

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, August 2, 2004
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Chuck McLaran called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Chair Ralph Reid Jr., Doug Killin, Dick Olsen, Bessie Johnson, Glenda Fleming, and Sharon Konopa.

Absent: None.

BUSINESS FROM THE PUBLIC

There was no business from the public.

LINDENWOOD APARTMENTS

City Attorney Jim Delapoer explained that Lindenwood Apartments are disputing the amount of their sewer bill. The issue revolves around the interpretation of a “dwelling unit” and its application to the sewer rate structure. This case has already been heard by Hearings Officer James K. Brewer. Brewer found in favor of the City. It is now before the Council as a legislative matter.

Sharon Kime is the owner. Kime distributed Exhibits 1-36 (see agenda file). David Jacobs was also in attendance.

Kime thanked the Council for meeting with her.

Kime has owned the Lindenwood Apartments since 1984. She has participated in this community and has been a recipient of City services. She assured the Council that she already has and is still willing to pay her equitable, fair share for City services. She has recently come to appreciate the real challenge the City has in trying to comply with Department of Environmental Quality (DEQ) requirements.

Kime doesn't feel that her businesses' severe financial problems are the result of the resolution or the Wastewater Task Force. She does not believe the intent of the Task Force was that sewer bills would be inequitable for one certain class of customers. She said it was not her intention to bring legal action; but her questions to City staff resulted in an inundation of documents that still did not define or site authority for a “dwelling unit”.

Kime said she is not asking for special favors or for an exception to the resolution. She is simply asking to be treated equitably across the class of multi-family residences. Currently, Lindenwood and like structures are billed a flat charge for every bedroom; no other multi-family structure is charged in the same way. If the billing remains as is, it will drive her out of business. She is asking for Council to define “dwelling unit”.

Kime began reviewing Exhibits 1-36.

Kime introduced John McGee, a Civil Engineer for K&D Engineering who is involved in wastewater design and evaluation, and Tom Crooks, Chair of the Mayor's Wastewater Task Force. Kime introduced other quad and quint owners in Albany: Julie Grunberg, Jay McHenry, and Don Weber.

Tom Crooks, PO Box 594, Joseph, Oregon, explained that he is puzzled that a quad is being considered as one dwelling unit per bedroom. He described how it is for tenants to live in shared quarters. He was on the Task Force for 13-15 months; the objectives were fairness and equity. At the onset, there were a lot of customer classes and subclasses which the Task Force was able to streamline. He thought the Task Force established a good guideline by giving the customer the opportunity to control and reduce their sewer bills based on their water usage. It does not seem fair to call a single bedroom that has access to a shared bath and kitchen, a whole dwelling unit.

Councilor Konopa asked Crooks if the issue of quads was specifically discussed by the Task Force. Crooks said it was not.

Julie Grunberg, 38589 Harrington Drive, Lebanon, said that she owns and manages two separate apartment buildings at two different sites, each with 10 units. She and her husband bought the first building in 1994 in order to have retirement income. Later, they bought the second building. Now they are running into problems; the apartments do not qualify for HUD since they do not have their own kitchen and bathroom. Yet, Grunberg is still trying to keep the cost down since many of the renters are lower income. They work closely with Linn Benton Community College, Linn County Mental Health, and Linn County Parole and Probation to offer affordable housing for those down on their luck. Tenants are able to afford the studio apartments because Grunberg pays all the utilities and the apartments are furnished. They have no problem with the inevitable rising cost of sewer service, but not at this rate: in 2001 they

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paid \$501, in 2002 they paid \$1,786, and in 2003 they paid \$2,014. In 2002 they had to raise their rent. But if low income renters can find 1-2 bedroom apartments for the same price as the studios, they will move out. Grunberg has never had a problem renting units except for the last two years; they had to borrow money for the first time ever, just to pay the bills, mostly utility bills. She asked the Council to please consider changing the definition of “dwelling unit.”

Don Weber, 1745 Thurston Street, Albany, has owned property in Albany since 1971. He owns quints, which he explained are essentially small bedrooms that surround one common living room with a shared kitchen. He has also had problems maintaining affordable rent with the rise in inflation. He is controlled by the market. When his utilities rise, he cannot raise rent. He is now tapping into savings accounts in order to stay afloat. He can survive one more year before he runs out of money. He is deferring maintenance on his quints in order to make ends meet. An apartment building next to his has one bedroom units with 2-3 people living in each unit, and they pay almost half as much for sewer. They have a total of 20-30 people living their building, and there are just ten living in his building—yet, he pays more for sewer than they do.

Councilor Johnson asked Weber, what is the square footage? Weber replied the apartments at 926 4th Street are 10 feet x 14 feet. He charges \$345-\$350 per unit and pays for the utilities.

Grunberg’s buildings are at 697 Jefferson Street and 417 6th Avenue SE. She is also deferring maintenance on her buildings in order to make ends meet.

Konopa appreciated the presentation by Kime. She said that she can relate to these same issues, as she is involved in a non profit group in Albany that provides housing, and they too struggle with utility payments. She agrees that landlords can only charge what the market will pay.

Delapoer passed out two graphs: “Winter Average Consumption & Monthly Sewer Bills per Dwelling Unit” and “Modified Monthly Sewer Bill per Dwelling Unit” (see agenda file). He said that staff disagrees with Kime about what she asserts or thinks that everyone else (other utilities) does. He started with what the City and Kime do agree on.

Delapoer explained that the Council is not obligated by law to follow anyone else. All the Council has to do is to be fair and equitable. The current resolution says to charge a fixed charge for each dwelling unit. After the Task Force completed their study and the resolution was adopted, staff did an audit to make sure the City had good information about multi-housing in Albany. As a result of that audit, staff concluded that a number of apartments were actually quads. Billing dwelling units in this way is not a new administrative decision. Bills for quads and quints were being billed incorrectly for several years because the City had insufficient information. Because the information we had was not correct, we did not back bill quads and quints; although we do have the authority to back bill them for up to six years. Under our current Resolution, we have a method for disputes to be resolved. In this case, James Brewer, an attorney from Corvallis, reviewed the arguments of both sides and concluded that staff is correctly interpreting the resolution. It is not true that staff chose to change the interpretation; it is true that a situation of under-billing was discovered and thus, corrected.

Delapoer recalled that Kime said she would not ask for a special rate because she helps low income folks. The Wastewater Task Force was told that bonding restrictions do not allow one class to subsidize another. We cannot make rate decisions to help low income housing. If the City wants to help in other ways, it can; but not through the rate structure. He pointed out that the huge increase claimed by Kime is not truly just an increase in the rate, but is also due to the mistake that resulted in the under-billing.

Delapoer explained further that the Albany Development Code specifically says that the definitions therein only apply to development code. Dwelling units for zoning issues is different than dwelling units for rate structures; it is not a good comparison.

Delapoer addressed Kime’s assertion that there is no functional difference between four people in a quad and four people in a bedroom living as roommates. He passed out pictures of the quads (see agenda file). He gave examples of structure and how it applies to dwelling units.

Delapoer explained that the Council used this same rationale when considering motel rooms and recreations vehicle spaces in the commercial class rates; they clarified separate commercial use by property right (substantiated by a lease or rental agreement). The hearings officer who considered Kime’s complaint seized on the same point regarding the contract; each tenant in a quad has a separate contract and a separate household.

Delapoer said to look at the fairness of the application. The “Winter Average Consumption & Monthly Sewer Bills per Dwelling Unit” graph shows that from a water usage standpoint, the use pattern is just like a one bedroom apartment. The sewer bill for a quad tenant and for a one bedroom apartment is about \$20 a month. What Kime is requesting is to pay \$7.66 per unit, rather than \$20 per unit for the same water usage. Ultimately, it is a policy decision for the Council.

Delapoer distributed copies of the City’s “Hearing Memorandum before Hearings Officer James K. Brewer” (see agenda file). He directed the Council to the summary decision by Brewer.

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Delapoer read the draft resolution that clarifies dwelling unit (see agenda file). He explained that basically, if you occupy a space by right of a lease, then that is your dwelling unit and you pay one fixed charge.

Councilor Olsen asked Delapoer, if I rent a room in my house, would you consider that a dwelling unit? Delapoer replied yes; you will then have transitioned your single family home into a multi family unit.

Councilor Fleming asked Kime to explain why she felt that staff manipulated the data in Exhibit 34. Kime showed why she felt the calculation was misleading. She added that she is asking to pay according to 39 dwellings, not to pay \$7.77 per dwelling per month.

Olsen asked, are there boarding houses in Albany? Staff is not aware of any.

Konopa asked, how are assisted living buildings, with separate studios that are attached to larger unit billed? Staff replied that they have their own bathroom but share kitchen and dining space, and are billed for one dwelling unit for each bedroom. Camlu Retirement Center is an example.

McLaran asked Kime, how many leases do you have? Kime said that they vary every month because of high turnover. Most tenants are college students. McLaran asked, but there is the potential to have 152 signed leases, the same number of bedrooms? Kime said yes, although she has never had that many. McLaran pointed out that in a bed and breakfast, guests pay for the bedroom but still share a common bathroom and kitchen.

Councilor Killin recalled that when the Council considered dwelling units for the Blue Ox RV Park, they decided the Park should pay a dwelling unit for each space. They were charged according to how many spaces they had at the park, not how many were filled at the time.

Johnson asked, how much was Kime undercharged? If she had been billed the correct amount, how would it change the graph that shows how her bill has increased? Staff would have to research the amount she was under-billed.

Grunberg asked the Council, are you saying the City charged us incorrectly for 30 years? Kime was told by staff that the City changed the billing system and it was nothing she had done.

Olsen remembers this issue 30 years ago, when the quads were built. His recollection is that it was a conscious decision to bill as one base.

Killin is a landlord. He agrees that it is more difficult to get renters now, due in part to low interest rates. He pays two base charges on duplexes that have one water meter. We have to draw the line somewhere. If the Council accepts Kime's argument, then Killin could claim he has one water line and one sewer line, so he should only have to pay for one base. Killin feels we should charge Kime for 152 base charges.

Olsen asked Kime, is there a limit to how many people can live in a quad unit? Kime replied that only one person can. Olsen said that that is a difference between quads and duplexes.

Crooks described the Task Force's discussion. He said that if you apply for a building permit, it is classified as two dwelling units. He suggested that instead of counting a quad with four bedrooms as four dwelling units, we could parrot what the Building Department does and classify it as two dwellings. It is a compromise between four units and one unit.

Johnson thinks we should charge according to the number of leases. It is the cleanest way and it is fair to apartments and duplexes.

Kime said that quints are defined by the Building Department as 2.5 units.

Councilor Reid suggested that for communal type units, we count the number of fixtures (such as sinks, showers, and toilets).

Konopa agrees that we could match the Building Code definition. She reminded the Council that tenants have to pay for laundromats on top of their rent. She thinks we need to review this further.

The Council will continue discussion of this item at a future work session.

Killin moved that quads should be treated as 2 dwelling units and quints should be treated as 2.5 dwelling units and they should be charged accordingly. There was no seconder to the motion.

EAST I-5 TRAFFIC STUDY

Civil Engineer II Jeni Richardson referred to the report in the Council packet. She said that the City Attorney has advised that the Council does not discuss this yet.

Fleming asked if staff is assuming that Airport Road will be closed off as it now shows in the Transportation System Plan. Staff replied that the key assumption is that there will be a southbound on-ramp on Knox Butte Road.

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Reid asked if the Council can be briefed on this issue prior to the public hearing. Delapoer said that they cannot, because we would run the risk of a procedural error. It would be better to discuss it at the public hearing, although it will put a burden on staff and Kittelson to do a good job explaining the issues at the public hearing.

City Manager Steve Bryant reminded the Council they will not be in a hurry to decide on this issue, so they can take their time to understand it. *The Council decided to hold a work session after the public hearing.

COMMENTS ON RECOMMENDED WATER SYSTEM DEVELOPMENT CHARGES

This item has been postponed to a future work session.

UPDATE ON PROVIDENCE-KAISER H.M.O. AMBULANCE REIMBURSEMENTS

This item has been postponed to a future work session.

COUNCILOR COMMENTS

Reid informed Code Enforcement staff that 1319 Jackson Street still has big signs out.

CITY MANAGER REPORT

The Council selected August 17, 2004, for the ribbon cutting ceremony for Burkhart Park.

The Council selected August 25, 2004, for the public hearing for connection fees.

ADJOURNMENT

There being no other business, the work session was adjourned at 6:02 p.m.

Respectfully submitted,

Mary A. Dibble
Administrative Assistant I

Reviewed by,

Susan Busbice
Assistant City Manager/Chief Financial Officer