

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, August 8, 2011
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:02 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Jeff Christman, Bill Coburn, and Floyd Collins.

Councilors absent: Councilor Bessie Johnson arrived at 4:46 p.m.

Councilor-elect Ray Kopczynski was in the audience.

NORTH ALBANY FLOODPLAIN STUDY REPORT

Assistant Public Works Director/City Engineer Jeff Blaine said that Community Development and Public Works staff continue to work together on floodplain issues and that Planning Manager Heather Hansen is also in attendance to answer questions.

There are two policy questions to consider. The first is: What data should staff use for evaluation of floodplain development proposals in North Albany while the Federal Emergency Management Agency (FEMA) reviews the North Albany Floodplain Study (NAFS)? The second is: Does Council want our floodplain development regulations to consider flood impacts to neighboring property owners (referred to as “No Adverse Impact”)?

The Council considered the questions one at a time.

Policy Question 1: What data should staff use for evaluating floodplain development proposals in North Albany while FEMA reviews the NAFS?

Blaine said that in January there was a Work Session for the draft NAFS. The draft study showed a previously unmapped floodway and differences in flood depths ranging from five feet less to as much as two feet more than FEMA maps predict. Following that work session Council directed staff to finalize the study initiate public outreach, and submit the study to FEMA for review and potential map amendments. The public outreach event will be an Open House in North Albany in the next few months.

Blaine mentioned that between the public outreach activities and the FEMA review process, it could be up to two years before the City has a determination from FEMA. In the interim, what should staff use to regulate development; the FEMA data or the NAFS data? There have been several recent development inquiries about North Albany that are driving the timing of this question. The staff memo in the Council packet has two options:

- Option 1 is to continue staff’s current practice of using the study as an advisory tool, except for the previously unmapped floodway which is regulated as such per current Albany Development Code (ADC) language.
- Option 2 is to use both studies and regulate to the worst case scenario of the two.

Blaine said that FEMA recommends Option 2 because it is the most conservative approach.

Blaine introduced two maps: “Consultant’s 100-year Floodplain Boundary” (see agenda file) and “FEMA vs. Consultant 100-year Flood Plain” (see agenda file).

Councilor Floyd Collins said that under Option 2, regulating to the worst case, where the study shows higher flood levels than FEMA, someone building a house may have to build it up higher than currently required. Under Option 1, we would advise them of the two different flood levels and they would choose which to follow.

Blaine was asked, if the maps were advisory only, and showed higher flood levels than the FEMA map, and the builder didn’t take our advice, what is the risk to owner? Blaine said the worst scenario is that FEMA later agrees with our study, or specifies an even higher elevation, then the structure is at risk of flood damage and flood insurance may be required of them. Conversely, if the City were to regulate to the study’s higher elevation and then FEMA disagrees and dictates a lesser flood elevation, than the house would have been built up higher than was necessary.

Blaine explained that on the maps, the pink and the red areas are those that are in conflict. Discussion followed.

Collins pointed out that if the City were to choose to follow FEMA’s recommended approach the risk of requiring someone to build too high is probably low since the higher flood levels are generally east of Springhill Drive where there is a relatively low development opportunity.

Councilor Bill Coburn asked, what is the obligation of the City? Can we just show the two plans and tell them we won't know for a few years which will be adopted, or are we supposed to make the decision for the homeowner/developer? The City is not obligated to make that decision; Council could choose to follow Option 1 which is to use the study as an advisory tool in the interim. Hansen said she is more concerned about a subdivision where the lots get sold off and the first or second buyer has no idea that stricter standards may come into play later; and then they are surprised when their insurance suddenly goes up.

City Attorney Jim Delapoer said if that were to happen, and there were a flooding event, anyone who doesn't have flood insurance who has no one else to sue, may try to sue the City, even if the City isn't liable. This is what happened on 13th Street in North Albany some years ago. In North Albany much development took place before the area was annexed into the City and/or under older floodplain data and regulations. Now there is scientific data that says building at a certain level may cause damage by high water. Then the City has a greater responsibility. Delapoer said, our duty is higher to protect from that which we do know. It's not the developer we need to be concerned with; it's the purchaser that comes later that assumed the City wouldn't allow it to be built, if it was not safe. Albany hasn't been held to those standards yet, but Keizer has experienced it.

Community Development Director Greg Byrne said the NAFS map had more analysis go into it than FEMA's, and when compared to the aerial photos for the 1964 flood, it compares favorably. Its reliability seems to be high.

Collins asked, why are we considering taking a position if we haven't completed our public outreach yet and heard from the public? He suggested waiting to get input from the public before taking a position.

Delapoer suggested that if the Council is leaning towards one of the options, that they have staff draft code language and send that to the public hearing so it is tested. He pointed out that "worst case" really means "most protected case."

Councilor Jeff Christman asked, what applications are driving the need for this decision? Blaine said Blossom Crossing subdivision, the Scott Lepman property north of the access road to North Albany Middle School, the Riverside Baptist Church, and Hayden Homes.

Collins said he is leaning towards Option 2, to regulate to the worst case, in order to protect current and future homeowners.

Councilor-elect Ray Kopczynski asked, if the City stayed with Option 1 and then FEMA changes, can we indemnify the City? Delapoer said, not practically. The potential claimants are not going to be the same as the indemnifiers. The City can say there is a risk but if it is not in the ADC, we can't prohibit it anyway.

Christman said he leans towards using Option 1 until we have conducted the public outreach, and then have the public hearings to consider ADC changes to move to Option 2.

Staff explained that their original intent was to have neighborhood meetings to share the different maps. The policy issue was previously on a separate tract. Blaine suggested that at the Open House, staff can explain to the public that the Council has been asked the question and there will be public hearings.

ACTION: For Policy Question #1: The Council directed staff to use Option 1, to utilize the NAFS as advisory only; and to conduct public outreach about the study results.

Following the public outreach Council would like to consider Option 2 by holding public hearings for ADC code amendments.

Policy Question 2: Does Council want the City's floodplain development regulations to consider flood impacts to neighboring property owners (referred to as "No Adverse Impact")?

Blaine said that last September the City adopted National Flood Insurance Program's (NFIP) minimum standards for regulating development in the floodplain. Adoption was required at that time in order for the City to remain in the flood insurance program. Those minimum standards are based on protection of floodway and flood proofing new structures, but does not prevent a development activity, such as fill, from negatively impacting neighboring properties during a flood event. The two options for Council to consider are:

- Option 1: Do not implement a No Adverse Impact Approach (status quo)
- Option 2: Implement a No Adverse Impact Approach, which requires amendments to the ADC

Blaine referred to the "Example of Fill Impacts on Neighboring Properties" map (see agenda file). Blaine used the map to give an example of a scenario where fill in the flood fringe, such as that necessary to support a subdivision, could have significant negative flood impacts on properties nearby.

Councilor Bessie Johnson arrived at 4:46 p.m.

Blaine said staff looked at policies in Corvallis, Benton County, Linn County, Salem, and some in Portland. All give consideration to the no-impact approach, though their methods and standards for gauging the impact are all different. There is a wide range of methods to protect existing properties from development.

Konopa recalled that following the 1996 flood there were folks that were very upset about how neighboring properties impacted their own. She thinks we do need to protect properties by considering the impacts. Otherwise, we are setting ourselves up for more irate citizens in the event of a flood.

Collins said, Oregon drainage law says that you can't do something that causes damage to a neighbor; yet FEMA says you can put fill on your property without considering the impacts. They are not consistent. He asked, which would prevail, Oregon drainage law or FEMA? Delapoer said the law sets up regulatory standards for people's behavior, which is not the same as a guarantee that if a standard were followed that it wouldn't hurt someone. Generally the regulatory standard is not intended to substitute for civil standards for the drainage. Regulatory is different than civil standard. But, the City could potentially be sued if there was evidence the City knew a development occurred in an area where we know the flood waters rise. Delapoer said he would argue that we are not in a legal obligation to solve that problem and that those in that zone should be proactive and raise their houses. If the Council simply adheres to FEMA we won't be civilly liable; but we are more likely to be sued anyway, or at least criticized. For example, politically, with the flooding issue at 13th Street the City ended up spending money to pump the water even though we were not responsible.

In summary, Delapoer said making regulations stricter will increase the cost of development; but less strict will increase the number of complaints the Council may get by neighbors that are impacted. Either choice can have negative consequences.

Kopcynski asked, will this impact the City's Insurance Services Office (ISO) rating? Hansen said, we would get more points for adopting no adverse impact regulations.

Coburn supports Option 2, to implement a "no adverse impact" approach.

Collins said North Albany has unique characteristics. A balanced cut and fill approach probably won't work in that area. What might be good in one part of town won't necessarily work in others.

ACTION: Policy Question #2: The Council directed staff to come back with proposed language for Option 2, to consider a No Adverse Impact Approach which includes measurable, allowable impacts.

Hansen described the FEMA Pre-Disaster Mitigation grant funds that provide up to 75% of the cost to move or raise buildings above the 100-year flood level. Property owners provide the 25% match. If the Council is interested in having Albany participate in this grant program, then staff would work to identify eligible properties and collect data on elevations, etc. The Council said they are interested.

Councilor Dick Olsen asked, can we require that if they do not fill, they must build higher? Discussion followed about parking and storage underneath, and living quarters on the second floor.

Johnson asked if property owners are required to participate. Hansen said it is entirely voluntary.

INSURANCE SERVICES OFFICE FLOOD RATING

Hansen explained that the National Flood Insurance Program (NFIP) has an incentive program called Community Rating System (CRS). The CRS gives extra credit for going above the minimum requirements. Albany joined the program in 1991. Our ISO rating improved from a level 7 to 6, and citizens saw a 5% discount increase to a 20% discount as a result.

Hansen said, we didn't get to level 5 because we had not yet implemented Goal 5. We will ask for review in a year and are confident the City will have enough points to go to a level 5. The no-adverse impact policy, for example, would give us additional points.

Christman said, getting better ratings helps a segment of the community to get lower insurance premiums; but there may come a time when the cost to the whole community outweighs the benefit to one segment of the community. Hansen agreed it is a balance.

INSURANCE SERVICES OFFICE FIRE RATING UPDATE

Fire Chief John Bradner said the Fire Department appealed the ISO rating of 4 and successfully got it raised to a 3. This is good news. The staff report shows the areas where the department was able to get extra points.

Collins asked, did you ask what the impact on premiums would be to a \$250,000 house? Bradner said the higher rating would result in a 1-5% decrease in premiums. There was one case where an individual was informed by their insurance company that their rates were going up \$300 annually as a direct result of the ISO rating. What they found out was that some insurance companies use the ISO rating as an excuse for raising the rates.

Collins said it would be good to identify the savings because if the City goes out for a bond, it would be valuable information. For example, citizens pay for public safety in taxes or in premiums.

Olsen asked, for fire station distribution, he thought we were better than most cities but we only got half the rating for that measure. Brander said that they said we should have five stations, not four. Also, they don't look at response time or call volume, rather they look at hydrant population and determine how many stations a city should have based on that.

COUNCILOR COMMENTS

Collins asked staff to include an article in City Bridges about the conflicts between bikeways and garbage cans. We should advise Allied Waste (AW) to not put cans down in the bike path. Staff said a Police Officer received a complaint and when investigating counted 50 trashcans on sidewalks along Marion Street. Discussion followed.

CITY MANAGER REPORT

Hare said that next Monday is the City Manager evaluation. Finance Director Stewart Taylor will also do a presentation to discuss the public safety levy renewal and funding emergency services facilities.

ADJOURNMENT

There being no further business, the Work Session adjourned at 5:38 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC
Deputy City Clerk

Stewart Taylor
Finance Director