

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, December 7, 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
Councilor absent: Bessie Johnson

PRESENTATION

Target Community Giving Check Presentation to Parks & Recreation.

Target Community Resources Liaison Tracy Egan presented check for \$6,000 to the Parks & Recreation Department to benefit the Fiscal Year 2011-2012 concert series.

PROCLAMATION

National Pearl Harbor Remembrance Day.

Konopa read a proclamation naming Wednesday, December 7, 2011, as National Pearl Harbor Remembrance Day.

SCHEDULED BUSINESS

Communications

Accepting the resignation of Bob Kish from the Planning Commission.

MOTION: Councilor Coburn moved to accept the resignation of Bob Kish from the Planning Commission and send a letter of thanks for his service. Councilor Christman seconded the motion and it passed 5-0.

Accepting the resignation of Bodie Dickerson from the City Tree Commission.

MOTION: Coburn moved to accept the resignation of Bodie Dickerson from the City Tree Commission and send a letter of thanks for her service. Councilor Collins seconded the motion and it passed 5-0.

Quasi-Judicial Public Hearing

CI-02-11, code interpretation to allow financial assurances to be used to meet substantial construction requirements specific to Lowe's HIW, Inc.

Konopa explained that on November 7, 2011, Attorney Michael C. Robinson, representing Lowe's HIW, Inc., submitted a letter requesting a Code Interpretation to allow financial assurances to be used to meet substantial construction requirements for their proposed development on an 11.54 acre site located at the southeast corner of Ninth Avenue SE and Oak Street SE. The original Site Plan Review application was approved by the City Council on January 13, 2010, under file numbers SP-37-08; SP-38-08; and VR 09-08.

Konopa opened the Quasi-Judicial Public Hearing at 7:22 p.m.

No Council members wished to abstain, declare a conflict of interest, report any significant ex parte contact, or a site visit.

Staff Report

Planner David Marineau explained that Lowe's had applied for the Code interpretation that would allow financial assurances to be used to meet substantial construction requirements in accordance with the City's ongoing practices and specific sections of Article 12 of the Albany Development Code. If approved this interpretation would allow the development to proceed without a limit on the time allowed, rather than

allowing their approvals to expire three years from their original approval date. Staff recommends approval of the Code interpretation with the following conditions:

1. Approval of the proposed Code Interpretation is limited to those items specifically referenced in the staff report and approved herein. Approval of those items does not change any other requirements of approval of the original site plan or variance, including the conditions of approval. The original conditions of approval still apply.
2. In the event that the financial assurance for the public improvements, whether in the form of the Local Improvement District (LID) or Infrastructure Funding agreement (IFA), should become invalidated, breached by Lowe's, or otherwise fail to assure the required public improvements, vesting of the project shall revert back to its original terms of approval which are contained in the Notice of Decision for SP-37-08; SP-38-08; VR-09-08, dated January 15, 2010.

Applicant Testimony

Michael Robinson, representing Lowe's HIW, Inc., said that they agree with the findings and conditions.

Other Testimony

No one else wished to speak in favor or against.

Konopa closed the public hearing at 7:28 p.m.

Christman asked for the date of completion that is part of the Infrastructure Funding Agreement. Public Works Director Mark Shepard said it is December 2014.

City Attorney Jim Delapoer said the City wants a high level of confidence that the infrastructure will be built. The usual bond requirement doesn't make sense in this case and he gave a history of Lowe's agreements with the City. He said with this interpretation, Lowe's cannot open the store without the infrastructure being completed. Lowe's asked to do this as a public process, and he applauds them for that.

MOTION: Collins moved that the Council approve the request for a Development Code Interpretation to allow financial assurances to be used to meet substantial construction requirements specific to Lowe's HIW, Inc., as presented in Exhibits A, B, C, and D for Planning Division File CI-02-11 (agenda file pages 4-28). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing. Coburn seconded the motion and it passed 5-0.

Konopa explained that within five days of the decision the City Council provides written notice of the decision to the applicant and any other parties entitled to notice. The City's decision may be appealed to the State Land Use Board of Appeals (LUBA) if a person with standing files a completed Notice to Appeal application and the associated filing fee no later than 21 days from the date the City mails the Notice of Decision.

Legislative Public Hearings

DC-02-11, staff-initiated amendments to the Albany Development Code related to the Site Plan Review standards and procedures.

Konopa explained that this Legislative Public Hearing was regarding amendments to the Albany Development Code (ADC) to 1) ensure that any Site Plan Review process that involves interpretation is considered a land use decision; 2) streamline and simplify the process; and 3) fix conflicting sections in the Code related to the Site Plan Review process. The applicant is the City of Albany.

Konopa opened the Legislative Public Hearing at 7:35 p.m.

Staff Report

Planner II Evan Fransted said there are currently three levels of Site Plan Review: Option A (new development, Type I-L, limited land use decision); Option B (additions or increased intensity to existing site or development, Type I-L, limited land use); and Option C (change of uses, Type I administrative level review).

Fransted said the Type I process is a review based on standards specified in the Code that do not require interpretation or the exercise of policy or legal judgment. It does not require notice to surrounding property owners or ability to appeal the decision. The review criterion for the Option C application often requires staff interpretation and legal judgment. Staff recommends that the Option C application be eliminated and replaced with a Site Plan Review Type I-L process. The proposed amendments would allow some development activities to no longer require Site Plan Review and would only require building permits. He said the three different types of Site Plan Review applications (Options A, B, and C) would be combined and streamlined to reduce staff time and paper. Projects currently reviewed through the Site Plan Option C process that qualify for the Type I process will be processed administratively but the process will no longer

be called “site plan review.” Several ADC sections that conflict would be corrected with the proposed amendments.

Public Testimony

No one wished to speak.

Konopa closed the public hearing at 7:41 p.m.

Christman asked if these changes would have helped with the situation of the store on Century Drive that wanted to expand. Planning Director Greg Byrne said yes, it would have made that situation less uncomfortable.

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 SITE PLAN REVIEW (FILE DC-02-11) 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 a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Collins seconded the motion and it passed 5-0, and was designated Ordinance No. 5767.

DC-03-11, legislative amendments to the Albany Development Code clarifying existing standards and improving the land use review process.

Konopa opened the Legislative Public Hearing at 7:46 p.m.

Staff Report

Planner II Anne Catlin said this is a semi-annual package of legislative amendments to the Albany Development Code. Most of the amendments are staff suggestions to clarify existing standards and improve the land use review process. They clarify the requirements for notifications and mailings, streamline processes, and correct any inconsistencies.

Coburn was concerned about the banner sign limitation on page 67, Article 13, 13.680, in the agenda, as it relates to the ones downtown. Catlin said those are addressed on page 68, (4), Temporary Displays within the Downtown Parking Assessment District, allowing open banner flags in the right-of-way with an approved permit.

Public Testimony

No one wished to speak.

Konopa closed the Legislative Public Hearing at 7:51 p.m.

City Attorney Jim Delapoer read for the first time in title only “AN ORDINANCE AMENDING THE ALBANY DEVELOPMENT CODE CLARIFYING EXISTING STANDARDS AND IMPROVING THE LAND USE REVIEW PROCESS.”

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 a second time in title only.

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

Christman commented on signs and the lack of enforcement or the uneven enforcement. He doesn't think the City is going far enough in relaxing the law. He would like the law to read “no signs in public right of way.”

VOTE: A vote was taken on the motion and it passed 4-1, with Christman voting no, and was designated Ordinance No. 5768.

Second Reading of Ordinances

Amending Albany Municipal Code (AMC) 6.18, "Dangerous Dogs," and declaring an emergency.

City Attorney Jim Delapoer read for the second time in title only "AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) 6.18, "DANGEROUS DOGS," AND DECLARING AN EMERGENCY."

MOTION: Coburn moved to adopt the ordinance. Councilor Olsen seconded the motion and it passed 4-1, with Christman voting no, and was designated Ordinance No. 5769.

Konopa thanked the work group that spent time creating the new language for the ordinance.

Business from the Public

Bill Root, 2634 Valley View Drive, representing the American Motorcycle Association, thanked City of Albany departments for their cooperation during the Oregon Toy Run on Sunday, December 4, 2011.

Konopa mentioned that it was a great turnout with lots of gifts for the kids.

First Reading of Ordinance

Amending Albany Municipal Code 11.01.010, 11.01.235, and 11.01.285, and adding a new section 11.01.287 to revise and expand language relating to water curtailment and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE 11.01.010, 11.01.235, AND 11.01.285, AND ADDING A NEW SECTION 11.01.287 TO REVISE AND EXPAND LANGUAGE RELATING TO WATER CURTAILMENT; AND DECLARING AND EMERGENCY."

MOTION: Coburn moved to have the ordinance read a second time in title only. Councilor Kopczynski seconded the motion and it passed 5-0.

Delapoer read the ordinance a second time in title only.

Shepard explained that this ordinance was mostly housekeeping, to get the Municipal Code to align with the Water Management Plan.

MOTION: Coburn moved to adopt the ordinance. Kopczynski seconded the motion and it passed 5-0, and was designated Ordinance No. 5770.

Adoption of Resolutions

Accepting a grant from the Local Government Grant Program through the Oregon Parks & Recreation Department for the purchase of East Thornton Lake Natural Area and delegating authority to the Parks & Recreation Director to sign the grant agreement and related documents.

MOTION: Collins moved to adopt the resolution authorizing the City of Albany Parks & Recreation Department to accept a Recreation Trails Program Grant from the Oregon Parks and Recreation Department for the proposed purchase of East Thornton Lake Natural Area and delegating authority to the Parks & Recreation Director to sign the grant agreement and related documents. Kopczynski seconded the motion.

Konopa mentioned that as a recipient, Albany's was the largest grant that was awarded in the state of Oregon.

VOTE: A vote was taken on the motion and it passed 5-0, and was designated Resolution No. 6061.

MOTION: Collins moved to fund the remaining outstanding balance of \$390,074 with Parks System Development Charges (SDC) funds, and continue fundraising efforts to backfill some of the City's expenses from the SDCs. This motion is subject to state grant approval. Olsen seconded the motion. Collins explained that his motion is based on the information that the Council received at the Monday, December 5, 2011, City Council Work Session.

Christman was concerned that fundraising may slow down if the community believes they have this fallback.

Collins said the plan hasn't changed; the Council would only be solidifying the fallback requirement for the grant acceptance. He said he would continue to support fundraising efforts within the community.

Coburn was frustrated that the City was in this position, but defaulting is not really an option. He too wanted to urge continued fundraising efforts.

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

Adopting fees to coincide with amendments to the Albany Development Code that changes the procedures for the Site Plan Review application process.

MOTION: Collins moved to adopt the resolution adopting fees to coincide with amendments to the Albany Development Code that changes the procedures for the Site Plan Review application process. Kopczynski seconded the motion and it passed 5-0, and was designated Resolution No. 6062.

Adopting fees to support the Natural Resource Impact Review process to implement Statewide Planning Goal 5.

Byrne noted that there is a correction to the resolution on page 93 of the agenda. The corrected resolution is on the dais. In the fifth WHEREAS statement the word "more" has replaced the word "greater" and the phrase "or average" has been inserted before the word "costs."

MOTION: Collins moved to adopt the resolution on the dais adopting fees to support the Natural Resource Impact Review process to implement Statewide Planning Goal 5, with corrections to the fifth "WHEREAS" as discussed by the Council. Kopczynski seconded the motion.

Byrne explained that the fees cover minimum staffing time. They are in-line with other fees and are associated with the new requirements adopted by the Council. On average they cover 10-15% of actual costs.

Christman said he would be voting no, as he doesn't agree with the Goal 5 regulations. The fees are another example of having to absorb costs; the City can't charge the actual costs of implementing the regulations.

VOTE: A vote was taken on the motion and it passed 4-1, with Christman voting no, and was designated Resolution No. 6063.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) February 23, 2011, Transient Room Tax Task Force Meeting
 - b) October 10, 2011, City Council Work Session
 - c) October 12, 2011, City Council Regular Session
 - d) October 24, 2011, City Council Work Session
 - e) November 1, 2011, Dangerous Dog Work Group Meeting
 - f) November 2, 2011, City Council Regular Session
 - g) November 9, 2011, City Council Regular Session
- 2) Appropriating funds for the 2011-2012 State Hazardous Materials Emergency Preparedness Grant on behalf of the Mid-Valley Local Emergency Planning Committee for a hazardous materials full-scale exercise and training. RES. NO. 6064
- 3) Reclassifying staff positions in the Information Technology Department.
- 4) Accepting a grant from Oregon Department of Human Services for drinking water source protection. RES. NO. 6065
- 5) Accepting a franchised utility easement from Benton Woods Homeowners' Association, an Oregon nonprofit organization. RES. NO. 6066

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

BUSINESS FROM THE COUNCIL

Coburn asked if there is an update on sewer back-billing concerns. Shepard said one manufactured park is interested in negotiating a deal. Delapoer said they have a letter going out today to the largest delinquency. Most of the smaller properties have already paid.

Konopa invited the Council to the downtown parlor tour. Olsen's house is on the tour.

Hare reported that the Community Round Table had discussions regarding community support for the school district. If the Council has any ideas for specific projects, they would like to hear them.

Hare said the City of Albany budget discussions will be back in January and staff will present a plan regarding priorities and the impacts on service levels.

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Management Assistant/Public Information Officer Marilyn Smith said that Monday's work session was canceled. But, the Joint Planning Commission meeting would go ahead as planned.

NEXT MEETING DATE

The next scheduled meeting is Monday, December 12, a Joint Work Session with the Planning Commission, at 5:15 p.m., in the Municipal Court Room of City Hall.

The next scheduled Regular Session is Wednesday, December 14, 2011, at 7:15 p.m., in the Council Chambers of City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:31 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director