



MINUTES

Wednesday, June 26, 2019
Regular Session Council Chambers, City Hall

Approved: July 24, 2019

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE

Konopa led the pledge of allegiance.

ROLL CALL

Councilors present: Mayor Sharon Konopa and Councilors Rich Kellum, Bill Coburn, Bessie Johnson, Alex Johnson II, Dick Olsen, and Mike Sykes

Councilors absent: Councilor Rich Kellum arrived at 7:27 p.m.

Konopa and City Manager Peter Troedsson presented retiring Parks & Recreation Director Ed Hodney with a shadowbox containing a plaque and a key to the city. Konopa credited Hodney with the growth of the Art and Air Festival. She thanked him for 16 years of leadership at the City.

Bernadette Neiderer objected to the inclusion of Item 4b on the agenda. She said the City failed to provide a complete copy of the report at least seven days before “this hearing.” She said additional materials were added to the agenda 48 hours before this meeting. She said the record is still incomplete. She asked the council to defer the report and decision.

Konopa said this will be discussed under Item 4b, when the city attorney will explain a couple of options.

Camron Settlemier, 230 Seventh Avenue SW, said he objected to Item 4b on the agenda. He said it prejudices his right to a fair hearing. He said several items he submitted were part of the record presented to LUBA, but are not part of tonight’s agenda packet. He demanded a full and open hearing.

Konopa said Settlemier is actually giving testimony. The council will not hear any more until they reach Item 4b in the agenda.

Councilor Bill Coburn reminded the audience that calling out “point of order” and standing up to speak is not according to Robert’s rules of order. Point of order objections should have been brought up when the issue was first discussed. A point of order requires the mayor to make a decision on the accuracy of the objection. He asked that the mayor follow Robert’s Rules of Order.

SCHEDULED BUSINESS

Public Hearings

1. Adopting the 2018-2019 Supplemental Budget.

OPEN: Konopa opened the public hearing at 7:25 p.m.

Finance Director Jeanna Yeager said the council is holding a public hearing because there’s an increase of more than ten percent in three funds. Two of the increases are due to transfers in of money from the sale of the Brandis property. The third fund increase is because money is being appropriated for Phase II of the airport apron improvement project.

No one else wished to speak.

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

MOTION: Coburn moved to adopt the resolution. Councilor Bessie Johnson seconded the motion, which passed 5-0. The resolution was designated Resolution No. 6818.

2. Adopting Parks & Recreation fees for the 2019-2021 biennium.

OPEN: Konopa opened the public hearing at 7:27 p.m.

Hodney said parks and recreation asks the council to adopt a fee schedule every year. Fees are adjusted as appropriate. That's why some are increased this year and others aren't.

Councilor Rich Kellum arrived at 7:27 p.m.

No one else wished to speak.

CLOSE: Konopa closed the public hearing at 7:29 p.m.

MOTION: Coburn moved to adopt the resolution. Councilor Alex Johnson II seconded the motion, which passed 6-0. The resolution was designated Resolution No. 6819.

3. Implementing proposed amendments to the Albany Development Code.

OPEN: Konopa opened the public hearing at 7:30 p.m.

Planning Manager David Martineau showed PowerPoint slides (see agenda file). He described the proposal to eliminate a criterion from the floodplain development section of the Albany Development Code (ADC). The criterion describes velocity of flood flows. It requires the use of tools and data that are applicable only on a large scale. Until recently, staff thought it was one of the minimum requirements.

The problem with the criterion is that it isn't practical to implement. After 2010, community development staff asked public works staff to do technical reviews of floodplain development applications. Engineering staff declined because of this criterion. They believed that it wasn't practical to apply, and didn't want to have to defend their use of it. As a result, floodplain development review goes to a third-party consultant, and the cost is passed on to applicants. K & D Engineering has expressed frustration that their clients have to pay for analysis that K & D doesn't believe is meaningful. Staff agrees that it isn't meaningful, but isn't able to waive review criteria.

The City's current third-party reviewer also says that this analysis isn't meaningful and doesn't want to have to defend a challenge on it. They don't typically see this one in other communities they work in. Staff contacted the state and found that it isn't a minimum requirement.

Public Works Engineering and Community Development Director Jeff Blaine said two objections to the criterion are that it is unclear, and that there are procedural challenges in applying it. He discussed some of the clarity problems. He said using this criterion on a site-by-site analysis requires the use of tools that are only applicable on a wide geographical scale. Results implying accuracy are misrepresentation.

Councilor Dick Olsen asked several questions clarifying the purpose and function of floodplain review. He asked if Blaine was saying that the criterion doesn't work and is expensive to developers. Blaine said if we were getting meaningful results and protections, or better decisions, from the analysis, it would be well worth it. He doesn't believe we are getting that.

Olsen asked if filling the flood fringe increases water velocity. Blaine said yes, but water movement is different at every stage of every flood event. It's very complicated. Olsen asked if other cities are getting rid of this requirement. Blaine said the City's consultant doesn't see it in other communities.

Konopa asked if the requirement applies to our local creeks as well as to the Willamette River. Blaine said it applies anywhere there's a mapped flood plain.

No one else wished to speak.

CLOSE: Konopa closed the public hearing at 7:52 p.m.

City Attorney Sean Kidd read the ordinance for the first time in title only: AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE ALBANY DEVELOPMENT CODE TEXT RELATING TO FLOODPLAIN MANAGEMENT AND ADOPTING FINDINGS.

MOTION: Coburn moved to have the ordinance read a second time in title only. Johnson seconded the motion, which passed 6-0. Kidd read the ordinance a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Johnson II seconded the motion, which passed 6-0. The ordinance was designated Ordinance No. 5929.

Konopa read the appeal rules.

Report

7:53 p.m.

Proposed demolition at Fourth Avenue and Calapooia Street.

Kellum recused himself and left the dais.

Konopa asked the council if they would like to postpone the report to a new public hearing, or proceed.

Kidd summarized the case. On September 12, 2018, the council called up the case from a Landmarks Advisory Commission (LAC) decision. The council held a public hearing on October 10, 2018, and recommended approval of the demolition, with conditions. The hearing was closed October 10. The decision was appealed to LUBA, who sent it back on a remand for two issues: that the adopted findings were not adequate to support the decision; and that Kellum must be recused.

The council has findings before them that staff believes are adequate to support the decision made October 10. The findings address criteria found in both the ADC and in the Oregon Administrative Rules (OAR). The council has several options: adopt the findings as they are; adopt them with additional conditions; or deny the request. Denial was not an option at the LAC hearing, because the ADC doesn't allow for complete denial of a demolition application. The council at its hearing was able to apply the OAR criteria, which allow for outright denial.

The council is not obligated to make a decision tonight. They can choose to delay the question to a future meeting. Any decision tonight requires four votes in favor to succeed.

Kidd said this is not a public hearing. The council has heard that notice wasn't given in time per a statute that relates to public hearings. This is not a public hearing. New evidence will not be permitted. The council can consider only testimony presented before the public hearing was closed on October 10. If the council wanted to hear new testimony, the City would need to advertise a new public hearing.

MOTION: Coburn moved to adopt the findings and approve the demolition. He stated that his decision is not influenced by anything said by Kellum. Johnson II seconded the motion. He stated that his decision is not influenced by anything said by Kellum.

Kidd reminded the council that they have in front of them information provided for the October 10 hearing, as well as information provided this week, which is testimony provided on October 10. Everyone on the dais was at the October 10 public hearing. Johnson II has told Kidd that he has reviewed all of the material again, since he was not actually a City Councilor on October 10.

Olsen said he will vote against, because there are more than 200 pages in the original agenda and more that was supplied recently, and new information has come to light. He spoke for several minutes about the houses and Albany history.

Konopa asked Coburn if his motion was for a 90-day stay imposed on October 10, 2018, or for the yearlong stay imposed on July 9, 2018.

Coburn said he prefers that the motion be effective immediately.

AMENDMENT: Coburn amended his motion to make it effective immediately. Johnson II agreed with the amendment.

VOTE: The motion passed 4-1, with Olson voting against.

Business from the Public

8:12 p.m.

Jeff Heesacker, 320 Washington Street, expressed concern that the city government could see private conversations on the Next Door app.

Troedsson said Heesacker had misunderstood an employee's post. The post said that Next Door does NOT allow the city government to see conversations between community members. The post advised users that they would need to contact the City directly if they saw something posted that they would like the City to know.

Joel Horton, 1930 Lyon Street SW, said he is disheartened by tonight's decision for demolition. These houses are an example of demolition by neglect. He asked the City to take steps to keep this from happening in the future. He believes that there must be laws in place, but the City may not be acting on them.

Adoption of Resolutions

8:23 p.m.

Updating the Deadly Physical Force Plan for Linn County.

This item was moved up the agenda.

Doug Marteeny, Linn County District Attorney, said the deadly force committee meets annually to review procedures for responding to incidents of deadly physical force by a police officer. No substantive changes have been made to the plan this year.

Johnson II said the plan doesn't include procedures for body cameras. Marteeny said some jurisdictions don't have them. The plan allows an agency to make decisions on the use of body camera video in an investigation. Johnson II said body camera video should be part of the protocol. The issue affects black people nationally. He asked if video is made available to the public. Marteeny said yes.

MOTION: Kellum moved to adopt the resolution. Coburn seconded the motion, which passed 6-0. The resolution was designated Resolution No. 6820.

First Reading of Ordinance

8:27 p.m.

Approving financing of System Development Charges for property described as Tax Lot 00801.

Kidd read the ordinance for the first time in title only: AN ORDINANCE TO LEVY ASSESSMENTS AGAINST PROPERTY SPECIALLY BENEFITED BY SEWER AND WATER CONNECTIONS AND THE ASSESSMENT OF SEWER, WATER, PARKS AND TRANSPORTATION SYSTEM DEVELOPMENT CHARGES FOR PROPERTY DESCRIBED AS TAX LOT 00801, OF THE PARCEL 11S03W17BC, AND SITE ADDRESS 2614 GEARY STREET SE; AND DECLARING AN EMERGENCY.

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

Kidd read the ordinance a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Councilor Mike Sykes seconded the motion.

Kellum asked if the emergency clause is in the ordinance because something failed and the owners need to get it repaired. Troedsson said the emergency clause is to allow the owners to get their business done as soon as possible. Konopa said the owners have subdivided the lot and a new house is being built.

VOTE: The motion passed 6-0, and the ordinance was designated Ordinance No. 5930.

Adoption of Resolutions

8:29 p.m.

1. ST-16-02, Crocker Lane Local Improvement District.

Coburn moved to adopt the resolution. Kellum seconded the motion, which passed 6-0. The resolution was designated Resolution No. 6821.

2. Authorizing execution of an intergovernmental agreement with Linn-Benton Community College (LBCC) for the construction and maintenance of pickleball courts.

Hodney reminded the council that on May 20 they authorized a memorandum of understanding to develop the intergovernmental agreement (IGA), which is the legal relationship between LBCC and the City. If the council authorizes execution of the IGA, the next step is to finish the design and get the project out to bid. He said this kind of partnership is the way the City needs to do business with limited funds.

MOTION: Johnson moved to adopt the resolution. Johnson II seconded the motion, which passed 6-0. The resolution was designated Resolution No. 6822.

Adoption of Consent Calendar

8:32 p.m.

- 1) Approval of Minutes
 - a) May 8, 2019, City Council Meeting.
 - b) May 20, 2019, City Council Work Session.
- 2) Annual liquor license renewals.
- 3) Approving an infrastructure funding agreement for Timber Ridge at Burkhart Creek Local Improvement District.
- 4) Recommendations to OLCC:
 - a) Approving the off-premises sales liquor license application for BP Mart (Geary Street Market), LLC, location at 2805 Geary Street SE.
 - b) Approving the limited on-premises sales liquor license application for Casetta Di Pasta, LLC, location at 300 Second Avenue SE, Suite 112.

Konopa said staff has asked to pull Item 3 for discussion.

MOTION: Coburn moved to approve the consent calendar with Item 3 removed for discussion. Sykes seconded the motion, which passed 6-0.

Blaine said discussions with the developers of the Timber Ridge project are going well. Staff is looking for council approval to enter an agreement that specifies that an escrow account be used instead of a completion bond. It's a standard form of assurance. The developers also have asked that the agreement state that petitions and waivers are satisfied when the project is completed.

The council discussed types of bonds and financial assurances.

MOTION: Johnson II moved to approve the funding agreement. Sykes seconded the motion, which passed 6-0.

BUSINESS FROM THE COUNCIL

8:38 p.m.

Johnson said there were so many budget questions and ideas from the council and staff that the council needs to start discussion right away instead of waiting for the new budget cycle. Troedsson said a council work session is on the calendar for July 22, 2019, to talk about options and ideas and choose some for further discussion.

Kellum said he prefers to hold Troedsson's performance evaluation in executive session. He thinks if the council had concerns about Troedsson's performance, they should be discussed in closed session. If there were an issue the council felt needed work, it could be simply mentioned in open session, without details.

Kidd said the city manager's performance evaluation is appropriate for an executive session unless the city manager requests it be handled in an open meeting. Troedsson said he will defer to the council's wishes.

Coburn said Troedsson's evaluation is a private matter between him and the council. Johnson agreed.

Troedsson's evaluation is scheduled for executive session on July 8, 2019.

NEXT MEETING DATES

- Monday, July 8, 2019; 4:00 p.m. Work Session
- ~~Wednesday, July 10, 2019; 7:15 p.m. Meeting~~ CANCELED due to lack of agenda items

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:47 p.m.

Respectfully submitted,

Reviewed by,

Allison Liesse
Deputy City Clerk

Peter Troedsson
City Manager

Note: Staff handouts referred to in the minutes as (see agenda file) are available on the website in the "Staff Handouts" column.