

CITY OF ALBANY  
CITY COUNCIL  
Council Chambers  
Wednesday, May 25, 2011  
7:15 p.m.

**AGENDA**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Girl Scout Junior Troop #20103 led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson  
Councilors absent: Ralph Reid, Jr. (excused)

SCHEDULED BUSINESS

Consolidated Legislative Public Hearing

CP-02-10/DC-05-10, amending Ordinance No. 4447, which adopted the City of Albany Comprehensive Plan and Map, and amending Ordinance No. 4441, which adopted the City of Albany Development Code by amending the Comprehensive Plan text and maps, and Development Code text relating to protection of Natural Resources (Statewide Planning Goal 5), adopting findings, and declaring an emergency.

Konopa opened the consolidated legislative public hearing at 7:18 p.m.

Planning Manager Heather Hansen said this is the fifth public hearing in recent months and a summary was provided earlier in May. She reminded the Council that at the May 9 Council Work Session they agreed to receive the staff report and continue the public hearing until June 8 in order to allow the public enough time to review the materials. She explained that Goal 5 is about local protection of fish bearing waterways, significant wetlands, and wildlife habitat for species that are documented or listed by the state or federal government. There has been a major evolution in the recommendations from staff since the time the Natural Resource Advisory Committee recommendation was made in 2004, when the riparian corridor widths were between 60 to 120 feet including the Willamette River. Later the recommendation was changed to 50 feet for all waterways except Oak Creek and the Calapooia River, which were still at 60-120 feet, in recognition that those were the highest quality riparian corridors in the City. That was considered too stringent by many, so it evolved to be 50 feet for all waterways except the Willamette River. That is called the "safe harbor" approach. It was very inflexible and wasn't a good fit for the community.

Hansen said the alternative to "safe harbor" is called an Economic, Social, Environmental, and Energy (ESEE) Analysis, in which analysis is done on whether you limit, prohibit, or allow conflicting uses in those resource areas. With ESEE the City could come up with a program that balanced protection of the resources with what the community wants. The City hired a consultant that was very familiar with the state requirements and has worked with the state in getting Goal 5 protection programs adopted. The consultant used a minimalist approach in balancing and protecting the resource, with consideration of the uses for the property. The state won't allow a program that does nothing to protect the resources, but this program is a lot more flexible than what was proposed before. The proposed amendments in the agenda packet are based on recommendations from the consultant. The riparian corridor is still 50 feet, but the lower quality riparian areas can be reduced to 25 feet with enhancement of the remainder; residential lots less than 20,000 square feet are exempt from the riparian corridor regulations; routine maintenance and replacement of existing development and landscaping are exempt; and there are additional exemptions. Some of the lower quality isolated wetlands will be regulated by the state and federal government only. Public infrastructure to support development is an allowed use in the resource areas; and the wildlife recommendation has been reduced to 75 feet from 100 feet. The overlay districts are the primary mechanism to identify and protect the resources. A Natural Resource Impact Review would take place concurrently with development on any land use application or building permit. What is being proposed is a modified program, similar to "safe harbor" but more flexible.

Greg Winterowd, Winterbrook Planning, 310 SW 4<sup>th</sup> Street, Portland, said they have worked on 40 natural resource protection programs around the state. He explained why they qualified to be a consultant to advise what was appropriate for Albany. He has worked with Albany before and was the Planning Director for the city of Springfield. His approach was to look at what was in the Comprehensive Plan already, what is fair to property owners, and what will protect stream corridors. He said there is good evidence that supports that resource planning will increase property values. Albany wanted to protect riparian corridors and provide property owners with more flexibility. If property owners are willing to plant along the streams, these proposals make sure they are what the land demands. It has the owners working together with the City and to protect and enhance the waterways. Winterowd said there are federal regulations that protect salmon that come into play as well. The Council needs to know that the proposed changes are fair,

objective, and that the provisions are adequate to assure development can take place. But, the major goal is to protect the stream corridors.

City Manager Wes Hare said the City has been in periodic review for 11 years and Goal 5 is the last task. The state has to review what we submit and we have to meet their standards. He asked, will the City “forever” be in periodic review until we meet those standards? Winterowd said in his judgment if Albany does less than what is proposed here, Albany will lose local control and the state will take control. He believes it will be acknowledged by the state of Oregon as it is now.

Councilor Christman said he keeps hearing that the City should do the minimum. He would like a chart of what those minimums are. Hansen said that is hard to do with ESEE analysis because there is no prescriptive minimum. With ESEE you need to come up with a balanced approach to accommodate the property owner and protect the resource.

Christman asked, when it gets reviewed will it be reviewed subjectively by whoever is doing the review? Community Development Director Greg Byrne said yes, there is no “safe harbor” for any species of wildlife. The judgment comes into play when weighing the four concerns of ESEE and what is favorable for development and what protects the resource.

Councilor Collins asked, are you requesting that the public hearing be continued to June 8 and not close it tonight? Byrne said yes.

Collins asked, does the Council need to declare potential conflicts? City Attorney Jim Delapoer said they do not have to declare exparte communications. But if anyone has a conflict of interest, that needs to be declared.

Collins asked, would the enhancement to reduce to 25 feet from 50 feet apply only to the riparian corridors or would it also apply to the wildlife overlay? Hansen said, the riparian corridor only. Collins said then in the case of Thornton Lake if it is 75 feet, it is 75 feet from the ordinary high water mark and there is no ability to reduce it. Hansen said if there is 2,000 square feet or more of ground-disturbing activity, there would need to be a habitat assessment.

Councilor Johnson commented that with “safe harbor” so many acres would be put into riparian, wetlands, etc. She asked, with the new proposals how much land is designated in those categories? Byrne said it is hard to figure because not every property would enjoy that change. He said there was a lot of property that was lost during that evaluation. Those were based on the original Natural Resource Committee recommendations in August of 2009 and there have been significant changes since then. Johnson would like some ball park numbers.

Collins commented that originally open space was established based upon ordinary high water levels or what was perceived to be the wetlands inventory at the time. With the new information, when you put the overlays on, and they are less than the existing boundary, is part of the proposal to correct the existing open space back to the overlay zones? Byrne said yes, the proposal would be to have staff do that administratively, only as a reduction not as an expansion. Collins asked, the piece that was removed would revert to the underlying zone? Byrne said yes. Collins said in some cases it would add developable property to some lots. Byrne agreed.

### Testimony

Mark Grenz, 1155 13<sup>th</sup> Street SE, Salem, 97302, would like to defer his testimony to June 8, as he hasn't had a chance to read the entire document.

Diana Amos, 1030 NW North Albany Road, submitted written testimony (in agenda file) saying she didn't want to accept the generalized inventory of wetlands delineation on her property and was including the previous wetlands inventory (in agenda file) approved by the Division of State Lands in 2001. She recommended that the minimum for the state regulations be used.

Frank Amos, 1030 NW North Albany Road, (mailing address 14 El Molino Drive, Clayton, CA 94517), submitted written testimony (in agenda file) explaining that their property on the north side of West Thornton Lake is long and narrow. They want to convert a small cabin-like building into a home and with the proposed restrictions would not be able to. They are asking for reasonable treatment for the homeowner. He would prefer not to have a long list of “cant's”.

Jack Burrell, 276 Hickory Street NW, K & D Engineering, submitted written testimony, and thanked staff for the process, but said they need more time to evaluate the report. He would like to see more input from the property owners and consultant, and have discussions with staff.

Konopa said all concerns can be put in writing and sent to the Council before the meeting. If it looks like on June 8 that there needs to be more time, that can be done.

Christman asked, is the plan to have a work session for these people and staff between now and the June 8 Council meeting? Byrne said yes.

Johnson agreed that there are more questions and she would like to see work sessions provided.

Collins asked, is there a time line imposed by the state? Hansen said no.

Warren Harrington, 2326 NW Holley Place, was concerned about the minimum the City is doing. He asked if there would be changes in the lake as part of the park plans for East Thornton Lake. Konopa said that area would be brought back to the natural lakeside species in plantings by removing the invasive species. He was also concerned about septic line and animal waste going into the lake.

Collins mentioned that until there is a failing septic, the City can't do anything.

Mark Azevedo, 1210 NW Skyline Drive, was in favor of the proposed Goal 5, and submitted the cover page and index for a study that was just completed between the Calapooia Watershed Council, the City of Albany, Greenbelt Land Trust, those involved with the East Thornton Lake Natural Area, and private property owners, called "Calapooia River-Albany Assessment and Project Implementation Plan". He believes it is good to have some definitive regulation to protect stream corridors, wetland areas, and areas where there is significant wildlife. Also he understands the property owner's concerns about the Goal 5 process and feeling like it is the taking of their land, that it is not good for business, and that additional regulations may impact their bottom line. He suggested that the way to view the community and natural resources is changing rapidly. The manufacturing base that existed in this community has changed and jobs are different. The movement in the corporate world and in investments is now being put into sustainable, open spaces, and natural products. Technology is looking to do things differently. A community that protects its environment is the future. Goal 5 is an opportunity for the community to set some minimal regulations. He added that there is a lack of biological input in the discussion regarding the animals that need to be protected. He submitted information from the Oregon Department of Fish and Wildlife Sensitive Species report (in agenda file). He said he is working to protect habitat. He said that he and other members of the North Albany community have applied for a grant to fund a study to understand what is going on with both species of turtles in Thornton Lake and to remove invasive weeds out of the lake. The study will address where nesting sites are, ages, and sexes of the population of the turtles. They do know that the grant has been recommended for funding by the Oregon Department of Fish and Wildlife. This is an example of the lack of real information regarding the animals they are trying to protect. There is a Goal 5 Wildlife Habitat overlay for Thornton Lake and those regulations were developed with knowledge in hand. What is being proposed may be adequate or it may not. But it is a starting point for the community to embrace working to protect habitat. Most of the people around the lake would tell you that they do not like Goal 5, but 23 of the property owners around the lake are part of the grant application and are working towards a study on the turtles. There needs to be a minimum protection that will have some sort of certainty for the wildlife.

Johnson asked Azevedo for his point of view regarding the Amos's concerns about losing portions of their property. If it were his property, would he feel the same way? Azevedo said he would not feel the same way, but can appreciate their, the property owners, position. She asked him if reducing the 50 feet mark down to 25 feet would do the same thing as "safe harbor." Azevedo said it is complex and he knows that turtles are nesting farther than 50 feet from the lake. Originally the measure was for safeguarding fish and shading; now it is more than protecting fish. It includes safe water and other wildlife.

Councilor Coburn commented that finding more information on turtles through the study makes a lot of sense. He asked Azevedo if turtles could climb the steep banks along Thornton Lake. Azevedo said, yes they can climb steeper than humans can walk on.

Jason McAfee, 2380 15<sup>th</sup> Street SW, said he owns 2 ½ miles along the Calapooia River; 102 acres. He hopes these regulations will not get in his way to build his dream. He has more riparian zone and wetlands than anyone else he has heard so far. He believes some of those lines are inaccurate. He said maps and photos do not line up. He had concerns about ponds and wetlands designations. He owns a hazel nut farm and wants to create a natural habitat with a venue for events to take place.

Byrne said he would talk with McAfee and review the maps and report back to the Council.

Dan Watson, 710 East Thornton Lake Drive, provided a handout of his testimony (in agenda file). He said he hasn't had a chance to look at the entire report but believes the codes will dramatically restrict his ability as a landowner to use his property. He would also like to have the ability to access all the goals during the review process. He said he has been involved with the process for over a year and was glad to hear there may be funds available to do a turtle assessment. He read his concerns about the turtle habitat overlay, riparian corridors, wetlands, and re-vegetation standards. He doesn't think property owners should be put in a position where they need to spend a lot of money for consultants.

Phil McFadden, 524 NW 34<sup>th</sup> Street, Corvallis, owns Rainwater Orchard property on the north side of Thornton Lake. He is personally in favor of the Goal 5 regulations. He doesn't live on his property and therefore doesn't have the same issues. He has worked with his neighbors to help perfect the plan. He said

coexisting with the turtles and other species would allow all to prosper. He asked, how might the overlays affect the assessed value of properties during tax times? Has he missed the taxation side? If owners are being severely impacted, it would only be fair to see their property taxes lowered.

No one else wished to speak.

MOTION: Collins moved to keep the hearing and the record open to receive additional testimony, to give people the opportunity to meet with staff, and to make an assessment if the Council wants to leave the hearing open longer, to the June 8, 2011, City Council meeting. Johnson seconded the motion.

Johnson said the Council needs to find a balance that is acceptable to the property owners and the state.

Konopa asked Hansen to provide an example of the worst case scenario with these regulations at the June 8 meeting.

VOTE: A vote was taken on the motion and it passed 5-0.

#### Business from the Public

Ellen Hamill, 2042 Hill Street, said the Blue supporters are happy about the dog Blue's new home. She thanked the Council and staff for their efforts in coordinating the move. They have 300 more signatures for their petition, but will not present them tonight. Their goal is to have a bright future with the City. She said others want to speak on this subject.

Konopa asked those wanting to speak regarding "Blue" to please not repeat information that has already been in front of the Council.

Arlene H. Brooks DVM, 13012 Running Dog Lane SE, read written testimony (in agenda file) explaining that "Blue", after being micro-chipped, was lead by a leash into a van that took him to the Albany Pet Hotel. She said on April 13, 2011, a five page history titled "Blue", a one page letter, and a three page order signed by Judge Scott, was permitted and released at the Council meeting to provide background for Blue's case. She said she reviewed the handouts. She felt the history was biased. She said she also found an inaccuracy. On June 3, 2010, there was an omission by both Lt. Dorland and Judge Scott. Blue's first hearing had been canceled but Judge Scott issued an Order opposite to Police Chief Boyd's designation and labeled Blue a "Dangerous Dog". Why this happened was probably a mistake. Chief Boyd never picked up Blue to kill him and he continued to refer to Blue as "potentially dangerous" in subsequent letters. She said it raises concerns because Judge Scott actually changed the designation without a hearing's evidence, Chief Boyd chose to ignore Judge Scott's ruling, or it was a mistake – a life-threatening mistake. Her opinion is that it shows a level of bias or mind-set that could have influenced the outcome at Blue's December 2010 hearing. She thinks it should have been revealed that a previous Order had been rendered, erroneous or not. Maybe another Hearings Officer should have resided. She believes the Albany ordinance works well for the most part and has for 25 years. Where it doesn't work is when a "dangerous dog" designation is applied to a dog who became a nuisance because he was not fenced and kept on his property while confrontations with the neighbors continued, and a child's family needed some common sense and improved parenting skills. She said Blue has an option to move out of state to live with the woman who purchased him as a puppy; who has his littermate, has no irate neighbors, is familiar with the Blue Lacy breed and will not feed Blue around toddlers. It is a workable option.

#### First Reading of Ordinance

Levying assessments against property specifically benefited by sewer and water connections and the assessment of Sewer, Water, Parks, and Transportation System Development Charges for property described as Tax Lot 4400 of Parcel 11S-03W-17AA, and site address 2553 Bain Court SE; and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only, "AN ORDINANCE LEVYING ASSESSMENTS AGAINST PROPERTY SPECIFICALLY BENEFITED BY SEWER AND WATER CONNECTIONS AND THE ASSESSMENT OF SEWER, WATER, PARKS, AND TRANSPORTATION SYSTEM DEVELOPMENT CHARGES FOR PROPERTY DESCRIBED AS TAX LOT 4400 OF PARCEL 11S-03W-17AA, AND SITE ADDRESS 2553 BAIN COURT SE, 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 5-0.

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

MOTION: Coburn moved to adopt the ordinance. Johnson seconded the motion and it passed 5-0, and was designated Ordinance No. 5756.

#### Adoption of Resolution

##### Revising fees for Development Code provisions and repealing Resolution No. 5793.

Byrne recognized Planner III Janet Morris for her service to the City explaining that she would be retiring at the end of June.

MOTION: Coburn moved to adopt the resolution revising fees for Development Code provisions and repealing Resolution No. 5793. Councilor Olsen seconded the motion

Christman asked, these kinds of fees are usually contested, why is no one here now? Byrne believes it is because the Council didn't raise fees in the last two years. He hasn't received any complaints or comments about this increase.

Morris said there is no requirement to contact people or to post a notice for this kind of increase in fees. She believes since there was no increase last year and the previous year they actually went down, and the economy is picking up, the industry understands the City needs to pick up this small fee increase.

VOTE: A vote was taken on the motion and it passed 5-0, and was designated Resolution No. 6001.

#### Adoption of Consent Calendar

- 1) Approval of Minutes
  - a) April 13, 2011, City Council Regular Session.
  - b) April 18, 2011, Albany City Council and Tangent City Council Special Session.
  - c) April 25, 2011, City Council Work Session.
  - d) April 27, 2011, City Council Regular Session.
- 2) Approving annual liquor license renewals.
- 3) Authorizing the IT Director to sign a contract between the City of Albany and Associated Business Systems, a Ricoh Company, for copier services for four years, beginning June 3, 2011.

RES. NO. 6002

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

#### BUSINESS FROM THE COUNCIL

Konopa introduced Gabe Nelson, a student at Oregon State University, who has been observing the meeting. He has an interest in having a career in local government.

Johnson said that it had been a year and half since the Council asked staff to work with the local community to build a bike park for kids. She understands that there was participation for awhile, and then the project halted. She feels it left the kids with no adult guidance. It has gone to the Bike Commission and they voted to continue. She said they need leadership.

Hare said there was an adult volunteer group that was working with them that decided to wait for a better economic environment in which to raise funds.

There followed discussion regarding the planning that has already been done and the responsibility of the City. The Council requested Parks & Recreation Director Ed Hodney to provide an updated report at the next meeting.

Coburn would like staff to provide more information regarding the return of funds as it relates to an appeal of a landmarks ruling.

Coburn, the Council representative for the Oregon Department of Transportation (ODOT) Stakeholder Advisory Team for the I-5 Interchange Project, said ODOT had seven meetings with community groups. All of the groups had questions and there were responses that he can send to the Council, if they want. He heard an explanation of the "valued engineering" process that ODOT goes through. He said that normally that takes place after the design is complete. They bring in people unfamiliar with the design and they pick it apart. He said it was unique to bring them in at this point to evaluate the different designs that are being proposed. This process is called an Environmental Assessment. He said that the state said it would pay for the extension of Timber Street from Highway 20 south to the roundabout, as they recognized they are making significant changes to the intersection that would affect the businesses and property owners.

Konopa added that the Steering Committee met and they talked about what the state would be willing to pay as well. A lot of ODOT right-of-way will be abandoned and she asked what they would be doing with it. They said it would be landscaped and she asked for an agreement with the City to somehow enhance the landscaping, as the City's experience with ODOT landscaping is not very good. That area is an entrance corridor for the City. Coburn agreed that ODOT is not interested in giving up any property.

There followed discussion regarding alternatives for the intersection and ramps. Konopa said they did talk about phasing the project.

Olsen said he would hesitate to send Goal 5 back to the Planning Commission.

Collins would like Police Chief Boyd, the Immediate Past Chair of the Willamette Criminal Justice Committee, to report on the new or revised plan for the Benton County jail or other law enforcement facilities.

Collins said Councilor Reid asked for an update on the Schoening property on Main Street. Delapoer said the City is in the process of considering enforcement action. They have resolved many issues but two remain, garage proximity and screens. He said there has been more progress than lack of progress.

Reid asked for an update on the correction of a storm water issue on the Lepman property. Scott Lepman came to the Council in a Work Session and asked the City to participate in reestablishing a storm drain system going to Oak Creek. Public Works was going to work with him.

Public Information Officer/Executive Assistant Marilyn Smith mentioned that Sunday, May 25, is Councilor Reid's 82 birthday and anniversary. He has been married for 57 years.

#### NEXT MEETING DATE

The next scheduled session of the City Council is a Work Session on June 6, 2011, at the Boys and Girls Club, at 4:00 p.m. The next Regular Session is scheduled for Wednesday, June 8, 2011, at 7:15 p.m., in the City Council Chambers of City Hall.

#### ADJOURNMENT

There being no other business, the meeting was adjourned at 9:50 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC  
City Clerk

Stewart Taylor  
Finance Director