

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, August 24, 2011
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 of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Ray Kopczynski, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson

SCHEDULED BUSINESS

Continued Consolidated Legislative Public Hearing

CP-02-10/DC-05-10, Goal 5.

Konopa reopened the Consolidated Legislative Public Hearing at 7:17 p.m., explaining that it is regarding legislative amendments to the Albany Comprehensive Plan, Chapters 1, 2, 7, 8, 9, and plates 3, 4, and 6; and amendments to Development Code Articles 1, 2, 3, 4, 6, 9, 11, and 22, to implement Statewide Planning Goal 5.

No Council members wished to abstain nor did any wish to declare a conflict of interest, or report any significant ex parte contact.

Konopa reminded those wishing to testify to please be aware that they must raise an issue with enough detail to afford the Council and parties an opportunity to respond to the issue if they later want to raise that issue on appeal or object to a periodic review work task submittal to the Oregon Department of Land Conservation & Development (DLCD). If additional documents or evidence are provided by any party, the City Council may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. If they testified at the hearing on June 8, please restrict testimony tonight to new information.

Staff Report

Planning Manager Heather Hansen explained that the Goal 5 program is part of the Periodic Review work program that was adopted by the City Council for wetlands, riparian corridors, and wildlife. Since the last hearing in June a special meeting with the public was held on July 25. From that meeting there was direction from the Council to make revisions to the proposed amendments to address density bonuses, on-site stormwater, inability to mitigate on-site due to easements and rights-of-way, and alternatives to bonding for mitigation. Also, for the City to reconsider the outright exemption from the riparian corridor overlay for residential lots less than 20,000 square feet, and strengthen the Economic, Social, Environmental, and Energy (ESEE) Analysis Report.

Hansen reviewed the revisions (highlighted in yellow in agenda packet) to the ESEE Analysis Report and Articles 3 and 6 (page 2 of agenda packet).

Hansen introduced Greg Winterowd from Winterbrook Planning, the consultant that assisted in writing the ESEE Analysis Report, and Amanda Puntin and Ed Moore from the Oregon Department of Land Conservation and Development (DLCD).

Testimony

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

Kris Richardson, 2002 Waverly Drive SE, was concerned about the exemptions for the 20,000 square foot lots because accumulation of lots can make a big impact. The City has the responsibility to protect resources and she is concerned about the environmental impact.

Scott Lepman, 100 Ferry Street NW, was concerned about section 6.065 District Boundary Refinements (page 134 in agenda). He has a property in south Albany, in which he created a large wetland anticipating the use of some upland. That was the agreement he had with the Division of State Lands and the Army Corps of Engineers. He believes this section prevents him from using the upland in the future. He submitted a letter from his lawyers, Perkins Coie, outlining his concerns (in agenda file). He was also

concerned that some items in the proposed Goal 5 implementation hadn't been changed. He said if the Council continues this process, he would like to review the document in more detail.

Councilor Coburn asked, what would you like done? Lepman said strike the sentence "Wetlands that are filled, or lands removed from the floodplain through fill, are not eligible." or include fill after a certain date, like the adoption date of Goal 5. If the sentence is struck, he will still have to abide with open space provisions.

Councilor Kopczynski asked, what would happen if that sentence is struck? Planning Director Greg Byrne answered that this paragraph is intended to deal with the open space zoning district and the reduction of the application of that designation, through an administrative review, in places where natural resource overlays don't exist. The reasoning was that the open space district was applied loosely years ago before accurate mapping of the area and before the City had good Geographic Information System (GIS). So there are places with uplands with no natural resource value at all that currently have open space zoning on them. It is an attempt to say that in those places the City is not meeting the purpose of that district, staff is suggesting the City reduce the boundary of the open space district and allow that property to be developed, and do that administratively because it fits the purpose the Council set when they established open space districts. He said the Lepman property is not zoned in the City yet. Staff does not interpret the paragraph, nor do they intend the paragraph the way Mr. Lepman does. When brought into the City, it will be up to the Council to decide if his property will be zoned residential or open space. Staff anticipates it to be residential and this paragraph will not apply.

Lepman was still concerned, because he feels it could be changed.

Hansen said it is proposed as "administrative" because it is a map correction.

Councilor Johnson asked, can it be changed if the property owner wants? Hansen said yes. Johnson asked, why can't the City get the maps right before going on? Lepman's property is in the Urban Growth Boundary (UGB), the open space would take some of the space where he wants to build. It sounds like two different things. She doesn't want it pushed aside. She said, let's get it taken care of.

Councilor Collins said in the future if that parcel is annexed, it will go to an election. If passed, the Council will establish zoning. If the upland has been created, there would have to be a Comprehensive Plan amendment that would change the current designation of open space to an alternative zone. He asked, under the Comprehensive Plan amendment, is that a greater in-depth process and is the burden of proof higher, than if that sentence was struck? Byrne answered that it is not. The current Comprehensive Plan has an open space designation that runs through Mr. Lepman's property. A portion of it is indicated to be open space and a portion of it is indicated to be residential development. The Council will decide, when that time comes, where the line will be.

Collins asked, when dealing with property in the UGB, and designation and development was created with Linn County permits, what happens when annexed into the City? Byrne said generally, it is taken into the City as it exists.

Lepman commented that the sentence states that he is not eligible to change the designation. Byrne feels this ordinance wouldn't apply when he is annexed into the City.

There followed more discussion regarding the Lepman property.

Natalie Janney, 1155 13th Street SE, Salem, representing Multi/Tech Engineering, submitted written testimony on their behalf (in agenda file). She mentioned the ability to use low impact stormwater techniques in order to mitigate wetland. She feels the code is silent on that option.

Councilor Christman said the staff report says there are adequate provisions to allow on-site stormwater. Hansen said it is allowed if it is a facility identified in the City plan, if City owned, or if City constructed. Otherwise, it would follow the same criteria as if it was any other impact; for instance, encroaching within 25 feet of a riparian area, concerns about forestation, etc. Hansen doesn't think it would be an issue.

Janney said the code doesn't provide clarity.

Diana Amos, 1030 North Albany Road, appreciated the help and guidance she has received from staff. She said her property is long and lean along Thornton Lake, and she continues to have concerns about the footage requirement for building. She thinks the burden is on the newer property owners.

City Manager Wes Hare said in the past people were allowed to develop right to the lake shore in North Albany, and that will no longer be possible. She is right, it applies to new development. It applies when the law is passed.

Candace Ribera, 100 Ferry Street, representing Scott Lepman, said she would defer to Mr. Schultz and Mr. Watson. She thanked the Council for taking time to reach a decision.

Ed Schultz, PO Box 667, Albany, attorney representing several property owners and the Grand Prairie Water Control District (GPWCD). He provided a packet (in agenda file) explaining that it included specifics of where they have suggested changes. The GPWCD wanted to identify the fact that for 45 years they have rearranged creeks to carry flow at high-water-mark times and during additional discharges from stormwater, roads, etc. Since there hasn't been any significant flooding from those streams during that time, their management has been successful. He encouraged the Council to take a look at the packet regarding the GPWCD. One of their concerns involves their easements along the four creeks and the limitations regarding plantings. They propose that the GPWCD be excluded from the Goal 5 limitations, and not be offered protection. They only want that changed within their boundaries. He reminded the Council that the district is also an additional water provider and serves the community for flood water control, aesthetics, and natural area preservation.

Schultz continued with the proposed changes his property owner clients would like to see to the Goal 5 ordinance. Konopa asked why changes were coming tonight and were not submitted earlier. Schultz said they had been, but felt they had not been discussed or addressed in the proposed ordinance.

Schultz reviewed pages 6-2 thru 6-20 in his submitted packet, and mentioned that on page 6-19 no penalties are identified for violations.

Schultz continued reviewing their proposed changes saying that the Council needs to consider economic and development issues as well. He said their suggestions represent practical solutions and consistency.

Dan Watson, 710 East Thornton Lake Drive, said he had contributed to code revisions submitted by Mr. Schultz. He said that, as proposed, Goal 5 would prevent people from using their properties as they are currently being used. He provided maps with pictures of various properties (in agenda file) and reviewed how the changes would affect those properties. He commented on turtle protection. He said the maps he was submitting included suggested changes. Watson would like to have time to refine the model.

Mark Azevedo, 1210 Skyline Drive NW, said the people that have spoken represent a small segment of the community. The Goal 5 process is way beyond economic interest. It is set up to recognize the natural resources in the community and maintain the functions of those resources. He commented on Multi/Tech wanting a credit by trading a stormwater wetland area. He said that a stormwater runoff purification area is not the same as riparian wetlands. A stormwater area concentrates heavy metals in the water, including copper, which he considers toxic and he doesn't believe one area can be substituted for the other. He said Schultz and Watson's review may have not been to make the Goal 5 ordinance user friendly but still meet some standard of protection for wetlands and waterways. Despite the bureaucracy involved, Goal 5 was set up to protect the natural resources. He mentioned that the East Thornton Lake Natural Area isn't just for turtles. For the long term there needs to be some protective law in place. He said they have been working with the Calapooia Watershed Council and the Benton County Soil & Water District regarding plantings on Thornton Lake. He said he hoped the Council would make a decision quickly. The City is playing catch up with the rest of the state of Oregon. Albany is the last municipality to adopt Goal 5.

Frank Amos, 1030 North Albany Road, read a handout (in agenda file) he gave to the Council. He wants habitat assessment changed to 50 feet, would like to see mitigation at 3,000 feet rather than 2,000, and is concerned about costs for property owners in order to comply with regulations. He asked the Council to balance what they want to protect and the costs of that protection.

No one else wished to speak.

Konopa closed the public hearing at 9:05 p.m.

RECESS

The Regular Session was recessed at 9:05 p.m. for a brief period.

RECONVENE

The Regular Session was reconvened at 9:15 p.m.

Goal 5 deliberation

The Council asked the City's consultant to give a response to the testimony.

Greg Winterowd, Winterbrook Planning, in Portland, said the ordinance drafted by the staff is the result of the meeting on July 25 and addresses the comments made at that and other meetings. He thought what the Council had, was on the weaker side of what is in other cities in Oregon. In his view, the position given by Mr. Schultz would change the significance of the ordinance and it would not comply with Goal 5. He reminded the Council that technical changes can be made as the ordinance is implemented. He thinks this ordinance is a good balance for this community right now. The suggested changes come from one segment of the community. His recommendation is for the Council to move ahead and adopt the ordinance. He is hearing the same issues now as a few months ago.

City Attorney Jim Delapoer addressed the violations section cited by Schultz, saying it complies with the Albany Municipal Code and state statutes. Every crime in Albany is a misdemeanor, every violation is \$100. There are no other classifications.

Ed Moore, Regional Representative for DLCD, which covers Linn and Benton County, 635 NE Capital Street, Salem, commended the Council on their patience. He said Goal 5 is the last task in the Periodic Review program. He is feeling better about where the City of Albany is, but if anything is done to weaken the proposed ordinance it is likely it would be sent back to the City and the Council would have to go through this process again. When he thinks about Albany and the region, he sees the physical environment as a springboard for the future.

Johnson said she doesn't like Goal 5 the way it is written. It is complicated and cumbersome for home owners and she doesn't know how it will get enforced.

Hare said the staff enforces the laws of the City, and they routinely enforce the zoning code and other building and planning violations in the City.

Johnson feels the conditions are unrealistic and don't make sense. She thinks the overlay is a "taking". It is too much, costs people too much money, and they can't do with their property what they want. She also understands that the Planning Commission had grandfathered some properties in their version, but now it is gone. She would be in favor of keeping the overlay as it is. She commented on the western, painted, and pond turtles, disagreeing with the need for protection. She feels planting "natural plants" will encourage nutria. She feels Goal 5, as written, is a burden on the property owner. She feels it will benefit anti-development and will make it difficult for infill.

Collins suggested that on page 27 of the agenda, third paragraph from the bottom, the last sentence be changed to read, "Talking Water Gardens will become a destination for *outdoor recreation*." He asked, on page 31 of the agenda, under "3. Apply the Open Space Comprehensive Plan and Zoning Designation to the following areas: a. Local lakes, canals, streams, drainageways, and associated floodway", does that apply to the Santiam Canal, 8th Street, and Thurston Ditch? And if so, what does it do to the City's ability to develop walkways and other corridors that we have in other plans along those areas? Hansen said that it is existing language and she believes they are already zoned as open space. Collins asked, does having them designated as open space limit the City's ability to do the CALUTS Plan, which envisions walkways and development elements within open spaces? Staff will take a look at the code. He wants to make sure that question is answered and the City is not self limiting the 8th Street development.

Collins supports protecting the natural resources and said implementation is often in the details. He wants to have time to look over all of the suggestions.

Konopa doesn't think the suggestions provided tonight will satisfy the state. She asked the Council, how much longer do they want the process to take?

Collins said he wants to go page by page until he is comfortable with the information.

Coburn said he appreciates the work that Schultz did, and does see the value in some of the comments made. He sees a value in tying the tree ordinance with some of these regulations. He wants to make sure the Council is making the right decision for Albany and is concerned about any unintended consequences. There has been due-diligence by some citizens, and he needs to have time to look at all the materials. He would appreciate staff's comments on the information presented tonight.

Delapoer suggested the Council go through the document and debate among themselves and staff.

Konopa feels that if the Council changes the document they should reopen the public hearing as there were people who did not come tonight who would have if they knew changes could be made.

Collins said he is looking for language that clarifies and simplifies.

Christman agrees with Collins and Coburn. He doesn't think the Council needs to go page by page, but would like to hold off until the next Council meeting for a decision in order to make sure he totally understands the material. The Council will be making a decision that will affect the community for decades. It is not easy to change. The Council needs to be able to understand it.

Councilor Olsen suggested that staff review the comments made tonight and bring some suggested changes. He would like to look at the material as well.

Hare suggested that each Councilor look through the document and give to staff any changes they would like to see and then staff can come back with a redraft.

Delapoer said the Council could review, bring forward their concerns, and if there were four Councilors (the number needed for an issue to go forward) interested in the suggestion, add it to a list that comes back

to the Council with answers from staff. That may bring discussion before the Council in a more expedient way.

The Council agreed to the process.

Christman suggested that members of the Council submit their questions and list of items to staff before the Council meets again at the Work Session on September 12 in order for staff to gather information and be prepared with answers at the Council meeting on September 28. The Council agreed.

Business from the Public

Charlene Morrison, 1350 Springhill Drive, commented on an article that appeared in the *Parade* section of the Sunday newspaper, saying that it was about Michael Vick's dogs having been rehabilitated. She believes their rehabilitation was handled sensibly and intelligently. She said it was handled "sensibly", because the owner of the dogs was punished and "intelligently", because the dogs were retrained. She doesn't understand why the Blue case wasn't handled the same way. She asked the City attorneys to dismiss the case against the dog Blue.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) June 8, 2011, Regular Session.
 - b) July 11, 2011, Work Session.
 - c) August 10, 2011, Regular Session.
- 2) Authorizing appropriation of unappropriated beginning fund balance in the Justice Assistance Grant (JAG) fund. RES. NO. 6036
- 3) Transferring appropriation from the General Fund beginning balance to the Library. RES. NO. 6037
- 4) Authorizing the Library to sell surplus property.

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

Approval of Agreement

Renewing intergovernmental ground lease agreement with the state of Oregon through its Military Department for the National Guard Armory property.

Hare explained that this was a request for a renewal of a lease by the Oregon National Guard for the Armory building near the Airport. They have sent a proposed lease that would be for 40 years. Hare said that Delapoer is concerned about the length of the lease. Hare is in favor of signing the lease because the state has closed several armories lately and he wouldn't like to see that happen in Albany. The City continues to have protections in the lease, it is a desired use, and there are benefits to the community.

Delapoer said by agreeing to this lease the Council would be giving an asset away for 30 years for \$30. They expect to lease it for \$1.00 a year. He is not critical of the National Guard, but would prefer a shorter term. He suggests a 5-year term or a 10-year term. Delapoer was especially concerned about language allowing the Guard to sublease the building, on page 200 of the agenda. He would like to protect the City's asset, clean up what they have suggested, and consider language regarding landscaping as well.

The Council directed Delapoer to bring back new lease language for the Council to review.

Appointments

City Council Representatives.

MOTION: Christman moved to approve the appointments of Councilor Ray Kopczynski to the Council Audit Committee, Police Chief Ed Boyd to the Linn County Local Public Safety Coordinating Council, and Councilor Dick Olsen to the Transient Lodging Tax Advisory Committee. Kopczynski seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Kopczynski had questions regarding the off ramps of I-5 being closed for a month. Hare suggested he contact Oregon Department of Transportation (ODOT), as the City has no jurisdiction.

Coburn asked for an update on the burn-damaged China Buffet Restaurant. Hare said they have been working with staff. It is a slow process with the insurance companies.

Albany City Council Regular Session
Wednesday, August 24, 2011

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

The Executive Session was canceled.

NEXT MEETING DATE

The next scheduled meeting of the City Council is a Work Session, on Monday, September 12, 2011, at 4:00 p.m. The next scheduled Regular Session is Wednesday, September 14, 2011, at 7:15 p.m.

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:31 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director