

CITY OF ALBANY  
CITY COUNCIL  
Council Chambers  
Wednesday, September 14, 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**

Konopa led the pledge of allegiance to the flag.

**ROLL CALL**

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

**PROCLAMATION**

Look Me in the Eye Month.

Konopa read a proclamation declaring September 2011 as "Look Me in the Eye Month".

**SCHEDULED BUSINESS**

**Quasi-Judicial Public Hearing**

Vacating a portion of public alley right-of-way east of Baker Street between Fourth and Fifth Avenues, adopting findings, and declaring an emergency.

Konopa explained that the Quasi-judicial Public Hearing was regarding a proposed Vacation application to vacate a portion of a public alley right-of-way east of Baker Street, between Fourth Avenue and Fifth Avenue. The tract of land is located in the northeast one-quarter of the northwest one-quarter of Section 7, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon. The applicants are Rich Catlin, 424 Montgomery Street SE, and Ken Armstrong, 222 Fourth Avenue SE. This is City of Albany case file VC-01-11.

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

Konopa asked, if any members of the Council wished to abstain or declare a conflict of interest, or report any significant ex parte contact or a site visit? No members wished to abstain or declare a conflict of interest. Councilor Coburn said he had visited the site. Konopa said she knows the applicant Rich Catlin and has visited his home.

Konopa said for all those wishing to testify, please be aware that you must raise an issue with enough detail to afford the Council and parties an opportunity to respond to the issue if you later want to raise that issue on appeal to the Land Use Board of Appeals. Testimony and evidence must be directed towards the approval standards staff will describe or to the criteria in the plan or Development Code which you believe apply to the decision. If additional documents or evidence are provided by any party, the Council may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record request by the applicant shall result in a corresponding extension to the 120-day limit. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with enough detail to allow the local government or its designee to respond to the issue precludes an action for damages in Circuit Court.

Staff Report

Mike Leopard provided an overhead map (in agenda file) of the alley. He mentioned that there was a new ordinance on the dais for the Council to consider as there was a description error in the ordinance provided in the agenda packet. Leopard said five properties abut the alley and entry into it is from Baker Street. He explained that they looked at an early plat map and the alley was never extended beyond the borders of the Catlin property to the connecting street and because of location it is unlikely that it ever would. There is a storm drain in the alley and staff recommends that a public easement be retained.

Applicant

Rich Catlin, 422 Montgomery Street, said staff provided a good report. He added that this alley has never extended through to the other street. Their house blocks the possibility and their house was built in 1903. So, it is a condition that has existed for over 100 years. There is a low use public utility and they have

retained the signatures of 22 properties, of the 29 surrounding properties, more than officially needed. That meets the code requirement. They have agreed to a City of Albany public utility easement.

Testimony in Support

No one wished to speak.

Testimony in Opposition

No one wished to speak.

Testimony neither in favor or opposed.

No one wished to speak.

Konopa closed the public hearing at 7:27 p.m.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE VACATING A PORTION OF PUBLIC ALLEY RIGHT-OF-WAY EAST OF BAKER STREET BETWEEN FOURTH AND FIFTH AVENUES, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY."

MOTION: Coburn moved to have the ordinance read a second time in title only. Councilor Floyd 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. Councilor Olsen seconded the motion and it passed 5-0, and was designated Ordinance No. 5762.

Business from the Public

Charlene Morrison, 1350 NE Springhill Drive, representing Dr. Arlene Brooks, read a letter from Dr. Brooks saying that the dog Blue had marked one year of being impounded and is showing the results of it. She said that the dog is going "kennel crazy". Night time kenneling is the worst when he has no outside contact. She commented that Blue is losing his fighting mentality. He is running out of time.

Dick Owen, 810 Cox Street, commented that Blue's owner should have taken responsibility for him.

Sheri Holverson, 608 Alpine Meadow NW, said she is hoping that the Council isn't happy with the Blue situation either. She knows that the Council can do something. It hurts to think the Council will allow an innocent dog to die a slow death. She asked the Council to let him go to Hopes Haven.

Adoption of Ordinance

Calling for an election to submit to the electors of the city the question of renewing a levy at \$1.15 per \$1,000 assessed value for ambulance, fire, and police operations beginning in Fiscal Year 2013-2014 for five years.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE CALLING FOR AN ELECTION TO SUBMIT TO THE ELECTORS OF THE CITY THE QUESTION OF RENEWING A LEVY AT \$1.15 PER \$1,000 ASSESSED VALUE FOR AMBULANCE, FIRE, AND POLICE OPERATIONS BEGINNING IN FISCAL YEAR 2013-2014 FOR FIVE YEARS."

MOTION: Councilor Ray Kopczynski 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 a second time in title only.

MOTION: Collins moved to adopt the ordinance. Kopczynski seconded the motion.

Collins commented that what the City actually gets from the \$1.15 will be the current \$.95/\$1,000, because of compression and the quirks of the tax system. It is his understanding that although it seems like an increase, actual funds received will be equal to current levels, which will fund current levels of service.

Konopa said when they originally sought the levy they had factored in a cost-of-living, but didn't consider compression or health care costs. A decade ago, they didn't know. Going up to the \$1.15 will bring it to the \$.95 level.

When staff was asked to confirm the Council's understanding of the funding, Delapoer cautioned them not to publically comment on any City measure up for election as there have been ethical violation charges

brought against staff members in other cities for providing information such as being currently discussed. It is okay and appropriate that the Council, elected officials, should discuss why they support the measure. Staff comment may be considered unethical influence.

Kopczynski said that with the new tools on the City website, a property owner can look at where their taxes go. He calculated that on his property the increase would cost him another \$35.00 a year.

Collins said if folks are interested, they can look at the records available as well.

VOTE: A vote was taken on the motion and it passed 4-1, with Councilor Jeff Christman voting no, and was designated Ordinance No. 5763.

#### Adoption of Resolutions

##### Authorizing the City Manager or his designee to execute a release and settlement agreement with ADJ Properties and AJ Crushing, Inc.

Delapoer explained the property purchase agreement for Talking Water Gardens included a clause regarding the demolition of improvements on the property that needed to be removed to accommodate the wetland construction. The clause allowed for additional compensation to the seller should demolition costs end up less than estimated in the property appraisal. The final demolition costs associated with the wetland construction was less than estimated in the property appraisal. However, the exact amount of eligible demolition costs was in dispute between the City and the seller. A settlement agreement was reached in an effort to avoid litigation between the parties. The seller originally asked for \$250,000. It was negotiated to \$100,000.

Public Works Director Mark Shepard said this item went to the Albany /Millersburg Joint Management Committee and they unanimously approved payment.

MOTION: Collins moved to adopt the resolution authorizing the City Manager or his designee to execute a release and settlement agreement with ADJ Properties and AJ Crushing, Inc. Coburn seconded the motion and it passed 5-0, and was designated Resolution No. 6038.

Delapoer mentioned that the city of Millersburg had approved this resolution at their last Council meeting.

##### Declaring an assessment due and payable and directing collection pursuant to ORS Section 223.270, Procedure for Collection on Default.

Finance Director Stewart Taylor explained that this is one of a few assessments that is delinquent. When utilities are provided the City gives the property owners the opportunity to make installment payments on their assessed portion of costs. In 1993 the Council established the North Albany Sanitary Sewer District and imposed assessments on 683 properties. Many of the property owners agreed to pay their assessments through semi-annual installments payments for up to twenty years. All but thirty of the assessments were paid in full within a few years of the initial scheduled payments. Of the remaining thirty only the assessment on property owned by Randall Glaser and Barbara Glaser had not had regular installment payments. Details of the assessment history and what is owed are in the memo in the agenda packet. No payment has been made since 2001. Taylor said after notification from the City of possible legal action Glaser paid the smaller assessment amount off. And, on Monday he made a payment under the old agreement towards the large assessment. Taylor noted that Glaser has offered to pay at least \$1,000 a month, beginning October 10, 2011, toward the remaining balance due. His letter states that he fully intends to be paid in full by April 30, 2013. It is a Council decision to impose foreclosure or allow the payments.

Kopczynski said it seems he is trying to make some payments. He asked, can we put a lien on his property? Delapoer said we already have a lien. ORS 223.270 outlines a procedure for collection on default under the Bancroft Bonding Act. The procedure becomes available when an owner neglects or refuses to pay installment payments for a period of one year. This assessment is for more than one year. The City Council may pass a resolution declaring the whole sum, both principal and interest, due and payable at once, and direct collection in the same manner in which delinquent property taxes are collected under applicable law. This resolution is a declaration of default and accelerates the procedures.

Collins said if the property owner is not paying, they are still accruing interest, which increases their debt.

Delapoer said if the Council wants to give them time to pay off the assessment, then allow the Finance Director to renegotiate payments and if they are not made, have him bring a new resolution back to the Council.

There followed a discussion about other delinquent assessment payments. Taylor commented that this one is in the greatest default. His intent would be to bring others as well. The City imposes interest on the balance which does increase their debt. He commented that a property owner would be in a better position to use a bank to pay their assessment off.

There was a conversation about putting teeth in the assessment ordinance. Delapoer said the only way to get voluntary compliance is that people believe everyone will pay their fair share.

The Council was agreeable to consider Glaser's proposal for payoff of his remaining assessment.

DIRECTION: Council direction was for staff to accept Glaser's offer, and if he doesn't fulfill it, bring the issue back to the Council with a new resolution. The Council will not allow it to get in arrears again.

Coburn commented that in private business a customer doesn't have the option of not making payments for years and years. He wonders why the City doesn't aggressively pursue delinquent accounts.

Delapoer said the City doesn't have a collection force. It counts on people making their payments and abiding by their agreements.

Christman asked staff to bring all delinquent accounts to the Council together, rather than one at a time. Taylor said it may depend on how they approach the property owners. Each will require individual resolutions, but can bring those that meet a certain criteria as a group.

Delapoer said the Council could give staff parameters to work from. The Council agreed to have this item come to a work session discussion.

Taylor mentioned that the number of accounts that are behind is very small. By-in-large most property owners are in compliance. The citizens are responsive.

#### Adoption of Consent Calendar

- 1) Approval of Minutes
  - a) July 27, 2011, City Council Regular Meeting.
  - b) August 3, 2011, Special City Council Meeting.
  - c) August 8, 2011, City Council Work Session.
- 2) Appropriating additional Oregon Community Development Block grant funds to continue the low-income housing rehabilitation grant program. RES. NO. 6039
- 3) Accepting a right-of-way dedication deed from KCJ Properties, LLC. RES. NO. 6040
- 4) Approving liquor licenses for:
  - a) Relf x 2 Enterprises LLC, D/B/A Riley's Billiards, Bar & Grill, 124 Broadalbin Street SW.
  - b) Yummy House Restaurant Inc., 1644 Pacific Boulevard SE.
- 5) Establishing an Interlocal Contract (ILC) with the Houston-Galveston Area Council (H-GAC) for the purpose of cooperative purchasing for Fiscal Year 2011-2012, with automatic annual review thereafter.

Konopa pulled item 2) for discussion.

MOTION: Coburn moved to adopt the Consent Calendar with item 2) pulled for discussion. Collins seconded the motion and it passed 5-0.

Community Development Director Greg Byrne explained that there was a typographic error in the resolution in the Council packet. The amounts for the line items had been reversed. A new resolution with the correct designations was on the dais for the Council to review (in the agenda file).

MOTION: Collins moved to adopt the new resolution for item 2) of the Consent Calendar. Coburn seconded the motion and it passed 5-0.

#### Report

##### Designating Voting Delegate and Alternate for the 2011 League of Oregon Cities Conference.

MOTION: Collins moved to designate Councilor Jeff Christman as the voting delegate and Councilor Bessie Johnson as the alternate for the 2011 League of Oregon Cities Conference. Coburn seconded the motion and it passed 5-0.

#### BUSINESS FROM THE COUNCIL

##### Appropriating additional certified local government grant money from the state of Oregon to the Historic Preservation Program.

Community Development Planner Anne Catlin explained that they had not fully spent the grant in Fiscal Year 2010-2011 and neglected to budget the balance in Fiscal Year 2011-2012. This resolution would do that.

MOTION: Collins moved to adopt the resolution appropriating funds (\$1,000) in the Fiscal Year 2011-2012 from the state of Oregon to the Historic Preservation Program. Coburn seconded the motion and it passed 5-0, and was designated Resolution No. 6041.

Other Concerns

Coburn asked Delapoer about the Blue pending lawsuit, saying that he had questions and wasn't sure who to ask. Delapoer said staff could schedule an Executive Session and invite Mr. Warren, the attorney representing the City, to bring the Council up to date on the action. The Council asked staff to schedule the session.

Shepard reported that Utility Billing staffers have found an error in billing three mobile home parks and other customers for sewer service. The units and mobile home parks have sewer hookups but no water meters, some using wells instead. Sewer charges normally are based on wintertime water consumption. When there is no water meter, the City assumes a household uses eight units of water a month. One unit is 100 cubic feet, or 748 gallons. A billing error in 2000 charged these customers for just one household rather than the actual number. Shepard said, per the Municipal Code, they can try to collect arrears for six years. The duplexes and triplexes are not large amounts, but a manufactured park had 102 properties and was arrears for 11 years, which is over \$96,000. Staff is trying to work something out with the customers.

Konopa worried about the effect on the mobile home park residents saying the managers will probably raise the rent.

Collins was concerned about being reasonable and practical. How did the error originally occur? There may be extenuating circumstances that the ordinance doesn't consider. Also, he suggested eight units as an assumed monthly usage might be too much.

Coburn said someone with more than 100 units and paying a monthly sewer bill for one, about \$40, must realize something is wrong.

Delapoer said the City was asking the customers to make a proposal on how to resolve the issue.

There followed concerns that if it was a City error, should it be billed?

NEXT MEETING DATE

The next scheduled meeting of the City Council is a Work Session, on Monday, September 26, 2011, at 4:00 p.m., in the Municipal Court Room, at City Hall.

The next scheduled Regular Session, is on Wednesday, September 28, 2011, at 7:15 p.m., in the Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:46 p.m.

Respectfully submitted by,

Betty Langwell, MMC  
City Clerk

Reviewed by,

Stewart Taylor  
Finance Director