



NOTICE OF PUBLIC MEETING
CITY OF ALBANY
CITY COUNCIL
 Council Chambers
 333 Broadalbin Street SW
 Wednesday, November 5, 2014
 7:15 p.m.

OUR MISSION IS

*"Providing quality public services
 for a better Albany community."*

OUR VISION IS

*"A vital and diversified community
 that promotes a high quality of life,
 great neighborhoods, balanced
 economic growth, and quality public
 services."*

AGENDA

Rules of Conduct for Public Meetings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the meeting.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the meeting.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE TO THE FLAG
3. ROLL CALL
4. SCHEDULED BUSINESS
 - a. Business from the Public
 - b. Second Reading of Ordinance
 - 1) Amending Ordinance No. 5833 to include sales of marijuana and marijuana-infused products within the locational restrictions applicable to medical marijuana dispensaries and declaring an emergency. [Page 2]
 Action: _____ ORD. NO. _____
 - c. Adoption of Consent Calendar
 - 1) Approval of Minutes
 - a) August 13, 2014, City Council Regular Session. [Pages 3-9]
 - b) August 27, 2014, City Council Regular Session. [Pages 10-16]
 - c) September 8, 2014, City Council Work Session. [Pages 17-19]
 - 2) Accepting an easement from Monty D. Spencer. [Pages 20-25] RES. NO. _____
 Action: _____
5. BUSINESS FROM THE COUNCIL
6. NEXT MEETING DATE: Work Session: November 10, 2014
 Regular Session: November 12, 2014
 Work Session: November 17, 2014
7. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net

The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, advanced notice is requested by notifying the City Manager's Office at 541-917-7508, 541-704-2307, or 541-917-7519.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 5833 TO INCLUDE SALES OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS WITHIN THE LOCATIONAL RESTRICTIONS APPLICABLE TO MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY

WHEREAS, Ordinance No. 5833 adds to state law certain location restrictions applicable to medical marijuana facilities which dispense marijuana pursuant to ORS 475.314; and

WHEREAS, citizens of the State of Oregon will vote on November 4, 2014, concerning Initiative Measure 91, which would allow the sale of marijuana and marijuana-infused products under certain conditions; and

WHEREAS, the City Council of the City of Albany believes that local location restrictions should apply consistently to medical and non-medical marijuana sales.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

SECTION 1: CREATION OF AMC 5.08.026.

AMC 5.08.026 is hereby created to read as follows:

5.08.026.

(1) Sales of marijuana which may be authorized by Oregon 2014 Initiative Measure 91 and/or any administrative regulations adopted pursuant thereto, shall be subject to the same locational limitations and regulations applicable to medical marijuana facilities pursuant to AMC 5.08.025 including the sanction for violation set forth therein.

(2) As used in this section, "marijuana" means all parts of the plant of the cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may, from time to time, be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

SECTION 2: EMERGENCY. Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health and safety of the City of Albany, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect when signed by the Mayor.

Passed by Council: _____

Approved by Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk

CITY OF ALBANY
 CITY COUNCIL
 Council Chambers
 Wednesday, August 13, 2014
 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: Councilors Rich Kellum, Bill Coburn, Bessie Johnson, Ray Kopczynski, Dick Olsen, and Floyd Collins.

Councilors absent: None.

SPECIAL PRESENTATIONS

Linn County Health Department.

This item was postponed until August 27, 2014.

Establishing a sister city relationship with the municipality of Santa Maria Huatulco, Oaxaca, Mexico.

Konopa said that Dr. Louis Weinstein and Dr. Laura Ouellette have a presentation for the Council about establishing a sister city relationship.

Weinstein said he has been practicing in Albany for the past 38 years. He and Ouellette have been vacationing in Oaxaca Mexico for the past 10 years and in spending time there they began to understand some of the needs of the area. As physicians, they enjoy volunteering and so they were introduced to the President of Red Cross. After a series of meetings with the Mayor and officials from the state of Oaxaca, they spoke with Konopa about establishing a sister-city relationship. Weinstein met with the Associate Director of Development for the local medical school that serves Albany students and discussed the possibility of medical students rotating in Huatulco. They also talked to the head of the residency program for Albany's medical students. Weinstein said, this has all evolved into a relationship which culminated in a meeting with the Huatulco President, Dario Pacheco Venegas.

Weinstein gave a PowerPoint presentation titled "Sister City Program" (see agenda file). He noted that they are not looking for funding; this is a volunteer program. They are looking for recognition from the City of Albany. Weinstein and Ouellette gave details about the area and why they could benefit from medical outreach.

Weinstein noted that there is a letter from President Dario Pacheco Venegas in the agenda packet along with a translation of the letter in English.

Konopa pointed out that this will be self-supported by the healthcare community.

MOTION: Councilor Ray Kopczynski moved to establish a sister city relationship with the municipality of Santa Maria Huatulco, Oaxaca, Mexico and Councilor Bill Coburn seconded it. The motion passed 6-0 and was designated Resolution No. 6354.

Konopa thanked Weinstein and Ouellette for helping this worthwhile cause.

SCHEDULED BUSINESS

Konopa asked if anyone would like to speak on the Lowe's request.

Larry Tomlin, 1139 SW Morse Lane, said that the issue according to the newspaper is if Albany will reduce or eliminate the contractual amount agreed to by Lowe's for the penalty. Tomlin said from his years in business and dealing with contracts, he thinks the City should hold Lowe's to the contract. The City has held up its conditions of the contract at the cost of \$4-5 million, causing disruption of traffic and businesses. Tomlin said, we set a precedent that could be used in court against the City in any contract that has a penalty clause, unless there were exacerbating circumstances. He said, we would be walking away from the \$2 million penalty. Lowe's is the 43rd largest business in the United States according to the Wall Street Journal with over \$53 billion in sales. Last year they had a 5.7% increase in sales, and previously they were up too. Marshalls and Big Lots are investing in Albany and they didn't need the City to give them several million to do so. He thinks Albany is business-friendly and he doesn't think making Lowe's stick to the contract would paint the City as negative towards business.

Communications

Lowe's request to amend the development agreement.

Mark Stoner, 28372 Camino Loranda, California, is the Director of Real Estate for the Western Region for Lowe's Home Improvement. He thanked the Council for their time and acknowledged that Lowe's recognizes that the City of Albany has lived up to their part of the contract. Stoner said City staff has been excellent to work with, even as the project has been in limbo over the past year. Lowe's recognizes that Albany made an investment of several million in infrastructure, and that Lowe's failed to live up to its obligation since it will not be opening the store on time.

Stoner gave some background; shortly after closing on the Albany store they stopped building stores due to the economy and a significant drop in sales. They did some significant downsizing at the corporate level. They have only recently started building stores again. Compared to their peak when they would build 125 in a year, they now only build 12 stores. There has been a backlog of sites that they own that they have to decide to build or sell. During that time Albany's site has been in limbo. In June they decided to move forward with the Albany Lowe's for a 2015 opening, starting in May and opening in November or December of 2015. This would require a one-year extension to the agreement. There was some serious consideration of just paying the liquidated damages and putting the property up for sale; but they decided that they do want a store in Albany. In reviewing the project again they realized they had overestimated what the store could do sales-wise. They have reevaluated and are still willing to move forward with the project. They would need a one-year extension on the opening covenant in order to move forward.

Stoner said that as to the number employees, they are downgrading the store to what is called an "84K". They have noticed that many cities want them to downsize their stores, making them smaller, more efficient, more effective, and more environmentally friendly. In looking at "secondary markets" like Albany, they feel that an 84K, which is about 30,000 feet smaller, is a better store to operate. It will do the same or close to the same volume as the previous store planned, and won't have an effect on employment since staff numbers are driven by sales volume. For example, there is a high volume store in San Francisco that is 107,000 square feet with 250 employees, and another in West Covina that is 170,000 square feet with 104 employees. The South San Francisco store is about the same size as Albany's would be, and has 124 employees. Employment is typically generated by sales volume. He believes the store is about 21% smaller than originally planned, not 35% as has been reported. It will be about 120,000 square feet. Stoner said, Lowe's is requesting a one-year extension on the opening covenant in order to move forward.

City Attorney Jim Delapoe clarified that the City's contract does not include a penalty; there is a liquidated damages clause, which is a vehicle that is often used when it would be difficult to ascertain what the exact dollar amount loss would be. Both parties agree in advance on a formula to represent a realistic sum for damages. Delapoe advised the City Council that they are free to make whatever decision they choose; he does not think they should be concerned about setting a precedent. Waiving a contract term does not create a legal precedent, although perhaps an argument precedent. But, the Council should make whatever decision they want. Delapoe said he appreciates Stoner's candor.

Konopa asked Stoner to clarify the size of the store. Stoner said the 84K represents the retail floor area of about 105,000 square feet; when the garden center is added it is 120,000 square feet. The previous plan was for a building of 150,000 square feet.

Councilor Rich Kellum asked, is there anything in the way Lowe's does business that would engender larger sales of your products in the market place? Or is there some way you will create a larger demand by advertising, proposals, etc.? Stoner said that historically they typically grow the market; when Lowe's comes in, the home improvement dollars spent generally increases. More people start home improvement projects or yard improvements, so the market grows even though some of their products are similar to what competitors sell. He said they function well in markets with True Value and Ace Hardware because they have a niche that is a little different.

Kellum asked, when Lowe's moves in next to another big box chain, they are competing with them; does that mean you give better service, or do you lower prices, or both? Stoner said Lowe's is different than Home Depot because they do substantial business with contractors, whereas Lowe's is oriented towards female buyers since they make a lot of decisions. Lowe's has more of a retail image. To Kellum's question, Stoner said they do compete head to head with Home Depot; typically if they build near a Home Depot or Home Depot builds near a Lowe's, there is a significant drop in sales at first but it comes back after a period of time.

Kellum said that when the Home Depot came in there was more than one building supply store that went out of business. He said, if you put in a smaller store, there is less tax revenues and less employment. The City of Albany paid \$4-5 million for improvements which may not have been necessary if you had started with a smaller store like what is being discussed now. He said, our costs did not go down; our expenses went up. At some point it will affect every supplier in town. He said, we are paying the price for the improvements since we live here and pay the taxes. Stoner said he understands where Kellum is coming from.

Councilor Floyd Collins said he is thankful that Stoner is here and they are having this conversation. He wants the project to move forward. He wonders why construction was delayed a year. Stoner said that it was an internal decision by Lowe's to stop building stores and evaluate the market and which stores they would choose to build. Collins asked, is a smaller footprint a firm condition of Lowe's moving forward in Albany? Stoner said he is not sure. It is a new prototype and they would like to build it in Albany. It is possible they could go back to the larger store, but one of the reasons they downsized the store is because it is more environmentally friendly, smaller, more efficient, and doesn't use the same utilities. Their goal moving forward is to scale back their stores where and when they can. Collins said, so the reduced footprint would still maintain the same lot configuration? Stoner said yes; they considered adding a pad in front to soften the look, but they don't think there is room for it. The store is not that much smaller.

Collins asked Stoner if he could submit to staff a comparison of the 150,000 and 120,000 square foot stores for the number and types of departments and the square footage they are allocating to each, in 7-10 days. Collins said when he saw the proposal he questioned going back through the land use process. Given the approvals Lowe's already has worked to get from the City of Albany, Oregon Department of Transportation, and the Department of Environmental Quality, Collins asked Stoner, are you sure you want to scale back? Stoner said he doesn't think they will have problems primarily because they are reducing the size. Collins said he thinks that would be a reasonable answer if they knew all the standards are the same now as they were in 2011, but agencies change standards over time and developers generally have to apply with the standards that are in place at final approval. Stoner will look into it.

Collins asked if Stoner would be willing to talk to staff about putting a package together to benefit Lowe's and the City. Stoner said yes.

Collins said in the newspaper and elsewhere there has been comparisons made between the Lowe's project and the Pepsi project. He said they are different issues. He said, we had a contract with Pepsi and they defaulted on the contract, and we had remedies identified in the contract. Lowe's has not defaulted; they are asking for reconsideration of the conditions. They want to come to Albany and we want them here, so the two parties need to come to a solution. To compare the two projects is not accurate.

Kopczynski said that he spent close to 25 years opening JC Penney's stores. He asked, if you are maintaining the same parcel, is there a possibility as part of the process for long-term use that if you see business growing, you could expand to a larger footprint? Stoner said he does not think they would design the building for the possibility of expansion. The company thinks the smaller stores are more effective and efficient, and their internet sales are growing substantially, too.

Collins asked the size of the Salem Lowe's. Stoner thinks it is about 170-175,000 feet.

Coburn asked, with a Lowe's in Salem and Eugene, what do you anticipate the drop in sales would be for those stores when Albany's Lowe's opens? Stoner said none in Eugene and very little impact in Salem because of the distance. The sales that will remain in Salem are likely folks that work up there and live here. This is typical of studies that show that residual sales are related to the customers' employment location. He said the impact to Salem would be less than 5%.

Councilor Bessie Johnson is a co-owner of a construction business, and said that niche is important. Parr Lumber has a niche that serves contractors; Home Depot does as well. Lowe's will also have a niche. This will bring jobs and it is a good size. She appreciates Stoner coming tonight and being forthright. The City Council's dilemma is that it is a contract. She hopes they can work something out because she wants Lowe's in Albany.

Johnson asked, for the other stores that Lowe's decided not to open, had they made the same deals as Albany did by paying for infrastructure, or were they bare land? Stoner is not familiar with all the deals. In his region, west of the Mississippi, about 15 sites were purchased and only one was built, in California; this one in Albany would be the second store built. They still own the remainder; some parcels were put on market and some are being land banked for the moment. There are two other regions also competing for new store development. Stoner said, when you build 12 in a year and half are stores that are in urban markets, there is a lot of competition between the regions. This site is approved and is in Lowe's capital budget for next year. Some of the other sites had infrastructure agreements, and some didn't.

Konopa said it is encouraging that Lowe's is looking at eco-friendly buildings and efficiency. But, she has sat on the Council for 18 years and this is the first time she has seen a retailer get this much infrastructure paid for. She said even if Lowe's has to pay the \$2 million to the City, they are still getting a bargain. She said, we want to make this work; our goal is to have great neighborhoods and if you build smaller, the neighborhood would like that but if you sell it and another retailer comes in, they may not be the right fit for the neighborhood. Stoner said they are not considering that; their intent is to move forward and build a Lowe's. He said they think it is the right fit for the community. He said, we would not be making a further investment if we did not think we could be a good asset and tenant in the community.

Collins thanked Stoner for having the site cleaned up. Stoner apologized that it took so long, as they do not have vendors who are local. Collins also asked that they put a sign up on the site that says something similar to "Future

site of Lowe's - 2015." He said the Council gets a lot of calls about the project so a sign would help to reassure the community.

Collins said, we are asking staff to meet with Stoner to review the proposal and work out a compromise for their market needs and the conditions of approval they already had, and to take into consideration the Councilor's questions that were asked tonight.

Accepting Wendy Ezell's resignation from the Planning Commission.

MOTION: Johnson moved to accept the resignation and send a thank you letter. Kopczynski seconded the motion and it passed 6-0.

Accepting Peggy Kroessin's resignation from the Arts Commission and Traffic Safety Commission.

MOTION: Collins moved to accept the resignation and send a thank you letter. Kellum seconded the motion and it passed 6-0.

Accepting Danon Kroessin's resignation from the Community Development Commission and Planning Commission.

MOTION: Collins moved to accept the resignation and send a thank you letter. Kellum seconded the motion and it passed 6-0.

Public Hearing

Authorizing the sale of surplus property on Main Street, north of Front Avenue not needed for public use.

Economic Development & Urban Renewal Director Kate Porsche passed out a copy of a map from a real estate agent (see agenda file) and a "Comparable Summary" of the property (see agenda file). The small parcel is at the north end of Main Street. Edgewater wants to purchase it at the full market value to fit in one more house. The price is \$4,205, which was recommended by the real estate agent. If the Council approves this sale after the public hearing, there is a revised resolution on the dais (see agenda file) for approval.

Councilor Dick Olsen asked if the parcel cuts off access to the lot between Sherman Street and Main Street. Porsche said it does not because there is still access to the east of this parcel and the site plan includes a path going through it. Also, the lot to the east is now the Community Garden, a popular addition to the neighborhood which was funded by Central Albany Revitalization Area (CARA.) Olsen asked if there is a reason to subdivide the large lot. Porsche said no; when they turned it into a garden it was because they decided it was not appropriate to subdivide or sell. It was deemed as a potential future pocket park.

Open: Konopa opened the public hearing at 8:10 p.m.

There was no one signed up to speak on the signup sheet (see agenda file).

Konopa asked if anyone in the audience wanted to speak. There were none.

Close: Konopa closed the public hearing at 8:10 p.m.

MOTION: Kopczynski moved to adopt the resolution on the dais and Kellum seconded it. The motion passed 6-0 and was designated Resolution No. 6355.

Business from the Public

Edgar Hahn Jr., 1560 Davidson Street, #321, discussed Waverly Lake. Hahn said he had given photos and a 20 minute DVD to Konopa. Hahn read his letter to Konopa to the Council (see agenda file).

Hahn said he also gave Konopa articles about dredges and aerators. He has lived in Albany since 1949 and has fished since grade school. The lake is not the same as it was in the 1950-60s, and they need to do something. He encouraged the Council to look at the lake to see if they come up with other solutions. He would appreciate them doing something about the lake for handicapped people and for kids. Now, kids can't fish because there is too much vegetation.

Konopa said the water that comes to Waverly Lake is from Cox Creek, which is fed by the Santiam Canal. There are lots of people that fish at Timber-Linn Memorial Park. Konopa will have the Parks & Recreation Director look at the information Hahn provided, and he will make a report back to the Council. Discussion followed about the flow of Cox Creek. Hahn asked if they can increase the flow. Konopa said they are limited by water rights. Konopa said that information will be part of the report.

Jim Clausen, 1403 15th, said he read on Drudge Report, which is a news aggregate site on the internet, about a small town in Minnesota that had an election for Mayor and elected a dog named Duke.

First Reading of Ordinances

Amending Chapter 3.40 of the AMC and granting a nonexclusive telecommunications franchise to AT&T Corp., for the construction and operation of a telecommunication system; and fixing terms, conditions, and compensation of such franchise; and declaring an emergency.

Delapoer read the revised ordinance on the dais (see agenda file) for the first time in title only.

MOTION: Johnson moved to have the ordinance read a second time in title only. Collins seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Johnson moved to adopt the ordinance and Kopczynski seconded it. The motion passed 6-0 and was designated Ordinance No. 5838.

Amending Chapter 3.70 of the Albany Municipal Code (AMC) and granting a nonexclusive telecommunications franchise to Lightspeed Networks, Inc., for the construction and operation of a telecommunication system; and fixing terms, conditions, and compensation of such franchise; and declaring an emergency.

Delapoer read the revised ordinance on the dais (see agenda file) for the first time in title only.

MOTION: Johnson moved to have the ordinance read a second time in title only. Kopczynski seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Johnson moved to adopt the ordinance and Kopczynski seconded it.

Coburn asked what Lightspeed Networks does. Finance Director Stewart Taylor said they offer high speed fiber throughout the community and provide fiber optics connecting buildings.

VOTE: A vote was taken on the motion to adopt the ordinance and it passed 6-0 and was designated Ordinance No. 5839.

Amending Chapter 3.80 of the AMC and granting a nonexclusive telecommunications franchise to Astound Broadband, LLC, for the construction and operation of a telecommunication system; and fixing terms, conditions, and compensation of such franchise; and declaring an emergency.

Delapoer read the revised ordinance on the dais (see agenda file) for the first time in title only.

MOTION: Johnson moved to have the ordinance read a second time in title only. Kopczynski seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Johnson moved to adopt the ordinance and Kopczynski seconded it.

Coburn asked what Astound does. Taylor said this is a new franchise whereas the other two were renewals. Astound offers high speed broadband and are seeking franchise rights along the I-5 corridor. There is no infrastructure built yet; construction will start in 2015.

Collins thanked staff for securing the indexing of the fees.

VOTE: A vote was taken on the motion and it passed 6-0 and was designated Ordinance No. 5840.

Adoption of Resolutions

Approving an extended property tax abatement agreement between the City of Albany, a cosponsor of the South Santiam Enterprise Zone, and Viper Northwest, Inc.

Collins said it is nice to see a \$5.5 and a \$6.5 million project going in and increasing the employment base.

Kopczynski said that Viper received some CARA funding. Konopa said that funding really sparked their expansion.

MOTION: Collins moved to approve the resolution and Kellum seconded it. The motion passed 6-0 and was designated Resolution No. 6356.

Approving an extended property tax abatement agreement between the City of Albany, a cosponsor of the South Santiam Enterprise Zone, and ATI/Pacific Cast Technologies, Inc.

MOTION: Collins moved to approve the resolution and Kellum seconded it. The motion passed 6-0 and was designated Resolution No. 6357.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) June 11, 2014, City Council Regular Session.
- 2) Declaring a Ford F-150 pickup as surplus property and authorizing the Police Department to dispose of the asset.

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

Konopa said it was a wonderful idea for the Albany Police Department (APD) to donate vehicles to Safe Haven.

Report

Receiving Code Enforcement Team Year-end Report for Fiscal Year 2013-2014.

Public Information Officer/Management Assistant Marilyn Smith said the Team focused on projects that are important to community or neighbors, such as grass and weed abatement, and vacant houses. Most of those fall on one person, Senior Code Compliance Inspector Mary Gaeta. Dangerous houses take priority. The grass abatement has taken a lot of time this year because of the long, hot dry spell since spring.

Smith said there are a couple of properties on which they may use an accelerated demolition proceeding, specifically a neglected duplex by Sunrise Park and a vacant house on Pitt Street. The house remains an attractive nuisance and they want to take care of it before school starts. They are also continuing efforts to pick up what others leave behind, such as furniture or appliances. Smith did research and learned that if an item doesn't fit in a garbage cart, it can be put out with the other trash and Republic Services (RS) will pick it up. She said RS's fee isn't much and gave examples. Customers can also haul the items to the dump which is also relatively inexpensive. If people leave items elsewhere, such as in a planter strip, the City will issue a littering citation. The potential fine for littering is \$1,280. The City has not given out too many littering citations. The whole community looks bad when there is furniture in planter strips.

As to tall grass, Smith explained that the City can't insist the person do anything unless it is a fire hazard and it is also during fire season. High grass tears down the value of neighborhoods.

Olsen asked if any of the houses on the staff report are in foreclosure. Smith said yes. Olsen asked if there is anything the City can do to speed up the foreclosure process. Smith said no; the properties get passed back and forth between lenders and it is hard to find the correct owner and get them to take responsibility for maintenance. Delapoer said part of the problem is that they are sub-prime mortgages and have multiple liens, which take a while to sort out. There are new state laws that now allow cities to make financial institutions responsible, so that is an additional tool that just recently became available.

Collins asked Smith if they looked at Geary Street north of Salem Avenue, where there is two halves of a mobile home being stored. Smith will look into it.

Regarding 181 34th, Coburn asked if the City has the capability to assign the person jail time. Delapoer said customarily they do not use jail time for junk prosecutions. In years past, the Council has been accused of being too aggressive so they try to get compliance otherwise; but yes, they can do that. If it is a drug house, there are also specified property crime sanctions that can be imposed. Smith said they have used that route with this particular house; APD has been involved and there are several types of violations taking place. The Deputy City Attorney, the Planning Department, the Building Department, and APD are all working hard on it.

Johnson asked for an update on shopping carts. Smith said APD manages that program. The preferred course is to contact the store and have them retrieve the carts. Discussion followed.

BUSINESS FROM THE COUNCIL

Delapoer asked if he could suggest a compromise for Lowe's that he was discussing with Stoner. Delapoer suggested that Lowe's propose to pay property taxes for the one year they would have paid, had they built on schedule. They could assess the bare land value today, compare it to what it assesses for a year from now when it is built, and then pay twice the first year's difference so that it would make the up for the tax revenue loss. Delapoer said he fears that if they push Lowe's too hard, Lowe's may decide to pay the \$2 million and walk away. He asked, is this suggested compromise in the order of what the Council would find acceptable? Or is there other direction?

Collins said he agrees to negotiating toward the whole package had they built on time; to pay their full assessment when received; that the City enforce the liquidated damage clause in the event they are not in Albany by December 31, 2015; and if not, double it.

Coburn suggested they start assessing the liquidated damages per the contract, so that on December 31, 2015, they would owe \$30,000. That would continue until the store was built. Ultimately, the City could refund it, and it could be somehow tie into Delapoer's idea to pay the extra taxes. He is not sure he wants them to take another year. The City abided by the agreement, and Lowe's did not. He said, we want the store, but a contract is a contract.

Delapoer said, if you want a Lowe's, and you make it too onerous, they will say no. He doesn't know what his bargaining power is because he needs to know how hard the Council wants him to push.

Kellum suggested raising the penalty in case they don't build; that they are not assessed unless they don't build; and that the City won't collect \$1,000 day unless they haven't built at the end of that time. Then, at the end of 2015, the City could make it retroactive. He said, if their intent is to build, it will cost them nothing. Discussion followed.

Olsen asked how close they were to walking away and just paying \$2 million. Delapoer said he does not know. Olsen agrees that they should not be pushed too hard.

Delapoer said that one of the lessons here is that contracts with penalties are not necessarily to punish, but rather to help things come to pass. If Albany is a secondary market for Lowe's and they primarily build larger stores, he wonders if, but for the \$2 million liquidated damages contract, the City would be getting this offer to move forward at all.

Kopczynski said this was their first proposal; there will likely be a round two. Delapoer doesn't think they should assume that. Delapoer doesn't think he has a lot of bargaining power, but he does think that Lowe's should give some consideration to the community for the loss. Delapoer said Stoner seemed to be receptive to that idea and indicated that he would talk to the others.

Delapoer said he is hearing that the majority of the Council would like to see Lowe's in Albany and that they generally approve of a smaller footprint store on that site. Therefore, he will try to get some community value to make up for the loss the delay has caused. He will also continue to keep them accountable to whatever the new promises may be, and that there are even greater enforcement tools if possible to secure their compliance. Discussion followed. Delapoer said he appreciates Stoner's candor in providing information about the delay.

Konopa stressed that if there is a new agreement, to make sure it will be a Lowe's and not another store.

Collins asked, since this project was approved through the land use process, and they may be reducing their footprint, can this be done outside the land use process? Staff said it depends; it will likely have to go through a modification process for their existing land use. What they have to do will depend on what they propose. Delapoer said the Council will be modifying the contract, which is a different than the land use process. Discussion followed.

Smith said the Work Session to discuss the City Manager's evaluation has been postponed until September 29, 2014.

Smith said the grand opening of the new dog park will be on Saturday, from 9:00 a.m. to 11:00 a.m.

Kellum said he met with Linn-Benton Community College (LBCC) representatives today and will be meeting with ATI representatives later in the week regarding the request for funding from local industries. A tour will be scheduled at LBCC and the effected industries in the future. Discussion followed.

NEXT MEETING DATE: Work Session August 25, 2014
 Regular Session August 27, 2014

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:04 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC
City Clerk

Stewart Taylor
Finance Director

CITY OF ALBANY
 CITY COUNCIL
 Council Chambers
 Wednesday, August 27, 2014
 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

ROLL CALL

Councilors Present: Councilors Rich Kellum, Bill Coburn, Bessie Johnson, Ray Kopczynski, Dick Olsen and Floyd Collins

Councilors Absent: None

SPECIAL PRESENTATIONS

Linn County Health Department.

Linn County Health Administrator Frank Moore said Terry Knoll, Maio Zhao, and Public Information Officer/Management Assistant Marilyn Smith have given selflessly of their time as tireless advocates for some of the community's most vulnerable citizens. They each lead with a subtlety and grace that belies the true value of their contributions to the community. Over the last decade, they have been the drivers of the ten-year plan to end homelessness. They provide leadership that sustains the efforts to serve those less fortunate and they do so with a sense of purpose and compassion for others. Konopa presented certificates of appreciation for their selfless commitment and dedication to Albany's annual Heart to Heart Resource Fair and for being one of the pillars for this event.

Konopa said that Moore has been a strong voice with a lot of knowledge about how we can be of better service to the homeless and those in the mental health system. She expressed appreciation for all he has done for the community, and she presented a certificate of appreciation for his selfless commitment and dedication in addressing Albany's homeless and people with disabilities.

Santiam-Calapooia Scenic Bikeway.

Bill Pintard presented a proposal by six members of the Santiam Spokes Bicycle Club to create a new Santiam-Calapooia Scenic Bikeway that would connect to the Willamette Scenic Bikeway at Brownsville. The new 73-mile path would go into Sweet Home, Lebanon, and back around to Brownsville. He briefly explained the process to apply for a bikeway through the Oregon Scenic Bikeways Program. He said scenic bikeways bring money to cities as bicycle tourists spend money at restaurants, motels, and other businesses. He requested a letter of support from the City of Albany for the proposal which will be made to the Oregon Parks and Recreation Department.

Doug Robin added that while the proposed route doesn't affect Albany directly, it would affect the Willamette Valley Scenic Bikeway that goes through Albany, and the enhancement would produce a synergy that benefits all the communities involved. He noted that a template for a letter of support was provided to the Council.

Councilor Rich Kellum asked if there was any downside to the bikeway, such as others having to abide by additional rules. Pintard said he didn't see any downside. Kellum asked if staff knows of any downside, such as restrictions for commerce or other drivers. City Manager Wes Hare said the short answer is no.

By consensus, Council agreed that Konopa would prepare and sign a letter of support on behalf of the City Council.

SCHEDULED BUSINESS

Quasi-Judicial Public Hearing or Legislative Public Hearing

CU-01-14, 120-foot tall telecommunications facility.

Konopa, is a quasi-judicial de novo public hearing regarding an appeal of the Planning Commission's decision to deny a conditional use application. The location of the property is immediately south of 1122 53rd Avenue SW. The applicant is Verizon Wireless, LLC.

Konopa opened the public hearing at 7:34 p.m.

Declarations of Conflicts of Interest, Ex Parte Contact, or Site Visits:

Konopa said her only contact was from Roger Nyquist, asking about the hearing and stating that he would be attending.

Konopa said those wishing to testify should 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 to the Land Use Board of Appeals. Testimony and evidence must be directed toward the approval standards or other criteria in the comprehensive plan or development code that they believe apply to the decision. If additional documents or evidence are provided, the City 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 requested by the applicant shall result in a corresponding extension to the 120-day limit.

Staff Report:

Planner Melissa Anderson presented the staff report. The applicant is proposing to construct a new 120-foot tall monopole telecommunications tower with 12 panel antennas capable of co-location with other service providers. The leased area for the facility, generator and equipment is proposed to be 30 feet wide by 50 feet in depth and screened with a 6-foot tall sight-obscuring fence. The proposed site is immediately west of the existing bowling alley, within the vicinity of 53rd Avenue and Highway 99. The subject property is currently vacant land zoned for Mixed Use Commercial (MUC) and Open Space (OS). Development is proposed to be located in the MUC zone, outside of the OS zone and natural resource overlay zones.

Anderson said there was a neighborhood meeting and public notice prior to the Planning Commission public hearing on this application. The Planning Commission denied the request and the applicant appealed to the City Council. Prior to this hearing, the property was posted with public hearing notice signs and notice was mailed to property owners within 1,000 feet of the subject property. The City Council is asked to make a tentative decision to approve, approve with conditions, or deny the application. Staff will then come back with findings in support of the decision at the September 10, City Council meeting.

Anderson showed concept images of the proposed tower. She reviewed the applicable criteria, staff findings, and conclusions, as detailed in the written staff report. The Planning Commission found that the following three criteria were not met with the proposal: *Albany Development Code (ADC) 2.250(1) The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood; ADC 2.250(2) The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal calls for mitigation of differences in appearance or scale through such means as setbacks, screening, landscaping or other design features; and ADC 8.500(6) Towers should be located in an area where they are unobtrusive and do not substantially detract from aesthetics or neighborhood character, due to either location, nature of surrounding uses, or lack of visibility caused by natural growth or other factors.*

Anderson said that staff found that the Planning Commission reached a reasonable decision based on consideration of the applicable review criteria and recommends that the City Council deny the subject application.

Councilor Ray Kopczynski asked what timeframe was considered with regard to development potential of the site. Anderson said the Mixed Use Village Center zoning districts are intended for certain uses. Staff found that placing this use with this height and scale is more industrial in character and not compatible with what is existing or intended for the area.

City Manager Wes Hare asked if there was a good sense of where other cell towers are located in town. Anderson said the applicant provided a good summary of towers in the area, and staff verified the information. She reviewed existing tower sizes and locations. Konopa asked how many towers were placed before the Code language for telecommunications facilities was adopted. Anderson said she didn't have that information but could look it up.

Councilor Bessie Johnson asked how far the tower would be located from the existing bowling center. Anderson said the base would be about 40 feet from the property line of the bowling center and the building is about 10 feet from the property line. Johnson asked how the property would be accessed. Anderson said through driveway access from 53rd Street.

Councilor Bill Coburn said the application includes what appears to be a potential development plan. Anderson said she understands that was a concept plan presented by the property owner.

Coburn asked about setback requirements. Anderson said there is a requirement that a tower must be set back from a public way at least as much as the height of the tower; there is no requirement regarding setback from development. In discussion and in response to further questions about setbacks, Planning Manager Bob Richardson said there is no requirement that a building must be a certain distance from the cell tower; however,

the vision for the community is a mix of retail and residential uses in a neighborhood scale. Having a cell tower in that location appears to compromise the ability to achieve the vision that is contemplated in the Development Code for how the site should be developed.

Applicant's Presentation:

Mike Connors, Hathaway Koback Connors LLP, 520 SE Yamhill Street, Portland, Oregon, came forward on behalf of the applicant, Verizon Wireless. Connors said the purpose of the proposal is to fill a coverage gap in Albany. He reviewed the process used by the applicants to determine the area of properties that could be considered for a new facility and to determine if an existing tower could work. In this case, he said, there were no existing towers in the one-quarter mile search ring. Co-locating on the closest tower, which is less than one mile from the subject site, would create conflicts with existing towers and radio facilities. There were no available industrial zoned sites. Some property owners in heavier commercial zones were contacted but were unwilling to lease to the applicant. The subject site is the only viable site in the search ring. An alternative sites analysis is in the record.

Connors drew attention to information prepared by Black Rock, consultant for the applicant, *Existing Utility Poles and Transmission Towers Near Proposed Verizon Wireless Site* (see agenda file). He reviewed ways in which the applicant tried to meet or mitigate concerns. They had a neighborhood meeting, limited the proposal to the minimum height necessary to meet their coverage objectives, proposed a monopole design, located behind the bowling alley to minimize visual impacts, and situated the pole so there is open space as a buffer to the surrounding properties. They also met with the owner of the bowling alley and moved the tower slightly to try to mitigate his concerns.

Connors said staff recommended approval of the proposal at the Planning Commission level, and it is clear from that decision that all of the objective criteria and development standards were met. The Planning Commission determined the application doesn't satisfy three criteria but they all come down to one issue - the height of the tower. The appeal is based upon the applicant's belief that the Planning Commission misinterpreted and misapplied Development Code standards, first by imposing an artificial height restriction. Cell towers taller than 50 feet are allowed in the MUC zone through this process; there are numerous towers taller than the one proposed and there is no height restriction in the Code. Connors said if this interpretation is adopted, it would apply directly to any other proposal for this type of facility in zones that require a conditional use permit. Regarding questions about impacts on future development, the property is owned by a developer who determined the property could be developed to its full extent without the tower impacting that potential and no evidence has been presented to show otherwise. There is no setback requirement to buildings. To the extent that setback is an issue, it would be from a marketing standpoint. Concerns about co-location are not a legitimate basis for denial of the application because the applicant is complying with the Code.

Connors said the result of adopting the Planning Commission decision would be that the applicant would not be able to provide coverage in this area of the City. This is the only viable site and they have mitigated to the maximum extent possible. The Federal Telecommunications Act requires that local governments not impose regulations that prohibit or have the effect of prohibiting the provisions of personal wireless service. He said there is a need for the facility and the only way they can get that need met is if the Council interprets the Code in a way that is consistent with its intent and approves the application.

Kellum asked what coverage the site would provide. Connors drew attention to maps in the record which show existing towers and coverage. Kellum asked if the one-quarter mile search ring was chosen because it was most efficient. Connors said the search ring is the area of properties the applicant's engineers determined would sync with other towers.

Kellum said he would think a tower is required to be setback so it wouldn't hit the street if it fell. Connors said there are no instances of these towers falling over; he believes the setback was intended to provide some buffer from the public way. In response to further inquiries from Kellum, Connors said the applicants met with the property owner to determine the best location in terms of future development of the property. The proposed area was chosen because the bowling center provides some visual mitigation. The tower must be located to provide coordination between towers. The proposed location was determined based on an engineering and technical analysis.

Councilor Floyd Collins asked if two towers of lesser height in this area would provide the needed coverage. Connors said the taller height is needed in order to communicate with other towers. Collins asked if the applicant's other towers are 120 feet tall. Connors said the other towers are similar in height. He said the applicant would have no reason to build higher than necessary to function with other existing towers in the network.

Coburn acknowledged the letter from ATI indicating they wouldn't lease to the applicant. He asked if other property owners in the heavy industrial area were contacted. Connors said the heavy industrial zone is outside of the search ring needed to serve the coverage gap. Coburn said he understands the search ring is the applicant's optimal site. Connors said a heavy industrial site would have been the optimal site because it would have allowed this use outright.

Coburn noted several property owners indicated they were not interested in leasing to the applicant; he asked what the issues are. Connors said some property owners are just not interested in leasing space for these types of facilities.

Konopa asked why the applicant didn't try to purchase property. Connors said that acquiring property for this type of facility is cost prohibitive and isn't done in the industry.

City Attorney Jim Delapoe said he assumes there are standard lease rates and property owners weren't willing to lease at the proposed rate. He said the applicant raised the question of whether federal law would be violated if the City precluded this service; however, to some degree, the financial constraints the applicant operates under may preclude them because they aren't offering to buy the property and there is an amount that doesn't make economic sense to the company. Connors said property owners weren't willing to lease for a variety of reasons, including future development potential or plans to sell the property. He said it would be unusual that property was not leased based on rent amount. He doesn't want to focus on the federal act because he thinks the request meets the Code and that is where the focus should be.

Kellum asked if the applicant could understand why someone would not want a cell tower near their property. Connors said yes, with most applications, there are people who don't want development. Following the Development Code fosters smart planning and development. Kellum said there are also rules that say the development has to fit the area. In discussion, Connors said these facilities by their nature are taller than other structures. Interpreting the Code in a way that prevents that could be applied to most zones and would set a precedent.

Collins asked if the applicant looked at property outside of the search ring. Connors said there was some effort to contact property owners on the immediate outskirts of the search area. Collins noted that there are industrial lands to the east, outside of the search ring by about one-eighth of a mile. Brief discussion followed regarding the applicant's search process. Connors said the applicant would have sited in an industrial zone if they could have.

Public Testimony in Support of the Application:

There was none.

Public Testimony in Opposition to the Application:

Roger Nyquist, Firwood Place SW, said he supported the Planning Commission's decision to deny the application, and he asked that the City Council do the same. He said the proposed site is outside of the applicant's search ring as shown on the Alternative Site Analysis; he thought the applicant should use Geographic Information System tools to better define the search area and identify what else might be available. He submitted a copy of a newspaper editorial opining that now is the time to start disaster planning for a potential earthquake disaster, as well as two maps (see agenda file).

Nyquist referred to his written testimony which describes his opposition to the application. In his 20 years of being involved in the public process, this is the first time he has testified in opposition to an application. He said the bowling center business has been in his family for 50 years and moved to its current location in 2005. He expressed concern about safety associated with having a 120-foot tower located 40 feet from a building that he invites the public to be in every day. He referred to and reviewed attachments to his written testimony – maps and photos of existing towers in the area and an excerpt from the Telecommunications Act of 1996. He said it is clearly the Council's authority as to what it wants the community to look like. He referred to the applicant's comments about setting precedent and commented that a precedent could also be set by allowing this tower in the MUC zone. He said the Mixed Use Village Center concept was in place in 2005 when he applied to relocate the bowling center, and he revised his plan because of it. He likes the concept of the Village Center and thinks the City should give it a chance to work. A 120-foot tower at this location would change the nature of the zoning. Nyquist said the tower clearly poses a safety risk to his facility and his customers. He expressed concerns about the potential for ice falling off of the structure or the structure itself falling over in the event of an earthquake. He said there are areas much better suited for the tower than the proposed site, as demonstrated in the maps he provided. He said he is opposed to the proposal and he thinks it doesn't fit the area; however, if Council is inclined to approve the request, he asked that they at least relocate the tower so that it would not hit his building if it fell during a catastrophic event. He showed a video of ice falling from cell towers which he obtained through a YouTube search.

Johnson asked how far the bowling center is from the property line. Nyquist said it is about 8 feet in the subject area.

Kopczynski asked if Nyquist would perceive any way the tower would affect his business simply by the fact that it was there. Nyquist said some of the mothers who bring their children to play miniature golf have indicated it wouldn't be their preference. He doesn't know how it would affect his business.

Kopczynski referred to photos of towers submitted by Nyquist. He hadn't noticed many of these towers until they were pointed out; some of these towers are right up next to buildings. He asked what kind of setback

Nyquist would propose. Nyquist said he would like the tower set back from his building at least as far as the height of the structure.

Kopczynski said his perception is that this is a case of NIMBY -- not in my backyard. Nyquist said he was sorry to hear his testimony was interpreted in that way.

Bill Ryals, 935 Jones Avenue NW, submitted two pages of photos of towers, a map of the area, and excerpts from the Development Code related to the Village Center zoning districts (see agenda file). He said there were several questions at the Planning Commission hearing related to sizes of cell towers for which the applicant had no answer. He said the majority of towers are not that tall and it is unusual to see towers stand out of their surroundings. His main concern has to do with the Village Center plan; the cell tower would impact roads and infrastructure and make it very difficult to develop the site as envisioned. He feels that safety issues should apply to both public and private streets. He said this is an allowed use in industrial zones because it is understood there is a greater risk involved. Approving this would set a precedent for other like areas within the City. He would like to see something like the North Albany Village developed in the subject location. He disagreed that the applicant has mitigated as much as possible; an online search shows that there are a lot of mitigation strategies that have been used in other areas. He referred to the applicant's statement that they would not have proposed this site if an industrial zoned site had been available; he argued that the cost of a conditional use permit process could be much less expensive than two towers or increased lease expenses. He said if this use is allowed, it should at least meet the part of the Code that states that development needs to respect the scale, design, and feel of the Village Center.

Eddie Merrifield, 2030 Kodiak Avenue SW, lives near the subject site. He said the applicant indicated that the property owner knows what is best for this property; however, the applicant lives in Washington and hasn't been active in this area since about 2004. He gave some personal information, talked about the beauty of the area, and expressed concern about the visual impacts of the proposed tower. He said the tower doesn't fit in with the neighborhood which has open space, wetlands, parkland and a nature trail. He said the statement that there is no industrial property available is counter to what he believes; he wonders if there is none at the rate they want to pay. He said he is a Verizon customer and he does have very bad service; however, he doesn't think the tower fits in the proposed site.

Neutral Testimony:

Dan Johnson, Willetta Street, said he lives about 500 feet from the subject site. He appreciated that his concern about additional traffic on Willetta Street, which he raised at the Planning Commission hearing, was addressed with a proposal to move access away from Willetta Street.

Rebuttal:

Connors suggested that Council consider continuing the hearing to allow the applicant to provide additional information on a couple of issues. Regarding Nyquist's concerns about safety and proximity to his facility, the applicant would be willing to talk to the property owner to see if a different location on the site could be proposed. Regarding questions and concerns about why the applicant didn't choose a different site, the applicant would like to provide more specifics about those property owners who were unwilling to lease and why.

Connors said he would take this opportunity to reinforce a couple of issues in response to testimony. He said the Code allows this use subject to conditional use criteria. The Planning Commission interpretation says that the use is incompatible based in height. If Council adopts that, it will set a precedent that structures taller than existing structures not allowed in most zones.

Connors said the applicant provided information which shows the height of the proposed tower is consistent with other towers in the area and with industry standards. A question about two towers is speculation; the Council bases its decisions on evidence, not speculation. The purpose of the concept plan was to show the property owner had given thought to how with site might develop. The site is owned by a developer who has submitted a conceptual development plan and there is no evidence that the tower would impact development potential. He noted testimony from a Verizon customer confirming that he has bad service in this area. He spoke about wireless communications needs in the community and said the Council needs to be providing this service.

Request for a Continuance:

Council briefly discussed the request for a continuance.

MOTION: Kopczynski moved to continue the hearing. Johnson seconded the motion.

Delapoer asked if the applicant would agree to a corresponding extension of the 120-day timeline. Connors said the applicant would.

Coburn said he sees value in continuing the hearing, and he doesn't think additional information would hurt the process.

Kellum said that continuing the meeting for additional technical information would be a waste of time.

Johnson noted the applicant was going to work with the property owner to see if a location on the property could be proposed that would have less impact on the bowling center.

VOTE: The motion passed 4 to 2, with Collins and Kellum voting no.

Delapoer suggested that Council set a date for the continuance and set any parameters such as a time limit for testimony. Brief discussion followed.

MOTION: Kopczynski moved to continue the hearing to October 8, 2014, with a 20-minute time limit for each side. Coburn seconded.

Olsen said he didn't support time limits.

VOTE: The motion failed 3-4, with Johnson, Kellum, Olsen, and Konopa voting no.

MOTION: Kopczynski moved to continue the hearing to October 8, 2014, with no time limits. Olsen seconded the motion and it passed 6-0.

In response to an inquiry from staff, Connors said the applicant would agree to a 45-day extension of the 120-day time limit. Any written materials be submitted to staff two weeks prior to October 8.

Business from the Public

Rene Pearsall, 1525 Maple, said members of his family are suffering with meth. He reviewed several incidents of crime that have occurred against himself and his family, and what he felt was a lack of response from the Albany Police Department (APD). He said he talked to several Councilors about this issue in November. He is irritated that he can't get a response from the Police and that they consider his family to be a joke. He expressed concern for the safety of himself and his family members. Konopa said she would ask APD to follow-up.

Tom Cordier, 2240 NW Park Terrace, said he is advocating that as much Central Albany Revitalization Area (CARA) money as possible be used to fund the Police and Fire stations. He said he would like a question to be asked of Jeannette Launer. Assuming that the Albany Revitalization Agency made a decision to remove several non-Tax Increment Financing (TIF) public projects from the current plan and substituted a project to fund \$5 million for replacement of the fire station as a minor amendment, his question was: "If that decision were legally challenged as a violation of the substantial amendment definition, what would the court likely decide?"

Konopa asked if Cordier was asking this on behalf of the Public Safety Facilities Review Committee. Cordier said he was asking the question as a concerned citizen who also is a member of that committee.

Hare said he understood that Launer would have information regarding what constitutes a substantial amendment for the CARA Advisory Board meeting on September 17. Konopa noted that the information would be available on the City's website the Friday preceding the meeting. Cordier said he would be out of town, and he requested assurance that the substitution question would be asked. Following brief discussion, Collins said he would ensure that the CARA Advisory Board addresses the substitution issue and Cordier's specific question.

Adoption of Consent Calendar

Approval of Minutes: June 23, 2014, GAPS School Board and City Council Joint Meeting

MOTION: Collins moved to adopt the Consent Calendar. Coburn seconded. The motion passed 6-0.

Appointment

Appointing Willard Sheppy to the Traffic Safety Commission.

MOTION: Collins moved to approve the Appointment. Kopczynski seconded. The motion passed 6-0.

BUSINESS FROM THE COUNCIL

Johnson said she was still looking for a Planning Commission appointment from Ward III; she asked that anyone interested in the position contact her.

Smith said staff was contacted by Linn County Presiding Judge Murphy requesting a City of Albany representative be appointed to the Linn County Public Safety Coordinating Council. Kellum volunteered to serve on that body.

NEXT MEETING DATE: Work Session September 8, 2014
 Regular Session September 10, 2014

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Reviewed By,

Teresa Nix
Administrative Assistant

Stewart Taylor
Finance Director

CITY OF ALBANY
CITY COUNCIL WORK SESSION
Municipal Court Room
Monday, September 8, 2014
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Councilors Bill Coburn, Bessie Johnson, Ray Kopczynski, and Dick Olsen.

Councilors absent: Councilor Floyd Collins and Rich Kellum (both excused).

BUSINESS FROM THE PUBLIC

None.

ALBANY AIRPORT COMMISSION (AAC) LOAN CONCEPT

Assistant City Manager/Public Works and Community Development Director Mark Shepard said the City Council formed the AAC in 2010 to provide citizen input regarding the Airport. For the past four years, the AAC has been working with staff to make improvements. He said the AAC members asked staff to present a proposal to create a program in which the City would provide low-cost loans for the construction of private hangars at the Airport. Currently, the City leases Airport property to private individuals who own hangars. He said the AAC thought it might be an incentive to potential hangar builders if the City provides a financing option for them. All of the hangars at the Airport are being utilized, and the Master Plan will identify areas where additional hangars could be built. He said the question for the Council to consider is if they are interested in providing a financing alternative to potential hangar builders.

Shepard said there are questions that haven't been answered yet such as rate of return, what the potential risks are, and how the loans would be set up. He said before staff moves forward with researching this further, he wanted to see if Council wants to proceed. A key question to consider is if the City wants to take on the risk of becoming a bank for construction loans. He said the advantages of this program could mean additional lease payments to the City, additional taxes going into the General Fund, and increased interest accrual. Shepard said the AAC members can share their perspective regarding the program.

Albany Airport Commissioner Chuck Kratch said he doesn't own an airplane, isn't going to build a hangar, but does see a lot of progress at the Airport. He said a lot of work has been done by the Council, staff, and AAC to make the Airport self-sustaining. He is concerned about how to continue sustaining the Airport and believes that a hangar construction loan program could help. He said the AAC received a request from an individual in Northern California who wanted to build a hangar, but it is difficult to get a loan for building on leased property. He said the loans would be paid back with significant interest. He commended Shepard and his staff for the work that they've done. He thinks this loan program is in the best interest of the citizens of Albany.

Albany Airport Commissioner John Harshberger said this program is another way to think about the overall picture of developing industry. It may be an incentive for businesses to locate in Albany.

Albany Airport Commissioner John Pascone said he considers the Airport to be an aspect of economic development. One way to expand the Airport is to have more hangars and aircraft and to sell more fuel. He said he doesn't see a downside to this program.

Albany Airport Commissioner Jay Sluiter said the Airport could benefit from increased revenue. He said Albany has an excellent facility and one of the nicest runways in Oregon, but the airport is being underutilized. He said there won't be growth at the airport with the current economic conditions without some type of moderate investment. He thinks growth at the airport would be beneficial to the citizens.

Councilor Ray Kopczynski asked if PepsiCo settlement proceeds, Central Albany Revitalization Area funds (CARA), and Transient Lodging Tax (TLT) funds were identified by staff as funding options for this program. Shepard said those were suggested by the AAC. He said the option staff brought forward was using the TLT funds that the Airport currently receives (approximately \$68,000 per year). He said a portion of these funds could be set aside for a loan program. Kopczynski asked if that would reduce the amount of Federal Aviation Administration (FAA) funding received. Shepard said that it would reduce the amount of money available for a match for an airport project. Kopczynski asked if the hangars would be built by the City. Shepard said the City wouldn't build them; a private owner would handle the project with a contractor. Kopczynski asked how the City is indemnified if something happens to the hangar. Shepard believes each individual hangar is insured by the owner.

City Manager Wes Hare clarified that the City hasn't subsidized the Airport with General Fund dollars for at least ten years.

Kopczynski asked what amount of PepsiCo settlement funds is being proposed by the AAC to be used for this program. Kratch said he didn't determine a particular amount. Konopa asked how much it costs to build a hangar. Sluiter said it is approximately \$100,000 to build.

Councilor Bessie Johnson asked how many hangars can be built at the Airport. Sluiter said it would depend on who is building it and for what purpose. Johnson said Albany is growing and we need to do something more with the airport. She said it is a good idea to bring in more planes, but she is unsure where the money would come from.

Hare said funds are contributed to the Capital Improvement Program, and one option is to add a lending program to it with the idea that it would compete against other projects. He said the demand for hangars is unknown at this point, but having a program would give Council a sense of what that demand is.

Councilor Bill Coburn asked how hangars have been built and financed in the past. Kratch said in the past, private parties borrowed money, leased land from the City, and then built the structure. He said the Council has reduced the rent for the first few years as an incentive to build. Coburn asked when the last new hangar was built. Sluiter said the last one was built ten years ago. He said the price of fuel has gone up substantially. Another issue is that pilots are aging, and few new pilots are getting started. He said it costs \$8,000 just to learn to fly an airplane. In the last 25 years, we've lost 50 percent of pilots and there is less demand to own an airplane. He said there has been a big push at the Federal level to reduce some of the restrictions, which could increase the number of pilots.

Konopa said we don't know what the future holds for the demand and we could continue to see a decrease. Sluiter agreed that there are many unknowns. Coburn said, in his opinion, recreational flying is a luxury hobby that only a small percentage of the population can enjoy. He said he isn't convinced that this type of program is what the government should be involved in. He wondered about the option of the City building hangars, but he doesn't think that will pencil out. Sluiter said all of the hangars are full at this point.

Konopa said the Council can come up with the financing tool, but it is important to identify that there is a demand for this program. She said we need to see what is on the ten-year horizon. Sluiter said the AAC could research that and will provide an estimate. Konopa suggested that staff look at the existing funds in the TLT account to see if a portion of that can be used as a way to bridge the gap on a bank loan.

Shepard said there are a lot of questions to answer and a lot of work to do to figure out the options, costs, and risks that will be involved with the program. He said staff can work with the AAC to get as much information as possible. Konopa asked Council if they want staff to explore more options for this type of a program.

Kopczynski said he's not convinced about the efficacy of this program, but he would like a little more information at this point.

Councilor Dick Olsen said Albany's in a position to become a place where tourists want to go. He said people can get here by train, air, or car. He said the Airport could help make Albany more tourist-friendly. He said there are people in Albany who fly airplanes as a hobby and he thinks this would be a good thing to do. He would like to hear more about a potential program.

Coburn said Kopczynski brings up a good point, and he would also like more information before making a decision. He would like to see a comparison between loaning money to a private party to build a hangar versus the City building hangars and leasing them. He would like to know which option would pencil out better and which would work best for pilots.

Johnson asked if there are ever instances when corporate jets come in and rent a hangar for a couple of weeks. Sluiter said hangar spacing would be the responsibility of a Fixed Base Operator, but the Airport doesn't have one nor a facility that would be conducive for parking corporate aircraft.

Hare said he would be happy to volunteer some staff time to look at and answer some of the questions that have been raised. He said a good question is what the City's role should be in this. He said there has always been a delicate balance between revenue and expenses, and it would be good to consider if this program could be a way to generate some income.

Sluiter thanked Shepard and his staff for his help with this and listening to the AAC.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

Police Chief Mario Lattanzio said last December, he sent Community Education Specialist Sandy Roberts to CPTED training. He said staff is thinking about future ordinance changes that could be implemented based on CPTED. Roberts said she has been in law enforcement for 15 years. She said CPTED was just a concept six years ago. She said the training she received has given her a greater understanding about how we can affect crime in the design of the City. CPTED focuses on closing the gap for committing a crime. Roberts gave a PowerPoint presentation about CPTED.

Kopczynski asked about the people who are staying on the river off of the Dave Clark Path. He wondered where they are going when they are told to move on. Roberts said most of them are finding another spot in the area or they move out of

the City. She said she gives a brochure listing all of the available resources to every individual she makes contact with. Konopa said there are many agencies for those people to work with and get help.

Konopa said this is a great program and allows the City to be proactive. Konopa said, in a way, Albany has been doing some of this through the Great Neighborhoods Program. She said the first step was to require new housing developments to have setback sidewalks and front doors facing the street. She said the goal was to have neighborhoods be welcoming. She said commercial zones weren't a focus and this is a great program to see what can be done to be more proactive. She said we can look at the Development Code to make sure all new development follows these guidelines. Konopa likes seeing this type of program in our community. She said it builds a great community. She thanked Roberts for being proactive with this issue.

Roberts said Parks Maintenance staff have worked hard to help with this program and she appreciates all that they have done.

COUNCILOR COMMENTS

Johnson asked about the status of the Brandis property. Hare said staff is in discussions with a potential buyer for at least a portion of the property.

Olsen asked about the status of finding a new grocer for the Ray's Market location. Hare said he hasn't heard about any potential grocers wanting to locate a store there, but staff is continuing to pursue the possibility. Olsen said several constituents have mentioned to him that it would be nice to have a grocer back in that location.

Hare discussed the possibility of removing the podium in the Council Chambers. He said that it may be replaced with a wooden table in order to allow for more room when people are addressing the Council. Johnson likes the podium and wondered if a side table could be added instead. Konopa suggested attaching two flip-out tables to the podium. Hare said the wooden table would match the dais. Council said the City Manager could proceed with the table.

Hare said he will be attending the annual International City/County Management Association conference. He is leaving Friday, September 12, 2014, and will be gone next week.

CITY MANAGER REPORT

None.

ADJOURNMENT

There being no other business, the meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Reviewed by,

Diana Eilers
Administrative Assistant I

Stewart Taylor
Finance Director

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Monty D. Spencer

Purpose

A variable-width slope and retaining wall easement along North Albany Road required for the construction of ST-13-03, North Albany Road Reconstruction.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

DATED AND EFFECTIVE THIS 5TH DAY OF NOVEMBER 2014.

Mayor

ATTEST:

City Clerk

SLOPE AND RETAINING WALL EASEMENT

THIS AGREEMENT, made and entered into this 11th day of Oct., 2014, by and between Monty D. Spencer, hereinafter called Grantor, and the CITY OF ALBANY, a Municipal Corporation, herein called "City."

WITNESSETH:

That for and in consideration of the total compensation to be paid by the City, the grantor has this day bargained and sold and by these presents does bargain, sell, convey, and transfer unto the City of Albany, an easement, including the right to enter upon the real property hereinafter described, and to maintain and repair the slope and a retaining wall adjacent to the right-of-way for the purpose of protecting the slope over, across, and through the lands hereinafter described, together with the right to excavate and refill the slope to allow construction and maintenance of a retaining wall, and the further right to remove trees, bushes, under-growth, and other obstructions interfering with the location and maintenance of the said slope and retaining wall.

This agreement is subject to the following terms and conditions:

1. The easement hereby granted consists of:

A variable-width slope and retaining wall easement along the frontage of North Albany Road. See legal description on attached Exhibit A and maps on attached Exhibits B and C.
2. The permanent easement described herein grants to the City, and to its successors, assigns, authorized agents, or contractors, the perpetual right to enter upon said easement at any time that it may see fit, for construction, maintenance, evaluation and/or repair purposes.
3. The easement granted is in consideration of \$250.00, receipt of which is acknowledged by the Grantor, and in further consideration of the public improvements to be placed upon said property and the benefits grantors may obtain therefrom.
4. Upon performing any maintenance, the City shall return the site to original or better condition.
5. No permanent structure, with the exception of the City's retaining wall, shall be constructed on this easement.

IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

GRANTOR:

Monty D. Spencer



STATE OF OREGON)
County of Linn) ss.
City of Albany)

The foregoing instrument was acknowledged before me this 11th day of October, 2014, by Monty D. Spencer, as his voluntary act and deed.




Notary Public for Oregon
My Commission Expires: September 14, 2017

CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare, as City Manager of the City of Albany, Oregon, pursuant to Resolution Number _____ do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this _____ day of _____, 2014.

City Manager

ATTEST:

City Clerk

EXHIBIT "A"

Legal Description

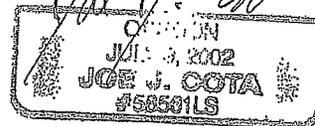
North Albany Road Easement

A Tract of land for easement purposes located over a portion of that Spencer Tract described by deed recorded in M-330307-02 in the Benton County, Oregon Deed Records that is more particularly described as follows:

Beginning at a point on the east right-of-way line of North Albany Road that is North 03°48'08" West 10.00 feet of a 5/8 inch rod said rod being North 89°50'21 East 12.03 feet of the northeast corner of Lot 4 of "NORTHWOOD" a subdivision recorded in Benton County, Oregon; thence South 89°57'38" West 25.05 feet; thence North 02°00'11" East 15.53 feet to a point on the north line of said Spencer Tract; thence North 89°48'45" East, along said north line, 23.44 feet to a point on the east right-of-way line of North Albany Road; thence South 03°48'08" East 15.62 feet to the Point of Beginning.

March 05, 2014
EXHIBIT "A"
Spencer easement 1
(12-116) JJC:ls

File Ref: z:/projects/2012/12-116/surveying/documents/spencer1.doc



Renewal: 12/31/15

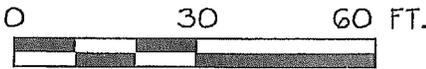
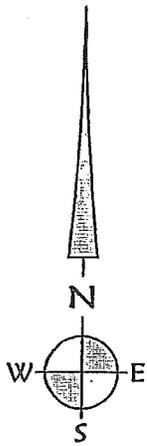
EXHIBIT "B"

MARCH 4, 2014

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 9, 2002
JOE J. COTA
#58561LS

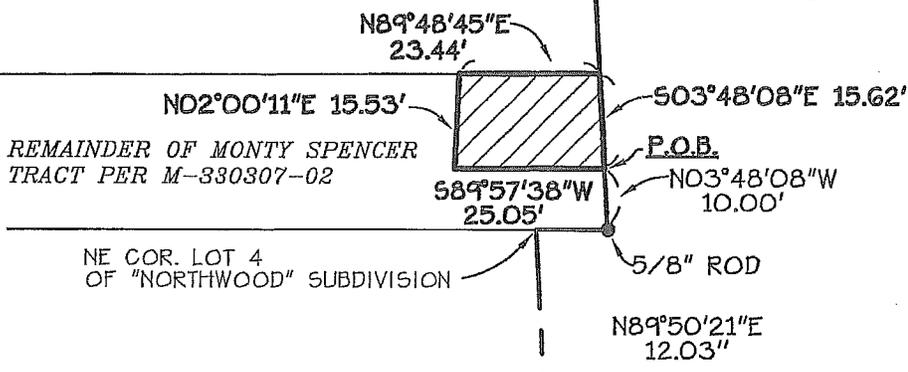
Renewal: 12/31/15



SCALE: 1" = 30'

NORTH ALBANY ROAD

TANGENT I.P. INC TRACT
IDENTIFIED AS PARCEL II OF
M-366475-04



NW QUARRY ROAD

K & D

K & D ENGINEERING, Inc.
276 N.W. Hickory Street P.O. Box 725
Albany, Oregon 97321
(541) 928-2583

Date: 3/4/2014

Time: 10:58

Scale: 1=30

File: dwg\2012\12-116\12-116_spencer.dwg (Briancpu54)

EXHIBIT C

11S04W36DC00602

A variable-width slope and retaining wall easement along North Albany Road required for the construction of ST-13-03, North Albany Road Reconstruction



Geographic Information Services

