



CITY OF ALBANY
CITY COUNCIL SPECIAL WORK SESSION
City Hall, Municipal Court Room
333 Broadalbin Street SW
Monday, May 9, 2011
6:30 p.m.

MINUTES

CALL TO ORDER

Council President Floyd Collins called the meeting to order at 6:45 p.m.

ROLL CALL

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

Absent: Mayor Sharon Konopa

GOAL 5

Collins said that tonight we are having a Special Work Session on the proposed Goal 5 implementation in Albany. He said that the public hearing for Goal 5 is scheduled for Wednesday, May 25, 2011.

Community Development Director Greg Byrne said that this is one of the statewide planning goals and doing this work is the last task in the City of Albany's periodic review process in the Comprehensive Plan. This process was started in 1997. He said that the Goal 5 work was set aside due to ballot measures and mixed advice from the state. Staff restarted the work and has been intensely working on Goal 5 for the past 18 months. There have been joint City Council and Planning Commission work sessions, and the Planning Commission has held three public hearings regarding Goal 5. Byrne said that staff wanted to start this process with a work session to get the Council grounded because of the changes since the last meetings.

Byrne presented a PowerPoint presentation [see agenda packet]. He said that Albany is one of the last cities to complete Goal 5 work. Goal 5 is called Open Spaces, Scenic and Historic Areas, and Natural Resources. The focus will be on the open spaces and natural resources portion of it. The reason for this work is to comply with state and federal requirements, to protect significant resources, and to respect local values. It is a balancing act, and there is not a single easy solution for it and it has been fairly unpopular along the way. Byrne said that this process involves redrafting five chapters and eight articles in the Albany Development Code. He said that staff would like to know if they are on the wrong course before the redrafting is complete.

Byrne said that there are three categories of resources:

1. Significant wetlands – Identified by an approved methodology by the state and the wetland exhibits one or more of certain factors that are in that methodology.
2. Riparian areas – Strip of land between the ordinary high water mark and upland vegetation. It is generally characterized by wetland or riparian vegetation. It is an important area for wildlife and water quality.
3. Wildlife habitat – Wildlife must be listed as endangered, threatened, or on a specific federal or state list, and the wildlife must be documented in a particular location. He said that there is only one area in Albany that meets this criteria and that is the Thornton Lakes.

Byrne said that for many months staff has considered Safe Harbor regulations and staff found that it wasn't a good fit and there were several situations where it will not work. There was a shift from Safe Harbor to the Economic, Social, Environmental, and Energy (ESSE) analysis. Byrne thanked Public Works staff for all of their hard work with this effort. Public Works has helped fund some of the ESEE analysis work and the Engineering Division has put in a lot of work with Community Development. City Attorney Jim Delapoer helped to make sure that everything was done properly as these adjustments were made.

Byrne said that the approach will be to take the Open Space District, which is a zoning district that has been on the books since 1981, and augment it with overlay districts that respond to the three resource areas. He said it has been a late shift in the process, and the Planning Commission asked to move forward with this change.

Byrne said that the Open Space District is like any other in that there are permitted uses and conditional uses allowed. Permitted uses include single family homes on existing legal lots, paths and bridges for pedestrians and bikes, public roads and utilities, and agriculture. Conditional uses include accessory buildings, onsite retail of seasonal goods, nurseries and greenhouses, parks and passive recreation facilities, public infrastructure plants, and development in non-significant wetlands. Byrne said that there will be some uses that will be proposed for deletion including: golf and country clubs, driving ranges, and swimming or tennis clubs.

Byrne said that on top of the zoning map there would be three new overlays which will include significant wetlands, riparian corridors, and habitat assessment. For a district with overlays, the uses would be governed by the underlying zoning. Activities that will be subject to review include land divisions, any new structures, impervious surfaces, private utilities not in the City's master plan, and site modification. There are activities that will be exempt such as emergency responses, removal of refuse, normal farming practices, and normal maintenance and repair.

Wetlands – Byrne said that the Department of State Lands (DSL) regulates all wetlands and some are locally significant. We are required by law to identify those wetlands that are locally significant and follow an approved methodology to do so. Everything else is deemed non-significant. Wetlands associated with riparian areas would continue to be treated as significant. Some isolated wetlands are of higher quality than others. There are only four wetlands that are isolated and significant in Albany. Byrne believes this will meet the state requirements for significant wetlands that are locally regulated. City constructed facilities would be permitted through the significant wetlands. Underground utilities could go through if the topsoil and vegetation is replaced after construction; any others would have to go through variances or adjustments.

Collins asked how a Bonneville Power Administration (BPA) (spell out this acronym) line going through would be dealt with. Byrne said that it would go through a variance or adjustment process and DSL would also be involved in that regulation. Byrne said that BPA doesn't usually disturb much soil and that they sometimes fly under the radar of DSL requirements if they are not moving much material. Staff would regulate to the degree that if there is removal of vegetation there would need to be mitigation for that activity.

Collins said that it was mentioned in the earlier work session that Albany has significant power issues throughout the community and major transportation lines are going to go overhead somehow. Collins wants to be sure we are not in a position of precluding that option of logically extending that utility; otherwise we will not be able to develop the industrial lands out south.

Riparian Corridors – Byrne said that it is really tough to write one set of regulations to address all of the situations for riparian areas. Collins said that when he was dealing with riparian zones that had armor in them, staff had to inspect the armor every three years under a federal requirement, and remove any encroachment that would disturb the armor. Planning Manager Heather Hansen said that she believes state and federal regulations have changed quite a bit and that armoring is discouraged now. She said that it also depends on why the armor was put in to begin with such as for flood management versus bank stabilization. Hansen said that staff is talking about having provisions for maintenance of existing riparian armored areas. Councilor Bessie Johnson asked what "armored" means. Byrne said that it can be big rocks or large woody debris that is anchored into the stream bank or fabric that is laid down with planting put over the top.

Byrne said that staff started with the Safe Harbor plan of a 50-foot setback. It was modified to be a 25-foot setback if enhancement is provided in the remaining 25 feet. Existing residential lots less than 20,000 square feet would be exempt. He said that there are 326 lots that would be exempt.

Collins asked how complicated ESEE analysis is. Byrne said that we have had three done and one was done in-house. They can be anywhere from 15-20 pages for a small area and up to a large volume depending on the size.

Collins asked if a single-family home owner on one acre would have to do the ESEE analysis. Byrne said that they wouldn't need to do an ESEE analysis unless they are planning to encroach beyond 50-feet of the riparian corridor. Collins asked if a person could do the analysis themselves. Byrne said that they could, but it would need to come to the City Council to be adopted and submitted as a change to the City's Comprehensive Plan.

Wildlife Habitat – Byrne said that we are required to put in provisions to protect wildlife habitat. The 75-foot distance is not a setback, it is an assessment area. He said that means hiring a qualified professional to assess the area and see if there is critical habitat there. Hansen clarified that there is an exemption of 2,000 square feet of encroachment in that wildlife area. Delapoer asked if a person could develop more than 2,000 feet if there is no critical wildlife habitat. Byrne said yes. He said that people are doing a lot voluntarily in the area but the state will not allow us to rely on voluntary action alone.

Hansen distributed handouts to the Council [see agenda packet].

Mitchell Property on Cox Creek Handout – Hansen said that this property is outside city limits and is designated light commercial and open space. This is an example of a riparian area that could be reduced from a 50-foot setback to a 25-foot setback if a request is made. She said that staff is working on language so that the Grand Prairie Water District can continue to maintain the creek as they have been doing.

Collins said that the area between the red lines was designed to carry a certain flow capacity for flood protection. He asked, how does one enhance the area and still maintain capacity? Hansen said that the banks not within the waterway could be enhanced; the open space is not the same as high watermarks.

Collins said that Grand Prairie has to have a plan that complies with the National Resources Conservation Service (NRCS) and we could accept that as a de facto plan. Hansen said that staff will need to review the flood plain modeling plan and we would just continue to approve their maintenance plan each year.

Councilor Bill Coburn said that we don't have any jurisdiction regarding this property since it is outside of city limits. Hansen said that is correct, but if the owners want to develop the property it is likely to be annexed and the rules would apply at that time. Collins asked what would happen if they developed the property under Linn County regulations and encroached upon the riparian corridor overlay and then asked to be annexed. Hansen said that she assumes the property would be "grandfathered" in. She said that the City has an agreement with Linn County that when development is proposed within city limits and the urban growth boundary, the City staff can review it.

Kennel Property on Cox Creek – Hansen said that this property is an example of a property that is mostly wetlands and riparian corridor. She said that the City can't render property unbuildable. She said that the property owner could request a variance so they could develop some of the property. She said that this property is very wet.

Lepman Property on Oak Creek – Hansen said that this property is outside city limits and is mostly open space and significant wetlands, which can't be impacted.

Nauman Property on West Thornton Lake – Hansen said that this is an example of all three overlays. She said all of the overlays are within existing open space zoning. She said that a turtle habitat assessment would need to be done if the property owner plans to disturb more than 2,000 square feet within the habitat assessment overlay.

Rodgers Property on Robinhood Lane – Hansen said that this is two lots that have yet to be developed in a subdivision. She said that she spoke to Mr. Rodgers and he had a delineation completed and the wetland is significantly smaller than what is depicted in the photo. She said that it is possible he could have two parcels to put houses on. Collins asked, if moving the building envelope around encroaches on the required setback is it subject to variance? Byrne said that if the building envelope can't be moved around to honor the setbacks, then they can get an adjustment that will allow minimal encroachment to allow a 3,000 square foot building envelope. Hansen said that if they wanted a bigger building, it would require a variance.

Amos Property on West Thornton Lake – Hansen said that this is another example of all three overlays. She said that the overlays could be reduced if the state completes an onsite review of the land. With the habitat assessment area, the property owners would need to have it assessed if they are planning to impact more than 2,000 square feet.

Church Property with Lower Quality Isolated Wetland – Hansen said this is considered an isolated non-significant wetland. She said that the recommendation for this property is to not regulate it locally. The property owner would have to work with the state if they want to develop this property.

Swan Lake Backyards – Hansen said that these properties are exempt from the 50-foot riparian setback. Byrne said that this is probably the best example of why the Safe Harbor policy wouldn't work. Councilor Dick Olsen asked, is this a man-made lake? Hansen yes, and it is part of creek drainage.

Hansen said that the consultant's recommendation is to not exempt creek sections that have armoring. She said that there are only a few segments that are fully armored. The current direction doesn't recommend exempting sections that are armored. Collins asked if the ballparks on Oak Street wouldn't be built the way that they are now. Byrne said that there probably would have been some modification to the way that was done. Hansen said that things do have to be done differently. Staff is trying to limit the number of regulations.

Byrne said that staff will prepare the packet for the public hearing on May 25 if everything is agreeable to the Council.

Olsen said that he doesn't have any complaints with what is being proposed, but there may be citizens who may contact him with concerns and he will listen to those comments. Byrne said that it has been heavily modified at the previous public hearings. Hansen said that the consultant hired to do this work has a lot of experience writing this type of an analysis and staff asked him to come up with the minimum to meet Goal 5 rules. The consultant's recommendation is a balance of making it work for the citizens and having it meet the requirements of the state.

Delapoer said that the Council has discretion to modify the amendments. He said that the state is going to impose regulations and meeting the minimum regulations is what the Council can do.

Collins asked what will happen if this doesn't get it done. Delapoer said that the state will likely say to do it again and continue until it gets done. Hansen said that there are also sanctions that could be imposed.

Byrne said that staff has been in constant communication with state staff and they know where the City is at in the process. Delapoer said that it is important to see where Community Development is standing and staff knows that if we give into all of the requests made then the state may not approve.

Collins said that his recommendation is to move forward with the minimum requirements being proposed, but to not impose additional regulations.

Collins asked if anyone in the audience has thoughts or concerns that haven't been addressed by staff yet. Jack (last name and address?) said that this process is moving along fast. He asked the Council to give the public more time to review and make comments on Goal 5. He said that five days is not quite enough time.

Collins asked if it would be okay to open the public hearing on May 25, 2011, and then have a continuation of the public hearing at the next regular Council meeting for comments. Delapoer said that this is acceptable.

MOTION: Councilor Ralph Reid moved to open the Goal 5 public hearing on May 25, 2011, to receive the staff report, and then continue the public hearing at the next Council meeting on June 8, 2011. Johnson seconded the motion and it passed 5-0. (why not 6-0 if all the Councilors were in attendance?)

Management Assistant/Public Information Officer Marilyn Smith handed out a proposed ordinance to deal with the overpass issue [see agenda file]. She said that the ordinance would prohibit consumption of alcoholic beverages and possession of open containers at the train station property. Staff has also contacted ODOT to request a fence along the ledge that is next to the sidewalk at the south end of the overpass. The property has already been posted as no camping and no trespassing. The gazebo will be closed and there will be a notice of no trespassing there as well.

Smith said that there is a growing problem with people hanging out in the overpass area and they are moving into private property and business areas. Smith said that the ordinance has an exemption clause allowing consumption under permitted circumstances.

Reid said that he has an issue with the fact that this ordinance is only being applied to the train station and not the overpass. Delapoer said that there is a state law that prohibits cities from enforcing laws that outlaw public drinking. He said that the state made a decision that alcoholism is a disease and that laws that make it unlawful to be an alcoholic are not enforceable. He said that the Council can designate specific areas that are within the cities control.

Delapoer said that he understands that there are many who would like the Council to outlaw panhandling, but we can't do that. He said that panhandling is deemed, under the Oregon Constitution, as freedom of speech. Reid asked if the ordinance will include the REA building. Smith said that it does include the REA building and all city-owned property adjacent to the train station. Smith said that this ordinance will come before the Council at the Wednesday, May 11, 2011, meeting.

Linn County Commissioner Roger Nyquist said that he wants to clarify that the City has an urban renewal district, Central Albany Revitalization Agency (CARA), and that there are funds sitting in an account. He said that he views it as a community asset and that there is the option to defer some of the collection of taxes. He said that the City is allowed to collect up to \$58 million and there is the ability to defer a portion that is not committed to bonding, which is about \$1.2 million. He said that he is just looking for a way to help the schools. He said that asking Millersburg and Tangent to participate will be very difficult. Collins said that he has talked to Nyquist about some of these issues. He said that Council will need to understand the short- and long-term impacts to CARA. Olsen asked, what will be the effect on the school district? Nyquist said that the worst-case scenario would be that only one-third of the money could go to the school district.

ADJOURNMENT

There being no further business, the Work Session adjourned at 8:25 p.m.

Respectfully submitted,

Diana Eilers
Administrative Assistant I

Reviewed by,

Wes Hare
City Manager