global discussion of where staff is at in the budget process at the April 11 Work Session.

Management Assistant/Public Information Officer Marilyn Smith reported on the City's participation in the Pacific Power Blue Sky Program.

NEXT MEETING DATE

The next meeting of the Council is a Work Session scheduled for Monday, March 21, 2011, at 4:00 p.m. The next scheduled Regular Session is Wednesday, March 23, 2011, at 7:15 p.m., in the Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:52 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director