

MINUTES OF THE METRO COUNCIL MEETING

September 16, 1999

Council Chamber

Councilors Present: Rod Monroe (Presiding Officer), Susan McLain, Ed Washington, Rod Park, Bill Atherton, David Bragdon, Jon Kvistad

Councilors Absent:

Presiding Officer Monroe convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

Councilor Bragdon thanked the Rotary Club, the Methodist Church and the US Government for bringing a group of local officials from the Russian Federal. They were studying government in the United States and were at Metro today.

Councilor Washington recognized Terry Peterson for the REM Department's contribution of recycled paint to Mercy Corp for their rejuvenation efforts in Central America after Hurricane Mitch. He also noted a Certificate of Appreciation he received and passed on to the REM department from a children's center for funds they received from the North Portland Enhancement Fund. Fifty cents for every ton of garbage at the old St. John's Landfill went towards enhancing the community. He acknowledged Katie Dowdall's efforts with the North Portland Enhancement Committee.

Terry Peterson thanked Councilor Washington and the employees who actually did the work.

2. CITIZEN COMMUNICATION

Randy Pozdena, EcoNorthwest's Managing Director presented "Results of Analysis of Underlying Assumptions of the 1999 Vacant Land Estimates". He had been retained by Westside Economic Alliance and the Coalition for Sensible Growth to review the September 1999 Urban Growth Report Update findings, specifically to look over the key analytic assumptions, the consistency of the various calculations and to offer preliminary findings and raise questions. He added that UGR findings were very complex and difficult to audit and review. He synopsised the findings (a copy of which may be found in the permanent records of this meeting).

Councilor McLain welcomed Mr. Pozdena. She agreed that it was hard to make some sense of assumptions he didn't work on. She invited him to attend the Growth Management Committee meeting Tuesday, September 21, 1999, and said she would see that there was time for further discussion at the end of their agenda. She pointed out some of his assumptions that she wanted more information on. She felt his comments regarding accessory units being used as if they were just as good as single family homes was indicative of an assumption he had made that accessory units were not as good as a single family home to people who wanted to live in an accessory unit or could not manage a single family home by themselves. She asked for a compilation of assumptions and goals he was using to filter the information through. Regarding market fees and the need for an economic cross check, she felt it was important to note that Metro went through periodic reviews and were never done with this process. She wondered if he was talking about a one time market check, a market check just in the report, about constantly

checking the market. She commented that the market has different things happening due to different conditions.

Mr. Pozdena said he would be happy to respond to any of those items now.

Councilor McLain indicated that the Council agenda had been set.

Councilor Kvistad said he would like to hear the answer to the question.

Mr. Pozdena said he went into the review to understand the assumptions underlying the report and not with his own assumptions. His purpose was to find out how the bottom line number was derived, what methodological assumptions were made to get there, and to review those assumptions. He had started a list of issues he had with those assumptions. He said all of the issues had to do with whether one could skid in with 200 more units of supply than there was demand and not expect the price and market conditions in the region to be accommodative with the plan. He said he would be happy to work with staff to clarify his ideas more thoroughly.

Presiding Officer Monroe said Councilor McLain was the Chair of the Growth Management Committee and would be directing staff. She had invited him to the committee meeting.

Councilor Kvistad asked about the methodology not consistent with the 2040 precepts. He appreciated a quick overview of this part of the presentation.

Mr. Pozdena said the report assumed the capture rate, which showed how much of the growth heading our way would get placed in the Urban Growth Boundary. He wondered why such a low capture rate was assumed if the quality of life effected by the 2040 Plan was going to make living within the UGB on par with or better than living outside the boundary. He said it seemed if one had faith in the precepts, one shouldn't take a capture rate from a recent period when folks had been fleeing to Clark County to avoid the price effects of constraints.

Councilor Kvistad said he was not talking about Clark County but appreciated the point. He asked about the report being silent on market acceptance. He asked Mr. Pozdena to walk through his thinking on price and quality adjusted quantity and how that effected the presentation he had just made.

Mr. Pozdena said as he had indicated, the economist belief of supply and demand was always in balance, it was just at what price. If the only way to achieve these densities and contain the growth within the UGB was to further elevate prices above today's levels, the highest in the nation in terms of recent growth, then it was not clear to him we would be providing people with, the same quantity of housing on a price adjusted bases. The bean count approach to housing units had to be adjusted for the fact they were a lot more expensive for what you got and the amenities they provided.

Councilor Atherton asked Mr. Pozdena about methodology and projecting a demand for 20 years based on the state mandated requirement that it be done on the previous five years. He wondered if that was a reasonable assumption and if it was a workable process.

Mr. Pozdena said you had to live with the mandate if you had it. He would leaven it with market cross checks because asset markets, land markets were very forward looking. They were exactly the indicator you wanted. What those prices and trends were telling you was what the market

believed the relationship between available site supply and demand for those sites would be. You should not ignore that fact if you had the mandate to look forward to providing a 20 year supply. It was quite different to provide a 20 year supply of \$150,000 homes versus \$300,000 or \$400,000 homes in his view.

Councilor Atherton said there was a subset to that question when we look at land supply and we also look at quality. They had also had reports that because of the Urban Growth Boundary, because of the reduction in uncertainty that was provided by our land use planning program that had increase demand for commercial and industrial properties especially because it reduced the risk for those investors, therefore, we had had an accelerated rate of construction and development because of that reduction in uncertainty. Was this a factor?

Mr. Pozdena said he was certain that contributed and was aware of the academic papers that promoted that notion. He pointed out that if that were true in the housing realm then you would not expect to see the accelerated suburbanization that we were seeing. Portland was 9th or 10th in the nation but was not intending to suburbanize ourselves. Secondly, the depression of our home ownership rate suggested to him that there was a price problem regardless of what channel it came through. Price problems were usually resolved by adding to supply.

Councilor Bragdon asked how Mr. Pozdena reconciled his prediction of price flight from the region with the prediction also that the region would capture more growth.

Mr. Pozdena said to be internally consistent if we believed that the region's plan, the 2040 concept would provide a more livable desirable cost effective mode of living then the UGB should be capturing more not less than it had historically. We either walk the walk as long as were talking the talk or not. It was a logical outcome of his belief. He was not saying he didn't share that belief. He was saying that in order to have that occur we would have to add to supply.

Councilor Park asked about the flow chart concerning the Urban Growth Report processes. Did any thoughts come to his mind as to a simpler process?

Mr. Pozdena said he liked prices, he would like to track site values over time and that would tell him a lot more as a way of deciding whether we needed to augment the area within the boundary or not. He said site values reflected and captured very nicely in his view the fact that the market believed that there was going to be a relative shortage of land vis a vis supply going into the future in our region. He was not suggesting this effort not be gone through but that it be leavened with, considered along side of, these market indicators.

Councilor Park referred to Mr. Pozdena's comment about bean counting, which there had been discussions about, was that under current law that was what they were required to do. We didn't get into the discussion of it being a 30 year supply, perhaps it should be a ten year supply. We were stuck with current law which required going with a 20 year supply and at some point to count that. He asked if Mr. Pozdena was suggesting a change in the methodology in terms of it should be a price point or that it should be a different number picked in terms of the amount of years.

Mr. Pozdena said no he thought that he would prefer a different law than 2709 himself but he thought it could be worked within that context. Within the current methodology there were quite a bit of market judgments made about the refill rate, the rate at which Functional Plan compliance would occur. There were qualitative assessment being made, he was simply suggesting to add

another, the most important one, which was what was going to happen to pricing and could people really buy their way into this town.

Councilor Park said the question he had was that the assumptions staff were making were based upon trying to have 2040 implemented and those were the assumption in terms of certain densities at certain rates around the light rail and so forth. He was trying to get the connect between price and how we were building it and that somehow was effecting the underlying assumptions. He expressed interest in how this would work out in the future.

Mr. Pozdena said he wasn't party to the design of the 2040 process but he hoped that it didn't mean, this plan at any price including propelling development outside of our UGB and further suburbanizing our region.

Councilor Washington said for an economist he made sense, he brought this issue into language that made sense for him. He asked if this was a simple process or a complex one.

Mr. Pozdena said he felt the UGR process was complex.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

Councilor McLain said there was no MPAC meeting but that MPAC members had been involved in the Regional Water Consortium meeting this week.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the September 9, 1999 Regular Council Meeting.

Motion: **Councilor McLain** moved to adopt the meeting minutes of September 9, 1999 Regular Council Meeting.

Seconded: **Councilor Washington** seconded the motion.

Councilor Bragdon said the figure listed for the compactor was \$75,000,000. It should have been \$750,000.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed as amended.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 99-817**, For the Purpose of Amending the Metro Code 2.09.060 and 2.09.100 increasing the Eligibility Requirements and Fees for the Metro Contractor's Business License Program.

Presiding Officer Monroe assigned Ordinance No. 99-817 to the Metro Operations Committee.

8. ORDINANCES - SECOND READING - QUASI-JUDICIAL PROCEEDINGS

8.1 **Ordinance No. 99-816**, Denying Urban Growth Boundary Locational Adjustment Case 98-7: Jenkins/Kim, and Adopting the Hearings Officer's Report Including Findings and Conclusions. (Hearings Officer's Report and Recommendations.)

Mr. Dan Cooper, Legal Counsel, reviewed the procedures and general rules for this quasi-judicial proceeding. He reminded the council that they were the judges in this proceedings. This was quasi-judicial proceeding for a locational adjustment to the Urban Growth Boundary. Metro Code pursuant to state law sets criteria for the council to use in deciding this issue. The council's decision must be based on the evidence that was in the record. The record had been made at hearings in front of the hearings officer and was now closed. There was no further evidence that could be considered except the evidence that was already in the record. The criteria were those that were set for in the Code and they were addressed in the hearings officer's report and recommendation. He would be explaining what the criteria were. The criteria and the evidence guided this decision. A quasi-judicial proceeding meant that if there was evidence in the record that was undisputed that all of the criteria were satisfied then the Council must reach a decision to grant the applicant's request to move the Urban Growth Boundary. Likewise, if there was undisputed evidence in the record that the applicant had not satisfied all of the criteria, then the Council may not approve the application. If the Council reached the contrary decision to either of those two extremes and it was appealed, the Land Use Board of Appeals would send it back to the Metro Council. If on the other hand there was disputed evidence in the record as to whether or not the applicant had or had not met all of the criteria, then the Council had a choice as to which of that evidence the Council chose to believe. As long as the Council's decision was based on substantial evidence in the record that the Council believed showed that the applicant had either met or not met the criteria, either decision, he believed, would be sustained if appealed. In this case it was fair to say that there was disputed evidence in the record.

In this matter procedurally what would happen was that the Council would hear from Metro staff, Ray Valone, who would give the Council a very short introduction as to what the facts were. Then the Council would hear from the hearings officer, Larry Epstein. He would be giving his report and recommendation to the Council. Then the applicant, who was represented by his attorney, Mr. William Cox, would have an opportunity to address the Council on two matters that he had raised. One, was the exceptions they would take to the hearings officer's report and recommendation. This was their opportunity to tell the Council why the hearings officer's recommendation was wrong and why the Council should reach a different conclusion. As part of that request they had also asked that the Council send this matter back to the hearings officer to give them an opportunity to present additional evidence. If the Council chose to take that route, then the council could end this proceeding at any time today, send it back to the hearings officer and have him conduct a further proceeding to consider that evidence, give everyone an opportunity to enter any additional evidence they needed to rebut that evidence and then come back to Council with a further report and recommendation. If Council did send it back to the hearings officer, they may decide that it was appropriate to interpret some of the provisions of the Code and give him instructions as to how the Council would like to have him interpret those code sections as they may apply to the facts in this case so that can be part of his report and recommendations back to the Council. He thought that the hearings officer and Mr. Cox would address the nuances of what that was all about.

After Mr. Cox spoke and the Council got a chance to ask him questions, there may be other people in the audience who were parties to matter because they testified below who either wished to support the hearings officer recommendation and they got to present their argument as to why they believed the hearings officer recommendation was what the Council should do or who may be testifying in front of Council as to why the applicant should prevail in this matter and what their reasons were. It was important for the Council to know that everything the Council heard today whether from the hearings officer, from Mr. Cox or from anyone else that chose to speak was not evidence but simply argument as to what decision the Council should make. The evidence was already in the record.

In that light he noted that the Council staff received a letter dated September 9, 1999 from two people who were parties below, addressed to Council McLain. He furnished a copy of the letter to Mr. Cox and Metro's procedures did not provide for written argument in this matter. If the people were here they would be free to speak but if the Council had seen a copy of the letter they should disregard the letter because it was not the way the Council heard argument in this matter.

Lastly, this being a quasi-judicial matter, as he had said before, the decision must be based on the evidence in the record, if any of the Council had had any contacts, discussions or conversations at all with anyone who was here in this room, who was a party to this matter, either the applicant or any of the neighbors, about the case, the Council needed to disclose that now and tell everyone what the substance of those conversations were. This was for two reasons, one, the substance of those conversations may or may not be evidence in the record. If it was not evidence in the record you could not rely on it in making this decision. Unless Metro could explain why there was evidence in the record that supported the decision the Council reached then they didn't have a basis for having the Council's decision sustained. Secondly and equally important, everyone was entitled to have some procedural fairness as the Council considered this case. If any member of the Council had heard reasons from anyone why they should or should not make a particular decision, everyone that was involved in this, should have an opportunity to know that those conversations were and tell the Council why whatever had been heard was wrong. Normally, the Council tried to avoid those conversations but sometime it happened so that was why it was best to follow the rule to disclose them and get them cured right now by putting that in the record.

Councilor Park declared an exparte contact with a member of one of the applicant's family questioning the procedure as to where the Council was going with this. Second exparte contact was with an individual who was interested in seeing that the property did not come in and procedurally how to remove the property from the Urban Growth Boundary.

Mr. Cooper said to Councilor Park said they had discussed this matter and that Councilor Park was going to declare these disclosures and that he didn't believe that those conversations went to evidence in this matter. If anyone wished to ask him as they went forward what the substance of those conversations were, he may answer those questions.

Councilor McLain said there were some neighbors in the area who had phoned her, left voice mail or sent letters that concerned this issue or site 65. Some of them concerned both. She did not talk to any of those individuals but did send a letter to them indicating that she would not be talking to them because this was an exparte contact.

Mr. Ray Valone, Growth Management Services Planner, said before the Council today was a proposal for a locational adjustment, Michael Jenkins and Sang Kim requested the addition of

18.85 acres to the UGB for purposes of developing a residential subdivision. The packet before the Council included the Ordinance No. 99-816 for denial of the request. It included the hearings officer's report and recommendation, the exception request and offer of proof from the petitioner's legal counsel and his cover staff report. The property was located in Washington County southeast of the intersection of Springville and Kaiser roads. A public hearing was held on May 24, 1999 in the Washington County Public Services Building, conducted by Larry Epstein, acting as Hearings Officer for Metro. Mr. Epstein submitted his report and recommendation to Metro on July 1, 1999, 30 days after the close of the record on June 1, 1999. He introduced Mr. Epstein.

Mr. Larry Epstein, Hearings Officer, introduced the case by explaining his process. His practice was to provide to the Council with two documents. Findings, Conclusions and Final Order included a description of the project, the procedures and the applicable standards in providing findings in response to the applicable approval standards for the locational adjustment and his conclusions for what he thought the Council should do. The second document, Hearings Officer's Report and Recommendation summarized the longer document. He then read his report into the record (a copy of which may be found in the permanent record of this meeting).

Councilor Atherton clarified that to deny the petition all it took was one finding to accept one condition that didn't meet the Code.

Mr. Epstein said that was correct. They must fulfill each and every locational adjustment criteria.

Councilor Atherton summarized if there was one fatal flaw, it was fatal.

Mr. Epstein said yes.

Councilor Kvistad noted on page 67, attachment C, Mr. Epstein used schools as a criteria. He understood there had been some LUBA decisions having to do with schools, but noted that there were two school locations proposed that may not be developed yet. In his view, the hearings officer's perspective on that would not have been correct. He asked if either or both of these school sites shown on the exhibit were acknowledged by the school district. He wondered if Mr. Epstein had taken those into consideration.

Mr. Epstein believed these were the two schools cited in the materials and that showed the middle school would reach capacity in two years. It had been developed but the elementary school was not yet built.

Councilor Kvistad summarized that the middle school noted in Attachment C was built and existed and the elementary school had not yet been constructed but was in the Beaverton School District's Plan.

Mr. Epstein said that was his understanding from his site visit and from the materials.

Councilor Park said in the similarly situated lands criteria, the hearings officer had mentioned natural or man-made boundaries. He asked if jurisdictional boundaries were construed as man-made criteria.

Mr. Epstein said no because the Council had consistently said separate ownerships didn't make a difference. He said if ownerships didn't make a difference then neither should jurisdictional

boundaries in his opinion. He didn't think the Council had ever squarely faced the question of whether a jurisdictional boundary was something that distinguished otherwise similarly situated lands. As a matter of physical characteristic there was no indication that there was a county line.

Councilor Park asked Mr. Cooper for assistance.

Mr. Cooper responded that, as the hearings officer had explained, he had been interpreting prior Council actions. This was a new action and if this council wanted to make a new interpretation it had the opportunity to do so. The hearings officer was explaining why, based on all previous information, he was making that recommendation. He suggested letting the applicant explain his different views and then the Council would have an opportunity to make a different decision.

Mr. Epstein added that the Code itself dictated what factors were considered in determining similarly situated lands. The Code said the proposed Urban Growth Boundary amendment must include all similarly situated contiguous land which could also be appropriately included within the Urban Growth Boundary as an addition based on the factors above. It would have to relate to public infrastructure kinds of issues. Taxation and jurisdictional boundaries weren't mentioned in the criteria. In his opinion, it would not be consistent with the plain meaning of the word to consider such other issues in drawing distinctions between this site and land to the north.

Councilor Park said he was trying to draw a distinction. In a recent decision on Urban Growth Boundary Reserve Area 5 the cut off was made at the Multnomah-Clackamas County line based on Gresham's concerns for servicing those areas, and based on different tax codes. He asked, if that was the case, why would more additional lands not be included in Clackamas County.

Mr. Cooper said while the Council may have made a very rational choice in that decision, it was operating as a legislative amendment where it applied broad Goal 14 criteria which did not include the similarly situated land criteria applicable in the case of a locational adjustment. He said the Council had considerable flexibility but he also thought that Mr. Epstein had done a good job of summarizing everything he was aware of. He was sure Mr. Cox had a different opinion that the Council would be hearing.

Mr. Epstein said in this case the same agencies provided some services on both sides of the line. For instance, the Tualatin Valley Parks and Recreation owned land on both sides, and Tualatin Valley Fire and Rescue and USA Sewer also served both sides of the line.

Presiding Officer Monroe asked about Beaverton School District.

Mr. Epstein said he was not certain about the school district, he did not have a chance to ask them. That would be one distinction between this case and the legislative matter described by Councilor Park.

Councilor Atherton asked about the property immediately across the road to the west.

Mr. Epstein responded that was it was a power line right of way, not a road.

Councilor Atherton asked what was immediately to the west of the power line in the large open area.

Mr. Epstein said that area was dedicated open space for that subdivision.

Councilor Atherton asked if it included the stream.

Mr. Epstein didn't think the stream entered into that property but he wasn't certain.

Mr. Cox thought the stream might come into the property.

Councilor Atherton thought it appeared that the stream went through the property.

Mr. Epstein said it might go through the southeast corner of the open space area.

Councilor Atherton asked Mr. Epstein if the applicants were claiming this property did not provide open space.

Mr. Epstein said Mr. Cox argued in his exception that open space must mean something more than undeveloped land and that it would have to fulfill Goal 5 factors.

Councilor Atherton said it seemed to be similarly situated, adjacent to other lands that were characterized as open space. He asked Mr. Epstein about a statement he made about providing for the ability to serve nearby lands in the UGB or provide the potential to serve lands in the UGB.

Mr. Epstein said it must result in a net improvement in the efficiency of public services and facilities in the adjoining areas in the UGB. It also must facilitate needed development on adjacent existing urban land. Facilitate could be characterized as actual or potential benefit.

Councilor Bragdon said while open spaces wasn't defined in that part of the Code it was listed with other things that were deemed public facilities and services. The other items that were listed such as emergency services, schools, transportation were all things provided by public sector agencies. In construing open spaces as Mr. Epstein construed them, they were not necessarily provided by a public sector agency. He asked Mr. Epstein to comment on how he had made that distinction.

Mr. Epstein said they weren't provided by public agencies but they benefited the public. They were perceived as open space by the public. His rationale was that there was no other way to perceive them except as undeveloped open space.

Councilor Bragdon said that open space was privately owned, so it would be in the sense of a view.

Mr. Epstein said that was correct.

Mr. William Cox, 0244 SW California, Portland, OR 97219 introduced Eric Ismen, an attorney and planner, and said they had brought people who were knowledgeable about the property. He said he had professional and legal interpretation differences with Mr. Epstein's opinion which he had pointed out in general terms in his exception. He spoke to the similarly situated lands issue, saying that one of the things that had been overlooked was the fact that this property was surrounded on three sides by the UGB. It was not similarly situated to the property to the north because the property to the north was surrounded on only two sides by the UGB. If anything, in order to accomplish what the hearings officer had suggested, Malinowski's property should be take out all the way along so it would be similarly situated. He said it stuck up and created a divot

in the line which caused this property to be fronted on three sides by the UGB and only one side by EFU land. He thought that issue alone refuted most of the analysis given to the Council by the hearings officer. He thought Mr. Cooper should address this, but in answer to Councilor Atherton's question reiterated that Mr. Epstein said there only had to be one error for the locational adjustment to be out. He did not believe that to be entirely true. He felt all of the tests came up to a balancing between the benefits and the detriments. He did not think it was better evidence than Mr. Epstein's conclusion on item 3 of his report and recommendation about granting petition results in a superior UGB and a net improvement in the efficiency of public facilities and services relevant to the adjustment. The hearings officer found it did not result in sufficient net improvement and that more land was proposed to be included than was necessary to provide service efficiency. He felt this was a balancing. Mr. Cox did not feel this was a yes or no question. He felt it was Council's responsibility to weigh the facts and tell them whether or not it made more sense that this property was in the UGB or outside the UGB. He also mentioned the same kind of reasoning whether efficiency created by including the subject property in the UGB clearly outweighed incompatibility with existing agricultural activities. He said it was not yes or no and was not saying they had to meet all seven criteria clearly. He said many things needed to be balanced. He felt, in reading Mr. Epstein's decision, that they had not shown the benefit overcame the deficit. Also, some of those things when found not to be correct, jumped to the other side of the scale and there started to be greater benefit. One of the key things Mr. Epstein found was the question about sewer benefit. He said Mr. Epstein assumed you could get a pump station, but you can't. He thought the staff report to the Council analyzed it very well. It went through many of the elements and said the staff disagreed with Mr. Epstein, as did Mr. Cox. He said they would have evidence to show it was totally impracticable and inefficient to run the sewer line any where else. This was in the record. They also had a question of efficiency. Mr. Epstein said in his decision that efficiency wasn't relevant in talking about impracticability. He suggested that if something was inefficient it was not practicable and visa-versa. If it was practicable then it needed to be efficient. He spoke to the school issue. There were two things done in Mr. Epstein's decision about the school issue. The two questions that needed to be answered were whether a school was one of the other factors, which Mr. Cox did not believe, and did you want to set a precedent that no comment from a district or public supplier of services was assumed to be negative. Regarding parks and open spaces, he said there was a letter in the record to Joanna Rice from Steven Bosick, Superintendent of Planning and Development in the Tualatin Hills Park and Recreation District which apparently Mr. Epstein had overlooked in reference to the locational adjustment. It said when the area was annexed into the park district there would be an orderly and economic provision of park and recreation services resulting in a net improvement and efficiency of services. He did not think the discussion was relevant any more as it was clear the service provider said the project would increase the efficiencies. He said they would show that the design resulting from the hearings officer's decision was predicated on an illegal act, asking for a cul de sac in excess of Washington County standards, and it was not efficient and made no sense. He reiterated that there was a net improvement in parks and transportation, and they had shown the similarly situated land analysis done by the hearings officer completely ignored the number of sides they had to deal with as a UGB. His conclusion that they would have a negative affect on neighboring agricultural activities and a complete unbiased reading of your standards said "agricultural activities in the proximity". He agreed this was in the proximity, but to use the fact that there was already agricultural activities on the property already in the UGB as a reason for denying someone else's request for access to the UGB, was in affect the nonconforming use dictating planning. Because Mr. Malinowski did not want to develop his property did not mean the next owner wouldn't. The decision to put the Malinowski property in the UGB was based on whatever standards were used. It is in and part of the regional buildable land supply. It would eventually be developed if our planning was correct. To allow him to say his temporary use

would control what was done next door threw the whole concept of planning out the window. He said adding the 26' Mr. Epstein came up with would have the UGB sticking into the EFU land which made no sense because it would not be similarly situated. He thought the staff report clearly set forth the history. He asked Mr. Ismen for the history of similarly situated land and the inconsistent decisions made in that regard.

Eric Ismen, Attorney and Land Use Planner, 310 SW 4th Suite 1000, Portland OR 97204 said there was a document in the record dated May 24 that was a visual aid matrix explaining that this was a balancing test. He said even though he and Mr. Valone disagreed how much, the same conclusion, that there was a net increase in efficiency of urban services by bringing this property in, was reached every time. He noted that Mr. Epstein said similarly situated land was the key issue in this case, and said it was true in some previous cases that a physical barrier of some kind made a difference between whether a property was similarly situated or not, i.e. roads, railroads, etc. He said even a slope could make a difference. It was their opinion that quality of soil could also make a difference. He mentioned the Water Tower site above the proposed site that used to be part of the Jenkins property. It was sold to the water district who created a reservoir. During the construction they dumped the spoils (clay and other kinds of non-productive soils) down the hillside to a depth of 9-10' in order to dispose of the material excavated to build the water tower. He said they had introduced evidence that the dumping created a different soil profile. He agreed that the lands to the north were also class 3 and 4 soils, just as Dr. Jerkins' and Mr. Kim's soil were, but the soil on the adjoining FE land had been substantially altered so that it was no longer farmed, in fact the lessees had abandoned their leases because it could not be productively used for agricultural services any more. He felt it was important to talk about what was appropriate vs. what was possible to bring into the growth boundary as well as what was possible to categorize as similarly situated. He noted similarly situated was decided using criteria 5 through 9. The first criteria dealt with orderly and economic services which they had demonstrated in their application. Criteria number 6 dealt with maximum efficiency of land. He said they had provided in the record that there could be possibilities for other types of sewer or road connections, but whether they would result in maximum efficiency of land was a question. He said bringing in the other 26' would not create any new road opportunities, or any new water or sewer opportunities. He said in fact the property was different than other properties in the area because any new roads would have to be cul de sac to the north and that would exceed Washington County development standards. He said they had successfully demonstrated that parks, water, and other kinds of services could be provided by bringing this property in. He noted there were no disagreements that the retention of agricultural land would make the provision of urban services impracticable. It was their opinion that not bringing in this property would create a loss of connectivity, and would create an impracticability for providing gravity fed sewers to other properties currently in the urban growth boundary. Finally, as to the compatibility with nearby agricultural activities, the soils in case No. 98-8, adjacent to the proposed property, were class 2 and 3 which was slightly better than this land. The nearby land in Clackamas County was zoned AF-5 which was not considered farm/forest by the county, and they therefore concluded this criteria of compatibility with nearby agricultural activities did not apply. He said there was also a similar case, No. 98-10, wherein the Council found, even though it was ultimately denied for other reasons, that the nearby agricultural activities were used for cattle and hay production. He said that was exactly what the Hearings Officer found in this present case. He commented that the staff report suggested that cattle grazing and hay production were not incompatible with residential uses. In other words, there was precedent from Metro at this time regarding residential development and cattle and hay production not being incompatible. He said for those reasons, and by going through the 5 different criteria to evaluate the land, they thought they had included all similarly situated lands outside the growth boundary. He mentioned that perhaps the eastern portion of the property,

substantially wetlands. could be brought in by itself. Their proposal would be to cross a narrow neck of the wetlands, and go above the wetlands to the north consistent with Title 3 requirements. He felt they had demonstrated they could comply with that and provide some development on the north.

Mr. Cooper cautioned that the evidence about the difference in the soils near the water tower was not in the record. He understood there was a motion requesting it to go back to the Hearings Officer so that information could be introduced.

Ryan O'Brien, representing the applicant, pointed out the property on a map for Council. He noted that the UGB followed the Multnomah/Washington County line fairly consistently. He said the similarly situated issue related to this case because they were not asked to contact Multnomah County nor was it ever considered until the hearings officer's decision came out. He said Multnomah County had different utility districts and there were a lot of other issues once you crossed over the county line. He pointed out that the area was completely undeveloped in 1982 when it was taken out. He said he could guarantee that by 2000 the area would be completely filled. He felt it was important to look at drainage basins and how they flowed. He showed charts of ownerships which were all large enough to be developed into independent subdivisions which was why he firmly believed the area was prime for development. He pointed out the power line easement which was several miles long and other areas which Washington County anticipated would have a lot of pedestrian connectivity but few road connection options.

Councilor Kvistad asked if the information in front of him was already in the record, in keeping with the rules for quasi-judicial hearings.

Mr. O'Brien continued that if the Malinowski property was taken out there would be a very large urban area with only one access, Laidlaw Road. He showed access road positions if they got approval as well as how the area would look if they were denied. He said the problem with waiting for future urban reserve or legislative designation was that option that allowed the street stubs to be extended expired in December 1999. One that occurred the options for connectivity would be permanently lost and certain areas would be isolated.

Councilor McLain asked Mr. Cooper about procedure. She did not understand how the Malinowski property was related because she was not evaluating that property, she was evaluating the Kim property next to it. She did not see the point of the testimony because it was not part of the criteria.

Mr. Cooper said the property to the east was relevant because it could be more efficiently developed consistent with all the criteria Mr. Epstein had addressed regardless of the fact it was owned by someone who may not be interested in developing it at this time.

Councilor McLain questioned the fact he was losing opportunities and had to get a road in quick.

Mr. Cooper asked Mr. Epstein to relate whether the information was in the record.

Mr. Epstein said the graphics presented were not, but the information they conveyed was.

Mr. Cooper said it was important to distinguish between the record and the argument.

Councilor Atherton asked more about the scenario were the UGB not developed.

Mr. O'Brien said if the Malinowski property was taken out it would leave a very large urban area that they knew would develop by 2040, the whole neighborhood would be isolated and the only connection would be Laidlaw Road because there could not be cross connections. He pointed out schools, topography, property owners who would not develop.

Councilor Atherton asked Mr. O'Brien to distinguish between the Malinowski's unwillingness to develop as opposed to the other property owner's unwillingness to develop.

Mr. O'Brien said he did not think not wanting to develop could be used as a criteria because the property was in the UGB. He said no matter what he said the land was in the UGB and would develop. He could sell the property if he chose to.

Councilor Kvistad asked that the arguments be allowed to finish before questions were asked since it was a quasi-judicial proceeding. He was afraid some of the questions would get them off track.

Mr. O'Brien said Mr. Jenkins had spent about four years negotiating access to this development. He said when the option to stub roads in expired in December, Lexington Homes would go ahead and build houses which would preclude the street stubs into the property. He said the issue was that if there was interest in connectivity it is important to get it done prior to December 1999 so it could go forward. He pointed out once the roads and sewer became available to Malinowski, they could change their minds about developing. He showed an aerial photo of the site they were discussing. He noted it was fully wooded and difficult to penetrate with crossover roads. It could not be developed without a coordinated effort for streets and utilities. He had other visual aids to share.

Councilor Kvistad asked for clarification from legal counsel regarding the boundary between the record and the argument.

Mr. Cooper said one of the petitioner's requests to Metro Council was to allow the issue to return to the Hearings Officer so new evidence could be presented. He said if the Council was planning to do that, the question was irrelevant. If they were going to decide based on what was in front of them today, they should get it straightened out and he would look at the graphs in question.

Presiding Officer Monroe said unless there was a motion on the floor to return this to the Hearings Officer, he did not want to see new evidence today. He felt it might be appropriate to see the evidence if there was going to be such a motion.

Councilor Kvistad said he intended to make such a motion.

Councilor McLain said if there was going to be a motion then she wanted it on the table now to vote on. She did not want to see the information without having an opportunity for the hearing officer to have a thorough review of the information so she could read it and take the necessary time with it.

Presiding Officer Monroe did not want any motions until they had run through the process including allowing the Malinowskis to have their say.

Presiding Officer Monroe called a brief recess at 4:29 PM, so Mrs. Cooper and Epstein and Cox could review the evidence. The meeting resumed at 4:33 PM.

Mr. Epstein concluded the charts constituted new evidence. He said he had discussed with Mr. O'Brien that he should only present evidence already in the record that illustrated the same argument.

Mr. Cox withdrew his request to Council to send the matter back to the hearings officer.

Mr. O'Brien pointed out on the map from the record where the sewer line would need to run to the Malinowski property and proposed a different route that would be more a efficient use. He felt if they could provide an opportunity for a free sewer service and road connection to the Malinowski property, it would be better efficiency of services. He explained USA, at the request of Mr. Malinowski, dropped the sewer line 10' deeper in the ground so it could reach the lower limits of his property above the wetlands area.

Mr. Cox asked Mr. O'Brien to explain what it took to get a sewer line 30 feet in the ground.

Mr. O'Brien said it would be nearly impossible because of the topography. He showed the drainage basins of the area. This property was in different drainage basin from that of the other properties.

Presiding Officer Monroe asked for additional questions of the petitioners.

Councilor Atherton declared an ex parte contact as he had driven down Kiezer Rd. He asked about the 6-8' fences and gated communities and how they fit with the concept of linking communities.

Mr. O'Brien said the county required sound barriers. He said the interiors were well connected. The new developments would not have fences.

Councilor Atherton said that did not fit with his argument to make it more efficient.

Mr. O'Brien said there would be no other way to connect the neighborhoods. He said Laidlaw Road was not pedestrian friendly and was not considered a neighborhood road.

Councilor Atherton referred to the park district's letter on efficiencies. He asked why that letter was not in the record.

Mr. Epstein said it was highly unusual for service providers to provide explanations of their conclusions.

Councilor Atherton said he wanted to know what was meant by efficiencies and whether one particular property could be designated more efficient than another.

Mr. Cox said no other property in this entire area could do this except the Jenkins/Kim property.

Councilor Atherton asked Mr. Ismen about this property being taken out of the UGB on a trade in 1982.

Mr. Ismen said it was an amicable release and in the record. He said Metro made the decision because the subject property and surrounding area were not expected to be developed in the near future.

Councilor Atherton said that same factor could apply to any land outside the UGB.

Mr. Ismen said the distinction was that this was in the UGB and came out. It is the only land in the entire northern tier that had been removed.

Councilor Atherton asked if that had been done for tax reasons.

Mr. Ismen said that was not part of the record. It had been done voluntarily on the part of the owner of the property to trade with someone who wanted to come into the growth boundary.

Greg Malinowski, 13450 NW Springville Lane, Portland, OR 97229, said he and Richard supported the hearing officer's opinion. They did not feel the case needed to go back to the hearing officer for further work as new evidence would not change anything. He said neither he nor his brother would allow a road to be built through their houses or barn as shown on the plan. He said his kids attended the overcrowded schools and he noted the need for a connection greenway they had mentioned. He reported there were two sets of power lines on Mr. Shoenfelder's side of the fence and perhaps they should go through Mr. Shoenfelder's property if they needed access. He said they were feeling some pressure about the UGB. He said it was EFU land, not exception land, and had been farmed in the past. He said it is a seasonal wetland so it was not farmed in the winter months. He said the argument was for a sewer and a road they did not want. He noted that the pump station issue was dead because the sewage agency had lowered the sewer enough to serve their property with a gravity sewer. He said they had submitted information that their neighbor, Mr. Lundell, would grant an easement to access that gravity line.

Richard Malinowski 13130 NW Springville Rd., said his argument could be found in the existing record. He urged denial.

Councilor Park asked if the land was currently within a city limit or a service district.

Greg Malinowski said no.

Mr. Cooper said three options were open: 1) approve the motion and adopt the report, 2) direct Mr. Cooper or Mr. Epstein to draft findings and prepare a revised ordinance for approval, 3) no decision and continue.

Mr. Cox asked if rebuttal would be possible by the applicant. Presiding Officer Monroe said no.

Motion: **Councilor McLain** moved 99-817.

Seconded: **Councilor Atherton** seconded the motion.

Councilor McLain appreciated the explanations from the people who wanted to have the issue denied and agreed it was a balancing act, but there were important criteria in the code, 1) similarly situated, 2) better services in side the UGB, 3) superiority of the UGB. She felt the land

was similarly situated and she did not find a net improvement as far as better services. She did not believe the use of agricultural land would be improved. She was not convinced overall by the arguments as presented by the applicants for denial. She could not uphold a denial without finding support in the report.

Councilor Kvistad said should the vote fail, he would direct counsel to draft an ordinance to approve. He based his argument on common sense and a standard of reasonableness. He noted the property was bounded on e sides by the UGB. The property was clearly in Washington County. The parcel was split between 2 jurisdictions with different taxing authorities. He said 2040 discussions had taken into account county lines and jurisdictional boundaries. He said in his view, having the line at the county line was superior. Regarding the soil type, these are class 3 and 4 soils, in this case, he believed the parcel superseded the nature of the soils. As far as the issue of the 24', he did not quite understand. He thought the jurisdictional boundaries and the superior line issue superseded that. On the open space issue, he said if any undeveloped land was classified as open space, it would basically constitute a takings. Unoccupied or undeveloped land was not necessarily open space in the way Metro interprets it. His final point was regarding equivalency on the school issue. He felt it was a valid point, but would only be an issue if there were not schools nearby. He felt it was superior to the current boundary and he agreed with the Malinowskis regarding the difficulty of farming next to the urban edge. He said he would vote against the motion.

Councilor Atherton asked to see Exhibit 2 again, regarding the Tualatin Valley Water District. He could not see that it made an improvement in service as they stated. He said he would support the motion.

Councilor Park said he would have preferred the third option. He was concerned about retention of agricultural lands within the UGB. He was not certain, with goal 14, that it applied as a criteria. When that occurs those lands within the UGB have lost their right to farm protection and were subject to regular trespass and noise regulations. He said based on his earlier comments regarding URSA 5, he felt he needed more information on similarly situated lands. Regarding the increase in urban efficiencies, he had problem in terms of plotting other people's property. His question to Mr. Epstein regarding the open spaces issue was that the same criteria to extend that to other undeveloped industrial land inside the UGB. He said that did not mean the public owned that property nor was it locked away for public use. He felt that should be cleared up in the code. He said he would support this motion in the absence of a third alternative.

Councilor Washington asked if new evidence could be requested.

Mr. Cooper answered no, because the applicant had withdrawn the request for the remand. He said their decision should be made on evidence in the record at this time.

Councilor Bragdon asked about public efficiencies. He said regarding schools, that the code said whether or not the service could be provided in the future, not whether it was being provided now. He said the school sites nearby satisfied that for him. He felt the problem regarding privately owned open space, whether it was a view or some other issue for the owner, was that the space did not fall into the category of public service. He thought that should be clarified in the code. He said improvement of the UGB, making it straight lines, partly addressed the troubling part about "similarly situated lands."

Councilor McLain closed by commenting on similarly situated lands. She said she would oppose locational adjustments per se if that criteria were not in place. She said locational adjustment superior UGB did not mean making the lines straight, it meant making urban services better inside the boundary. She urged an aye vote. She said they should work on the code so no other hearings officer or applicant would have to go through this again.

Councilor Washington took exception to Councilor McLain's statement about reworking the code. He had a problem with going back so people would not have to go through this again.

Vote: The vote was 4 aye /3 nay /0 abstain. The motion passed with Councilors Washington, Kvistad and Bragdon voted nay.

9. RESOLUTIONS

9.1 **Resolution No. 99-2826**, For the Purpose of Approving a Change of Composition and Revising the Bylaws for the Metro Policy Advisory Committee.

Motion: **Councilor Atherton** moved to approve Resolution No. 99-2826.

Seconded: **Councilor Washington** seconded the motion.

Councilor Atherton said the this resolution would require that the 3 citizen members of MPAC be one from each county. The second part, whether or not to include the Port of Portland as a member of MPAC and give them a vote, was controversial at the MPAC committee meeting. He said their recommendation was for a do pass. He said the clear majority of the members of MPAC would be elected officials from local jurisdictions and that added very important weight to the role of MPAC in reviewing any increased powers for this agency in the future. He urged an aye vote.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

9.2 **Resolution No. 99-2833**, For the Purpose of Authorizing the Executive Office to Submit an Application to the State of Oregon Economic Development Department for Low Cost Financing for a Portion of the Reconstruction of Expo Center Hall D.

Motion: **Councilor Kvistad** moved to approve Resolution No. 99-2833.

Seconded: **Councilor Atherton** seconded the motion.

Councilor Kvistad said they had an opportunity to have about \$3 million in the construction funds procured through the Oregon Economic Development Department which would eliminate some financing. He said that this could result in a total of \$5.2 million through OEDD. It would allow Metro to bond through the state and will save money on the project. He urged Council support.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed unanimously.

9.3 **Resolution No. 99-2837**, For the Purpose of Adding a Representative of the St. John's Neighborhood Association to the Smith and Bybee Lakes Management Committee.

Motion: **Councilor Washington** moved to approve Resolution No. 99-2837.

Seconded: **Councilor Atherton** seconded the motion.

Councilor Washington explained that the Smith and Bybee Lakes Management Committee is managed by Metro according to the Natural Resource Management Plan. He said the committee was intended to have citizen representatives from North Portland neighborhoods and representatives from North Portland neighborhood associations. The current citizen representative is from the Overlook Neighborhood, which a considerable distance from the Smith and Bybee Lakes. The Smith and Bybee Lakes are located entirely within the St. John's Neighborhood. The St. John's Neighborhood Association has been concerned about that and requested that a seat be designated for a representative specifically from that neighborhood. This would not remove the current citizen representative, but add one from the St. John's Neighborhood Association.

Councilor Washington said the Council has the authority to add a seat. He said the City of Portland and the Office of Neighborhood Involvement had been contacted about this. He thought it was appropriate, as the history of the lakes ties into the St. John's Neighborhood.

Councilor Kvistad asked why Washington County neighborhood associations were not on the committee, since the lakes are a regional facility. Councilor Washington said the Council has the authority to add a seat if he wished to pursue it.

Councilor Bragdon clarified that the citizen seat currently filled by a representative from the Overlook neighborhood would not be removed. Councilor Washington said that was correct. This would be in addition.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

Presiding Officer Monroe said the next agenda item, the Contract Review Board, would be heard last, to allow those who had come for the public hearing to testify first.

11. PUBLIC HEARING CONCERNING ALLOCATION OF PROJECTED SAVINGS FROM METRO'S SOLID WASTE DISPOSAL SYSTEM.

Presiding Officer Monroe opened a public hearing at 5:25 PM. He said Councilor Washington would manage this part of the agenda.

Len Edwards, Fairview City Council, 635 Lincoln St., Fairview, OR, testified on behalf of the City of Fairview. He said the City of Fairview is located in Multnomah County, with Blue Lake Park and Chinook Landing inside its city limits. These impose a burden on the City of Fairview to provide police services. He said this subject has been brought up and is still under discussion. He reminded the Council that the City of Fairview has only about 6,000 people. He said the adoption of Measure 50 resulted in the loss of a police tax base increase and a budget cut of more than 20%. This left the City scrambling to provide public safety services. Adding the services needed by people visiting Blue Lake Park and Chinook Landing, the burden becomes overwhelming. He gave an example of what happens on a summer weekend. He said the City of Fairview employs a police force to serve a city of 6,000. Blue Lake Park, as a Regional Park, attracts 5,000 to 6,000 visitors on such a weekend and Chinook Landing doubles that. The police

department then becomes responsible to 15,000 to 18,000 people. The City of Fairview's request was to add a \$0.50 surcharge on entrance fees to both parks. He said the responses were mixed but generally negative, because 1) it might cause a drop in attendance, 2) the public would object, and 3) Metro would lose a subsidy now received from the State Marine Board. He said the City of Fairview believes the cost of service should be borne by the users of the service. In light of the fact that the city's request for a surcharge has been rejected, the city now requests that Metro Council consider an annual agreement with the city to help with the cost of public safety--police, fire, and emergency response--in the amount of \$75,000. (A copy of Mr. Edwards' written testimony can be found with the permanent record of this meeting.)

Mayor Roger Vanderhaar, City of Fairview, 180 2nd Street, Fairview, OR, said this was not a bailout for the City of Fairview, as one of Metro's staff people had implied. He said this was about this city's being mandated to subsidize police service in the two largest regional facilities operated in the Metro area. He said this is also about a service being subsidized by an external organization. It is not being paid for by users or property owners. Furthermore, the subsidy is coming from a city that gets 1% of the use--99% of the use comes from outside the jurisdiction. Blue Lake Park and Chinook Landing most likely require more police services than all the rest of the facilities combined. He said the areas see alcohol consumption, gang activity, prostitution, attempted rape, kidnapping, drownings, abandoned and stolen cars. Responding to these takes a significant amount of the city's officers time. He said that although Portland services the boat ramp on 42nd Street, virtually all of the use of that ramp is by Portland residents. In addition, they charge \$1 more at the Chinook Landing Ramp than at the 42nd Street ramp. He said asking the City of Fairview to provide this subsidy would be the equivalent of asking Gresham to put up a subsidy of \$1 million a year, or asking Portland to put up \$5 million. He did not think those cities would tolerate that level of subsidy either. He asked if Metro would continue to do this because it could, knowing Fairview lacked the resources to fight it. He said Fairview had been making this request for years, but it had become more critical because usage had grown and the demand on the police department had grown with it. He asked the Council to address this request before addressing the wish lists of everyone else.

Councilor Park asked Mayor Vanderhaar how many cars used Chinook Landing and Blue Lake Park each year.

Mayor Vanderhaar said staff had those figures, but he thought it was about 60,000 per year per facility. He said that was mostly during the summer and in addition to usage, prevention was as much a part of police activity as responding to incidents. He said if those areas were not patrolled year round, people went there to cause trouble because it seemed isolated. He said there had been suicides there and they feared incidents such as those in Forest Park.

Councilor Park asked Mayor Vanderhaar whether he thought 10 million cars a year at the Convention Center would have the equivalent impact on the city of Portland as 150,000 cars a year would have on the city of Fairview.

Mr. Vanderhaar said he estimated the ratio would be about 1 to 60.

Councilor Washington closed the public hearing at 5:39 PM.

Presiding Officer Monroe recessed the Council meeting to open the Contract Review Board.

10. CONTRACT REVIEW BOARD

Presiding Officer Monroe convened the Contract Review Board at 5:37 PM.

10.1 **Resolution No. 99-2832**, For the Purpose of Approving a FY 99-00 Residential Waste Reduction Campaign Work Plan, Authorizing Release of a Request for Proposals, and Authorizing the Executive Officer to Enter into a Contract.

Motion: **Councilor McLain** moved to approve Resolution No. 99-2832.

Seconded: **Councilor Washington** seconded the motion.

Councilor McLain said the current budget contained an allotment for this campaign, but the budget had a footnote requesting that the work plan be brought back before the Council for review. This campaign would encourage residents in the region to recycle more items and put more items at the curbside. It would also help local governments educate people on the new commingling programs due to start in October. She called attention to Exhibit A to the resolution in the agenda packet (part of the meeting record) for more details on the proposed program. She noted that the budget was \$140,000.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed unanimously.

Presiding Officer Monroe adjourned the Contract Review Board at 5:46 PM and reconvened the Metro Council meeting. He then called for a short recess. The Council Meeting resumed at 5:50 PM.

Motion: **Councilor Park** moved to reconsider the vote on Ordinance No. 99-816.

Second: **Councilor Kvistad** seconded the motion.

Councilor Park said he had hoped for a remand to clarify certain issues. He said he had too many questions and he needed better answers. For example, he needed to know what criteria applied to locational adjustments. He had questions on the agricultural issues and needed to understand what constituted "similarly situated lands."

Presiding Officer Monroe said that if this motion passed, he would set it aside and bring it up again in mid October on a date yet to be determined.

Councilor McLain asked Mr. Cooper to clarify the procedure. She understood that the petitioners had withdrawn their request to remand the issue to the hearings officer and had instead asked for a decision today.

Mr. Cooper said yes. The petitioners had hoped the Council would deny the hearings officer's findings that would have denied the locational adjustment. He said Councilor Park was not requesting that the issue be remanded to the hearings officer; he was requesting that the Council reconsider the decision. This would, in effect, put the Council on the third pathway--to not make a decision today.

Councilor McLain asked Councilor Park if he was asking for the Council to consider this again or was he asking that it be either approved or denied.

Mr. Cooper said the Council could deny the request for different reasons than those given in the hearings officer's report. It could direct that the hearings officer's findings be modified to reflect a different set of reasons, as long as those reasons were based on the evidence already in the record. It could not be denied for reasons based on new evidence.

Councilor Atherton asked Councilor McLain what she meant by "new criteria."

Councilor McLain said she had planned to explain her comments under "Councilor Communications." She thought she had been misinterpreted by some. She said she would support a reconsideration if it was simply to provide more time to understand the issue.

Councilor Atherton said Councilor Park had brought up a concern about similarly situated lands. He said in his view, the idea that county boundaries constitute dissimilarity situated lands is antithetical to regionalism. He said those boundaries are antiquated and regionalism should move beyond them. He would recommend the Malinowski's remove their property from the UGB to make the boundary more efficient. He urged a no vote on the reconsideration. He said locational adjustment requests for small parcels needed to be aggressively reviewed and decisions adhere strictly to criteria in the Metro code.

Councilor Washington said he did not need more time to read or study, but he did need more time to evaluate what he had heard today.

Councilor McLain said because this was a new process for some of the Councilors, she would support a reconsideration.

Vote: The vote was 6 aye/1 nay/ 0 abstain. The motion passed with Councilor Atherton voting nay.

Councilor Kvistad asked Mr. Cooper whether this item would remain open if a motion to return the item to Mr. Cooper for findings of approval failed.

Mr. Cooper said the Presiding Officer has said if this motion passed, he would set it aside and bring it up again in mid October on a date yet to be determined. He said if a motion was made now to return it and was defeated, then no final action would have been taken.

Motion: **Councilor Kvistad** moved to return the issue for redrafting to recommend approval of the petitioner's request.

Presiding Officer Monroe ruled the motion out of order.

Mr. Cooper explained that to overrule the Presiding Officer, a motion would need to be made, seconded, and passed by the Council to overrule the Presiding Officer's ruling.

Councilor Kvistad rescinded his motion.

12. COUNCILOR COMMUNICATION

Presiding Officer Monroe called for any additional Councilor Communications.

Councilor McLain said the Regional Water Consortium, which meets quarterly, met in the Council chamber last night. He said Metro belonged to the Consortium and several issues of interest to Metro came up. One was that the Consortium was currently working on a regional transmission line analysis and had developed three or four scenarios that would be evaluated. Those included sub-regional areas taking care of their own water needs and systems; a regionally connected opportunity; and sub-regional systems with a back-up emergency system. She said it was important in light of growth issues and the UGB amendment review as well as growth into the urban reserves. She offered to make a copy of the packet of information for anyone who was interested.

Councilor McLain also said that regarding the hearings officer case considered today, she wanted to make certain her closing comment had been understood correctly. She said her comment did not reflect on the process or its fairness. It had to do with her review of the Metro Code, which she did in preparation for hearing today's case, and being reminded of the importance of considering the code when making locational adjustments in general. She said it was a general issue that would be brought before the Growth Management committee. It was not related to this case in particular or anything in the hearings officer's report.

Councilor Kvistad brought up the issue of Councilor attendance at external events. He said the current Council, being new, had been active in taking advantage of these events, and more events would be coming up in the next few months. He thought the events were important and valuable. However, there was not enough in the travel budget to cover all the events. He asked the Council to try to find the money to adjust the budget to cover the basic items. He recommended doing that soon, as RailVolution, a major event that several Councilors had planned to attend, was coming up this month.

Presiding Officer Monroe said the issue had been brought to his attention and he agreed. He said he would bring the issue up at Council right after RailVolution. He said there was some flexibility in the budget and a budget amendment might be possible. He said this would be taken into consideration when planning next year's budget.

Councilor Kvistad expressed concern that the vote on an extension of the timelines for Title 3 compliance would take place when three Councilors would be absent. He requested the vote be moved to another date.

Presiding Officer Monroe said he had already moved the date.

Mr. Stone said it was now on the agenda for September 30 rather than September 23.

Councilor Kvistad said he believed the decision on delaying the Title 3 requests insulted those who came to testify. He thought the counties involved took it as an insult. He thought they might have interpreted the decision as some sort of punishment for not supplying as many details as Metro had requested. He criticized the Growth Management Committee for what he considered micro management of policy in local jurisdictions. He said any jurisdiction that made a realistic request need not be questioned nor micro-managed. He asked the Growth Management Committee to reconsider its decision.

Councilor McLain said that as the chair of the Growth Management Committee, she wanted to make it clear that Washington County staff knew it would have the same opportunity for extensions and had received two extensions already. This particular extension involved

unanswered questions regarding why the extensions were being requested. She said the County had mentioned town centers, but an extension had already been granted for that. The County had not requested any extension for Title 3. In the County's comments about town centers, they had indicated they had been working on Title 3 simultaneously. She said the committee had wanted to be sure it understood the reason for the request before sending it to the Council. She said the manager of the Growth Department in Washington County had been informed that Metro staff would be available to work with them, so an extension could be granted if the information warranted. She said all extensions that had been granted had timelines and work plans with them.

Councilor Bragdon clarified his concerns on this issue in the Growth Management Meeting last Tuesday. He said the majority of the requests for extensions were granted because most of them were documented and showed good faith progress. That was also true for Washington County. He said although no official action was taken, the dialogue was constructive on the town centers and Cedar Mills. The Title 3 case was different. He said the Title 3 extensions were not denied, so there was nothing to reconsider. He said the testimonies the jurisdictions presented on Tuesday were unclear and they had been asked to come back with more information.

Councilor Park said no disrespect was intended and the questions raised were solid. He said Washington County was unique. It had a Unified Sewage Agency (USA) that took care of stormwater and water quality issues. Neither of the other two counties had that. The question was, since USA does not have land use authority on the Title 3 issues, what procedure did it follow in its intergovernmental agreements with cities on how this would be enforced. USA did not have that information. That was why the decision was deferred. He was not interested in micro managing any local jurisdiction.

Councilor Kvistad said the information he had did not indicate that any staff other than Mr. Burton had been involved. He had only Mr. Burton's letter. He believed Washington County felt it had been treated differently. He thought that was true to some extent, although the counties were different and had different needs. He said he had been frustrated at how Washington County had been treated, and he knew some in Washington County who also felt that way.

Councilor Atherton said many of the difficulties were brought about by the 20-year land supply law.

Councilor Kvistad said he would back repeal of the 20-year land supply law if Councilor Atherton would allow him control of the UGB.

Councilor Atherton said he would do that if the UGB would only be expanded in the way the people wanted it to be and where they wanted it.

Councilor Park said he would like to see the Council address unfair burdens on small jurisdictions, such as those brought up by Mayor Vanderhaar of Fairview today.

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting 5:19 p.m.

Prepared by,

Chris Billington
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
091699c-01	September 1999	Observations on Metro's Urban Growth Report	TO: Metro Council FROM: Randall Pozdena EcoNorthwest	
091699c-02	9/16/99	UGB 98-07 (Jenkins/Kim) Hearings Officer report	TO: Metro Council FROM: Larry Epstein, Hearings Officer	Ordinance No. 99-816
091699c-03	9/16/99	Presentation on Solid Waste Savings	TO: Metro Council FROM: Len Edwards, Fairview City Council	
091699c-04	9/15/99	Metro Facts: The urban growth boundary and Metro's role	TO: Citizens of the Region FROM: Metro Council Outreach Department	