

MINUTES OF THE METRO COUNCIL MEETING

September 9, 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 2:05 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

Councilor McLain said there were two major issues covered at the last MPAC meeting. First were the Metro Code changes concerning growth and processing the urban growth boundary amendments. Then there was an update of the 1997 growth report. Issues and items from that dealt with up-zoning and environmentally sensitive lands. She said there had been discussion whether or not MPAC wanted to take a position regarding acceptance of the growth report. That discussion would continue at the next MPAC meeting and at the extra Growth meeting on September 14.

Councilor Bragdon added that there was a good discussion on the industrial lands survey.

Councilor McLain said at least six councilors had been briefed on that report. She pointed out that the industrial land study done by the Port of Portland obtained similar results.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the August 12, 1999 Regular Council Meeting.

Motion: **Councilor McLain** moved to adopt the meeting minutes of August 12, 1999 Regular Council Meeting.

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

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

7. **ORDINANCES - FIRST READING**

7.1 **Ordinance No. 99-814**, For the Purpose of Renewing the Solid Waste License for Operation of the Wastech Materials Recovery Facility.

Presiding Officer Monroe assigned Ordinance No. 99-814 to the Regional Environmental Management Committee.

7.2 **Ordinance No. 99-815**, For the Purpose of Transferring the Solid Waste Franchise for Operation of the Recycle America Reload/Materials Recovery Facility from Waste Management of Oregon, Inc. to USA Waste of Oregon, Inc.

Presiding Officer Monroe assigned Ordinance No. 99-815 to the Regional Environmental Management Committee.

7.3 **Ordinance No. 99-818**, For the Purpose of Amending the Metro Code Requirements for Urban Growth Boundary Amendments, Urban Reserve Planning Requirements in Title 11 of the Urban Growth Management Functional Plan and Appendices A and B of the Regional Framework Plan and Metro Code Requirements for Local Government Boundary Changes and Declaring an Emergency.

Presiding Officer Monroe assigned Ordinance No. 99-818 to the Growth Management Committee.

8. **ORDINANCES - FIRST 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.

Dan Cooper, Legal Counsel, indicated that the Hearing's Officer had a conflict and was unable to attend the meeting today. Therefore, Mr. Cooper recommended a delay on this ordinance until Mr. Epstein was available.

9. **ORDINANCES - SECOND READING**

9.1 **Ordinance No. 99-812**, For the Purpose of Amending the Metro Urban Growth Boundary and the 2040 Growth Concept Map in Ordinance No. 95-625A in Urban Reserve Area 65 in Washington County.

Councilor McLain explained that there had been a notice in the newspaper indicating there would be a public hearing on Washington County Urban Reserve Area 65 at this Council meeting. She said it was not before Council for action today but they wanted to be sure citizens could testify on this matter if they had come to the meeting to do so.

Presiding Officer Monroe opened a public hearing on Ordinance No. 99-812.

David P. Miller, 16415 NW Brugger Rd, Portland, OR 97229 said he was a neighbor of this parcel. He said as a resident of the neighborhood, it did not appear to him there was a housing shortage. He noted that LUBA had ruled this expansion was improperly constituted because it included this parcel which was a large single ownership EFU parcel. He noted that decision was in the Court of Appeals at this time and had not been ruled on. He felt LUBA would rule the same way on a direct expansion onto the same EFU lands that it felt were sufficient to torpedo the Urban Reserve. He read his letter into the record, a copy of which may be found in the permanent record of this meeting. He circulated photographs of an elk herd on his property and concluded that there would be a lot of problems with this property because of the wildlife, watershed issues and general topography of the property.

Mary Kyle McCurdy, 1000 Friends of Oregon, 534 SW 3rd Suite 300, Portland OR 97204, briefly summarized her written testimony (a copy of which may be found in the permanent record of this meeting). Her agency did not believe the parcel was ready for approval at this time for at least two reasons: 1) there was no legal or actual need for the additional land to be brought in at this time, and 2) they did not believe the area could be justified as an urban reserve but only as a traditional urban growth boundary expansion.

Greg Malinowski, 13450 NW Springville Lane, Portland, OR 97229 represented Malinowski Farms. He said he had testified against adding the parcel before and would be brief. He read his testimony into the record, a copy of which may be found in the permanent record of this meeting. He also included maps and pictures of the site for the record.

Councilor Washington asked if the Malinowski Farm produced vegetables.

Mr. Malinowski said it was a subscription farm and 40+ families paid \$500 each to come out once a week for a bag of groceries.

Councilor Atherton asked where Mayor Drake suggested upscale housing and lower densities be located.

Mr. Malinowski said his information came from the Oregonian which quoted him as saying perhaps the property should not have to meet the 2040 plans after all.

Councilor Park said he recalled the conversation and the mayor had said he was also looking at possibilities of up-zoning within the current boundary to keep 2040 alive.

Mr. Malinowski said he was concerned with how the land was used.

Councilor Atherton asked Mr. Miller what was growing on a section in the northern portion of the site, approximately 100 acres.

Mr. Miller said it was predominantly oats.

Councilor Atherton said he asked because he wondered why it had not been included in the urban reserve area.

Mr. Miller's understanding was that there had been too much EFU land in the area so some of the EFU land on the northern edge was removed. That resulted in the "U" shape along the northern edge of the area. He said it had been done before he became involved in the process.

Presiding Officer Monroe closed the public hearing and announced that the record would remain open for this ordinance. He said the next opportunity to be heard on this issue would be September 23, 1999 in Hillsboro at the Council meeting at 5 PM. He noted the final vote was projected for October 7, 1999.

10. RESOLUTIONS

10.1 **Resolution No. 99-2836**, For the Purpose of Approving a Memorandum of Understanding Regarding the Expansion of the Oregon Convention Center.

Motion: **Councilor Kvistad** moved to adopt Resolution No. 99-2836.

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

Councilor Washington reviewed Resolution No. 99-2836. He said this was a result of the property tax initiative that failed last year and since then the City of Portland, Tri-Met, and Metro had tried to put together a funding package in Multnomah County to meet the needs of building the convention center. He noted that the MOU was a non-binding agreement and read and explained some of the key components of the MOU package. He asked Mr. Adams and Mr. Rust to comment.

Sam Adams, Chief of Staff, City of Portland, thanked the Council on behalf of the City and remarked it had been a very complex arrangement. He felt the hard work of all the partners was well worth it and would make for significant benefits for all the people of the region.

Ken Rust, Manager, City of Portland Financial Planning Bureau, remarked it was the beginning of an interesting and complicated project with lots of work to be done. He said they looked forward to working with Metro's financial and legal staff as well as staff from other governments involved to put the details together.

Councilor Park thanked the officials for coming before the Council. He noted an editorial he had seen in which Timothy Grewe, Director of the Office of Finance and Administration from the City of Portland, mentioned 25% of the profits from Portland Family Entertainment (PFE) would go to the public. He asked for a definition of "public".

Mr. Adams asked to comment on Councilor Park's comments RE: East County first. He was pleased that the Gresham Area Visitors Association (GAVA) had endorsed the MOU and POVA had pledged to work toward greater cooperation between GAVA and POVA.

Mr. Rust understood some of the confusion with the different sets of numbers. He explained that there were two different projects going on at the same time. One trying to negotiate agreement with a private operator for Civic Stadium and this one. The two came together in the form of the MOU because the project revenues would be used to help support the Civic Stadium bonds that would be issued. He said a lot of details still needed to be negotiated with PFE. He felt the Grewe editorial was trying to characterize what the public might receive under the best case circumstances. He said the MOU pledged to contribute all of the Civic Stadium revenues earned to payment of debt service on bonds for as long as they remained outstanding. He said the revenues and profits from PFE would be shared over the life of the contract as they were earned.

Councilor Park asked for clarification as to whether any additional funding after the bonds were paid off would be available for the regional facilities for visitor development.

Mr. Rust said when that portion of the debt was paid off, the money stayed with the City. However, in the MOU was an assumption that they would be paying debt service from project revenues as well as about \$37 million from annual payments from the PFE contract. If the debt was paid off early, it would be available for other visitor related facilities and benefits.

Councilor Kvistad expressed his gratitude to Mayor Katz for her leadership on this project as well as Mr. Adams and his staff. He said it would have been very difficult to get through if they had not stepped up to the plate and worked with the Metro Council.

Mr. Adams thanked Councilor Kvistad and said it was a team effort between Metro's staff and the City.

Councilor Washington said this had been a very interesting process and acknowledged the hard work and integrity of the organizations involved, the City of Portland, Multnomah County, Metro, Tri-Met, POVA, the Portland Development Commission, Tri-County Lodging Association, the National Car Rental companies, and, of course, staff from all of these organizations. He said this was a critical first step and urged an aye vote.

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

11. CONTRACT REVIEW BOARD

11.1 Deliberation on Appeal by SSI Compaction Systems of Executive Officer's Rejection of Appeal of Award of Contract for Compaction System.

Marv Fjordbeck, Office of General Counsel, said this matter was a final appeal by SSI Compaction Systems on the award of a contract to Harris Waste Management Group for the provision of a compactor at the Metro Central Transfer Station. He provided a brief background of the matter.

Presiding Officer Monroe called Bob Pfeffer to the testimony table.

Bob Pfeffer, Harris Waste Management Group, 133 Diebert Rd. Longview, WA 98632 said Metro staff had issued a very intense and specific proposal which Harris Waste Management had met or exceeded. He said they had machines performing every day meeting the specified quotas. He said his company did not see the merit of the appeal for not being equal.

Tom Garnier, President of SSI Shredding and Compaction Systems, Wilsonville, OR, thanked the council for the opportunity to make this presentation. He said they had worked with Metro on developing equipment that met their specifications for the proposed job. He said upon request to the Waste Management Group of how their machine met the specs, they were sent a published brochure with the specifications, but with no explanation. They finally received the explanation the day before the bid was due and they submitted their bid on the basis that every spec had to be met. When they were subsequently given a copy of the bid response, they discovered issues they felt made the bid not equal. He said if they had known beforehand, they would have offered a different machine which would have met the new specs displayed by the intent to award the contract to Harris Waste. He said Harris Waste was not licensed in the state of Oregon at the time

of the bid. The RFB clearly stated you had to be, or using, a licensed contractor prior to submitting the bid.

John Verman, attorney representing SSI, added that prior to submitting a bid it was required under the RFB and Oregon Administrative Rules that all bidders already have contractors' license. He submitted a copy of the OAR backing that up. He said they had included a copy of the OAR to the Executive in their July 15, 1999 letter to him.

Presiding Officer Monroe asked Mr. Fjordbeck for a response.

Mr. Fjordbeck said the administrative rules Mr. Verman cited were not applicable to the regional government because they had their own contracting code. With regard to the provisions of eligibility, the language dealt with bidders on public works and construction projects who were required to be registered with the state of Oregon. He said this project was, in fact, neither of those so that language was not applicable to either bidder in this case. He said it turned out on closer review of the eligibility requirements that it was not required of either body.

Councilor Bragdon remarked that from SSI's letter of August 27th, the point may not be the OAR but the RFB issued by Metro which said prior to the bid the bidder would need to be registered.

Mr. Fjordbeck said the full language of the RFB said "prior to submitting a bid, all bidders on public works and construction projects are required to be registered with the State of Oregon." He said that information was explained to the bidders by staff before the bids were submitted.

Councilor Bragdon asked why language would appear requiring something that was not applicable.

Mr. Fjordbeck presumed staff included it because it was included in most RFBs whether or not they are public works contracts.

Councilor Kvistad asked why this was not a public works project. He asked if they were installing the equipment and what would be the line for a "public works project".

Mr. Fjordbeck said it was an equipment procurement.

Councilor Kvistad asked for more information on that point after the testimony was completed.

Mr. Garnier continued that when they reviewed the submittal, they found Harris Waste had taken an exception to the spill prevention and containment feature for both the HYDRAULIC POWER UNIT (HPU) and the compactor. He said this was a direct requirement of the RFB and SSI took no exception. He said SSI could not understand why that very important environmental issue was not deemed as non-responsive. He added that the features behind the development of the SSI product was not just for today but for the future. He said their new model offered consistent density bales which allowed them to obtain higher weights. The Harris design offered a multi-staged cylinder that allowed various forces throughout the compaction process. He said he brought it up because if SSI was allowed to bid this spec they would have probably quoted a different machine and saved substantially more money.

Mr. Verman said the point that Mr. Garnier was making was that the RFB expressly required the "ability to automate bale building program with consistent density feature". He said that meant

constant density and a uniform bale. He said Mr. Garnier was explaining that SSI created a machine with one cylinder to create uniform density with consistent pressure throughout, but Harris had a 3-stage pressure which resulted in non-consistent density and did not meet the specs.

Mr. Garnier acknowledged it was possible that the pressure could be lowered on the first stage of the bale to maintain consistent pressure over the first 2 stages, but that pressure would be below the required 260 tons of force.

Councilor Bragdon asked if SSI equipment was in use by any Metro facilities now. Mr. Garnier answered there was, and in response to a question from the Councilor about that previous RFB, Mr. Garnier deferred to one of SSI's engineers, David Miller.

David Miller responded that they were successful bidder at the Metro South Transfer Station for two compactors which ended up being the one proposed for this contract at Metro Central. The other two were installed about November 1998. In that RFB, they gave Metro an option. They bid the higher density machine as well as a lower density standard machine which is the one Tom mentioned earlier that could actually fulfill the requirements of the 30 ton bales, 4 loads per hour requirement but according to the RFB it specifically called out the tonnage capacity.

Councilor Bragdon repeated that he wanted to know if there was any difference in the RFB itself.

Mr. Miller answered that the RFB was similar to past ones.

Councilor Atherton asked if a contractors license was required to install the machine.

Mr. Fjordbeck was not aware of that requirement.

Councilor Atherton asked Mr. Garnier if it was required. Mr. Garnier responded that it was required of them at Metro South.

Councilor Atherton asked about the oil containment spec. He wanted to know if it was in the RFB.

Mr. Garnier said there was a direct request for spill containment.

Councilor Atherton asked if the Harris design allowed for spill containment.

Mr. Garnier said no, they took a written exception to it.

Councilor Kvistad asked legal counsel if Metro Council had legal obligations regarding this appeal, i.e. considering only certain appeal points, etc.

Mr. Fjordbeck answered that the Council was entitled, under Metro Code, to take into account any matter they deemed relevant.

Councilor Kvistad reiterated that their options were to reject the appeal, at which point the Harris company would move forward as the low bidder, accept the appeal and re-bid it, or other options.

Mr. Fjordbeck said the Council's option today was either to accept or reject the appeal.

Councilor Atherton asked if they had to adopt findings of fact.

Mr. Fjordbeck said that was not required.

Jim Watkins, REM Engineering and Analysis Manager, reported that Metro had been buying compactors from both companies for approximately 10 years. He felt Metro set the standard for the machines as the previous design was used as a reference for the next procurement. He said they had changed from Request for Proposals to Request for Bids because it was a more straightforward process. A team of engineers and operations people reviewed the bids. They had questions and asked Harris for changes, thus they felt they had an approved equal in their opinion.

Councilor Bragdon asked if a vendor should be registered with the State of Oregon Contracting Board.

Mr. Watkins thought whoever installed the compactor had to be registered, but not necessarily the prime contractor.

Councilor Washington said it seemed that the issue was the cost difference.

Mr. Fjordbeck did not think it was the cost difference. He felt the heart of the SSI appeal was the approved equal designation and the provisions contained in the RFB. He said the difficulty was that the owner of the equipment used as the technical benchmark in the RFB did not believe its competitor's equipment was equivalent.

Councilor Washington said this appeared to be a unique situation where Metro had used equipment from both companies with no difficulty. He asked if there had been complaints about either company.

Mr. Watkins answered that neither had performed perfectly and there had been problems, and even failures. He said it had been a learning process for both companies and they continued to improve their models.

Councilor Washington asked if there had been any earth shaking negative or positive experiences with either machine.

Mr. Watkins said the first SSI models were not as high a standard but they had since been repaired and modified.

Councilor Washington asked if that was the criteria for the failure of the bid.

Mr. Watkins said that was not the reason.

Councilor Washington asked if both machines were equal.

Mr. Watkins said yes, they were.

Councilor Washington said it was an issue of cost, as he had previously said. He asked for some clarification.

Mr. Fjordbeck said these items were not inconsistent. Staff was saying the two machines were equivalent. The appellant was saying the two machines were not equivalent. Presuming the staff point of view, it was a matter of cost. The appellant's view that the Harris machine did not reach the specifications in the RFB meant cost was not an issue.

Councilor McLain noted that the RFP process had different responsibilities and opportunities than the RFB process. She asked Mr. Watkins to explain how the 6 hours of team deliberation came to the conclusion of who was awarded the bid. She asked what there was about the chosen machine that fulfilled the bid criteria.

Mr. Watkins responded that staff had laid out the RFP specifications and compared them to the AMFAB compactor. He said when they had questions they contacted Harris, and in some cases asked for changes which Harris agreed to. He noted performance requirements and warranty issues. He said they compared the machines item by item per the specs.

Councilor Park asked about the spillage and oil containment specification that Harris took an exception to. He wondered how that requirement would be met by the Harris equipment.

Mr. Pfeffer said Harris met the provision on the HPU but took exception to the spill containment provision on the compactor body because they believed it was not a good environment to have hoses or electrical wires in a pool of oil. They felt walking in sludge 3-4" deep was a safety issue for the operators.

Councilor Park asked Mr. Watkins if the containment requirement was in the original RFB.

Mr. Watkins thought it was part of the document

Councilor Park asked about the consistency of bale issue that had been brought up previously. He understood the concern for properly loading the trucks and asked if it was a legitimate argument that the Harris machine would consistently and properly distribute the weight to get the maximum load per trip.

Mr. Watkins said the material being compacted was not consistent and it would be up to Harris to prove that.

Councilor Park said it had the same capability as the SSI machine to move up in capacity and was told it did have that potential.

Councilor Atherton asked Mr. Watkins when he reviewed the Harris design and asked for changes, what were the nature of those changes.

Mr. Watkins said they had asked for changes in the chamber construction, the platen adjustability, the platen support bearings and some additional concerns.

Councilor Atherton said those weren't bid specification issues, the only bid specification issue would have been the containment. The other issues were design issues.

Mr. Watkins said he would consider those specification changes too, for example, increasing the thickness of the steel.

Councilor Atherton asked if it would have been clear in the bid specification that the increase thickness was necessary from the beginning?

Mr. Watkins said you could use different types of steel. They had asked for greater thickness for the Harris design, which was agreed to by Harris.

Councilor Atherton pointed out that the SSI design met that requirement without those kinds of changes.

Mr. Watkins said yes. The team of experts thought that, from a maintenance standpoint, there was a better way to do it and so they made those suggestions to Harris. Harris agreed to make the changes and the team was satisfied with those changes.

Councilor Atherton said that SSI machine also met those requirements without the special changes so the issue at hand was whether the bid required the full containment versus the limited containment that was recommended by Mr. Pfeffer.

Presiding Officer Monroe said this issue struck him as a very important point. He asked Mr. Watkins if, after the selection of Harris, had the team asked Harris to make modifications that would not have been necessary had the team selected SSI.

Mr. Watkins said the suggestions to Harris were made prior to selection of the bid.

Councilor Kvistad said about the process, could the council make an independent motion or did the council have to take action on the motion before the council.

Presiding Officer Monroe asked Mr. Fjordbeck to review the Council's options.

Mr. Fjordbeck said, first where the council was in this process was that they were hearing from staff and legal counsel, additionally from a third interested party representing the Harris Company. If those presentations were at end then the Presiding Officer's process was to allow the appellant the opportunity to sum up before the council began their deliberations. Currently there was no motion before the council. The Council was here to deliberate on the appeal, at that point either a motion to accept or reject the appeal would be in order. That motion was probably not yet ripe because the staff responses may not yet be completed and the appellant had not yet had a chance to rebut.

Councilor Kvistad said he would like to reserve the right to make a motion.

Presiding Officer Monroe said he would call upon Councilor Kvistad first upon completion of questions from staff and the rebuttal or summation from SSI. Council would then have an opportunity for discussion and a motion.

Councilor Atherton said he wanted to follow up on another line of questioning that Councilor Park had brought forward, the issue of weight balance on the truck. He said the contention was that this weight should be evenly distributed throughout the trailer. He believed, when the question had been asked before, that Mr. Watkins response was that there were differences in garbage and you couldn't depend upon that kind of homogeneity. They were dealing with a shredder that created this homogenous mix of garbage. He asked Mr. Watkins, in his experience, did the bales have the same density throughout the finished product.

Mr. Watkins said it was not a shredder it was a compactor. It did not shred the garbage and blend it together. As the bale was being built, a good cat operator will gauge the type of material they were putting in the bale. If it looked as if the bale was getting too heavy they might select some lighter garbage. They could mix it up. If there was light garbage it would be compacted more if you really heavy stuff, you didn't have to compact it as much as you were building the bale. So the compactor operator had to work at a good uniform 32 ton bale.

Councilor Atherton asked if it complicated the operation of the bales if they were uneven bales rather than even sized bales.

Mr. Watkins asked Councilor Atherton for clarification on his question.

Councilor Atherton clarified that if you were having to operate the cat and gauge uneven bales, did it complicate the operation to try and spread out the density.

Mr. Watkins said the bale was built longitudinally not vertically.

Councilor Atherton referred to the drawings that SSI had provided showing the uneven bales versus an even bale. The uneven bale drawing depicted the Harris outcome.

Mr. Garnier said no, it was the force that was applied.

Councilor Atherton summarized that the end product was still an even bale.

Councilor Bragdon asked Mr. Watkins about cost. He understood that the appellant was saying that it was cost but it was really not cost because they were talking about like value for like things or unlike things. He thought Mr. Garnier would confirm this assessment. SSI's bid was about \$750,000 and the winning bid was \$720,000 but if the specifications were different SSI's bid might have been less.

Mr. Garnier said that was correct.

Councilor Bragdon asked Mr. Watkins if it was a reasonable magnitude, in his opinion, that the specifications would lead to that big of a difference of like machines.

Mr. Watkins said \$100,000 seemed high but they wanted the super compactor. That was what they believed they got from the Harris group also, not their lesser model.

Councilor Bragdon noted the winning bidder took an exception on the spillage question. It was not clear to him whether there was opportunity for the other vendors to take a similar exception. The winning bidder had taken an exception, he asked about how that exception was granted.

Mr. Watkins said that was correct, the exception was granted. In the team's judgment these compactors were similar and equal compactors even though not every bolt was exactly the same. There were differences in the design. They got the containment that they felt was necessary.

Councilor Bragdon summarized that the bid was award on July 8th and Harris got their CCB license on July 12th. He asked Mr. Pfeffer what prompted him to get the license?

Mr. Pfeffer said, in May when Metro staff sent out the preliminary bid specs for Harris and SSI to review and have comments before the formal bid was issued, SSI was the one that challenged

whether or not a contractors license was necessary and staff's response was no it was not necessary. Harris was involved with many other products and they were doing some other potential products in Oregon. They had planned to obtain the license anyway. He was the one who got the contractors license. He had mailed it on July 7th but knew full well that it was not a requirement for the bid opening. He said the date they stamped it in was after the opening but not a requirement for the bid.

Councilor Park asked Mr. Watkins about one of the items that Councilor Bragdon had addressed. He indicated that Mr. Watkins had made requests of the Harris Company to make certain modification on their machine to improve it. Had he made similar requests of SSI in terms of improving it or the ability to increase its efficiency or decreasing the costs? Was there equal opportunity given for adjustments.

Mr. Watkins said not on this because they had just spent a long process on the SSI compactors that they had just purchased for Metro South. They spent extensive time with SSI going over their design, making recommendations, choosing different options. They were pretty well satisfied with the SSI machine at that point. This was a ten year process where they had been going back and forth between the two compactor manufacturers. Each time the REM department set a new standard for these compactors so the department was indicating to Harris that if they wished to be a player they needed to come up to the current standard.

Councilor Park said he was concerned with the fairness of the process. Typically when considering two like machines you didn't work to improve the machine after you accepted the bid.

Mr. Fjordbeck responded to Councilor Park's statement. First of all, he believed the agency had not had a lot of experience with the so called approved equal process. One of the reasons that there was the 72 hour period requirement in the bid was to allow other perspective bidders to go into the approved equal designation and to exam it. The process that occurred was not the staff calling in Harris and asking them to change their compactor. Harris came forward with a proposal in which it claimed that the compactor was equivalent. At that point the staff sought out information about that proposal and then reached a conclusion on whether it was equivalent or not. That process was not codified anywhere. The staff approached this process by having an expert review. This review was not required. All the contract said was 'make the determination'. Once that determination was made, the other bidders had a copy of that determination and could factor it or not into their bid or seek information from the staff about that determination. This was the process that had been set forth, it was not the staff asking for the bid from Harris but rather the company coming forward, indicated that they thought the equipment was equivalent and staff then seeking additional information or other features to make that equivalent.

Councilor Park said his concern was what he had heard in prior testimony from staff which was that during the review process they requested certain modifications in terms of bearings and platens. The manufacturer agreed to make these modifications. So it was not the manufacturer coming forth with these ideas, it was the other way around.

Mr. Watkins responded that the department brought up concerns to the Harris. Then Harris responded back that they would make the changes in addressing the expert team's concerns.

Mr. Pfeffer said he was the key interface between Harris and the REM team. The Harris transpact (Harris compactor) that Metro currently had was ten years old. Staff and BFI's personnel had a list of questions about specific issues on Harris' current equipment. The Harris

Company went through those questions and addressed the changes they had incorporated in their new equipment. They were not doing anything special for the Metro machine, other than the containment. All of the indications of the seal sizes, the bearing surfaces were incorporated in their standard product.

Mr. Watkins said Metro had some concerns with the Harris machine from the previous experience. When they asked Harris Company how those concerns were being addressed, this was how a lot of the changes came about. They had talked to their operations people and asked what was causing problems. The operations people indicated what was causing them problems because the department did not have complete specs from Harris.

Councilor Atherton asked, in the SSI design, would their hoses or any of their operating equipment be subjected to a corrosive environment because of the containment structure that SSI were providing.

Mr. Watkins said it was not an issue.

Mr. Garnier concurred.

Councilor Atherton clarified none of their hoses, any oil containing or transferring equipment would have been in that corrosive environment of spillage.

Mr. Garnier said the machine was installed at an incline and the fluids drain into a sump. There was containment and a sump. It wouldn't be like a swimming pool where it was constantly building up.

Councilor Atherton asked by providing the oil containment feature that in no way would compromise the operation of the equipment.

Mr. Garnier said that was correct.

Presiding Officer Monroe announced that SSI should complete their brief summation at this time and then there would be Council discussion.

Mr. Verman summarized what he had heard to try and synthesize it. Metro had been going through a process of getting ever better compactors. Metro had been working with SSI, a local company. Harris had a local office in Oregon but did not manufacture its equipment in Oregon. As a result Metro had raised the bar. Metro had not bought a Harris piece of equipment in several years. Metro now required that Harris meet this new bar which had been set forth in the specifications. Even though a company was designated as an equal it did not excuse them from the written specs. They must meet the specs and be of a similar quality in other areas to the SSI equipment. The leachate containment requirement involved collecting a leachate at the bottom at an incline and containing it rather than letting it spill on the concrete creating a slippery surface. He had not heard staff say that they had ever granted an exception to the company or that they had agreed with Harris. He heard that Harris had taken an exception, they offered their rationale for why they thought it was a bad idea but he had not heard staff agree or that there had been any change. He understood that the exception was made in the bid, not before the bid and Harris made no attempt to submit any changes with regard to the containment. This was a failure to meet the leachate containment requirement. When Metro developed the specs they thought this was important so why was it all of the sudden overlooked completely. The consistent density issue had to do not with the quality of the garbage but with the pressure of the cylinders. What Mr.

Garnier was attempting to show with the diagram was when you were pushing on material to compact it, the force with which you push it determined how compact, dense it will become. One of the reasons that SSI's equipment was more expensive was that it had developed a way of providing consistent pressure with one cylinder which Mr. Garnier had indicated cost them approximately \$40,000 to \$50,000 more to make to create this constant pressure. Harris equipment had three cylinders with three different pressures, with smaller cylinders at the end. Harris information showed that the pressure in the third cylinder was 101 tons, the middle cylinder was 239 tons, and the last stage was 322 tons of pressure. When you have different pressures you would have different compaction. The requirement in the spec was a consistent 250 ton. This was why you had the consistent density requirement. Mr. Garnier had pointed out with regard to the information given to SSI, there was a flaw in the process. Metro determined the Harris compactor was equal but then only provided additional information 24 hours before to SSI.

Mr. Garnier said there was a lot of discussion about a 72 hour advance notice of the approval of the TP Super 500 being an approved equal. SSI asked for clarification on how it was approved equal and received the explanation 24 hour prior to bid opening. SSI did not have 72 hours to act upon it, only 24 hours. It was too close to bid time to have any discussion so they just submitted their bid and took no exceptions as was requested in the RFB. If someone was talking about giving a person opportunity to understand these exceptions, they were not given that opportunity. He had the letter in his hand, it was sent to SSI on July 7th with the points that Mr. Watkins made that Harris was willing to provide. It was SSI's understanding that Metro solicited these changes from Harris. SSI didn't have a problem with that, they simply wanted to know what Metro wanted. In other words, SSI was willing to rebid this process and give Metro what it wanted but Metro needed to clearly tell SSI what it was they wanted. They thought what Metro wanted was the RFB as it was originally written. SSI didn't think that was what they were asking for by what SSI had received so far. SSI felt that they did not have clarification and they bid what was asked.

Carl Winans, owner of AMFAB Resources, which developed the process of compacting waste. He had the company for ten years then sold it to Harris Waste Management. He was involved in the design of the unit and knew both machines thoroughly. He sold a machine to Metro in 1989 and then subsequently they bought one from SSI in 1991. Both machines were high maintenance items throughout this period. When the time came for the RFP last year for the South Metro station, Harris declined to bid or even work with Metro on this bid. Mr. Winans and SSI worked very closely with Metro to design the unit Metro had at South Metro now. In this RFB Metro used his specs, his drawings and everything that they had developed for those machines. This was what they had put out for bid. Through this process of 'as equal' he believed that by Harris having the specs and all of the information out there in the public that SSI's confidential specifications were somewhat plagiarized. He thought the compactors, even with the changes, were still not equal because he did not believe Harris had actually built a machine with the changes that had been asked for in the bid. Harris built a machine similar to this a couple of years ago for New York. The machine had three catastrophic failures. He wasn't sure if Metro staff had examined this or not. One can't change the law of physics when it comes to telescopic cylinders, each stage had a lower force that it exerted on the bale. When you make an unequal bale, you don't get equal load distribution to the axles. To do this you might have to travel with less weight than what was required for the bid and that would cost Metro money over a period of time.

Presiding Officer Monroe thanked the participants and declared that it was time for Council deliberation.

Councilor Kvistad said having gone through this, there were two or three points that had created a question in his mind. He had concerns about the approved equal status, he was hearing

comparable versus equivalent, similar versus equal. He did see where that meshed for him in terms of looking at a piece of equipment that Metro was purchasing. The actual contractor license was also of concern if it was in a different environment. He understood that the Council's options were; reject the appeal at which point Harris received the bid and Metro moved forward, move to accept the appeal at which point either it would be awarded by the Executive Officer or rebid by the Executive Officer, either way it would be returned to the Executive Officer for review.

Motion: **Councilor Kvistad** moved to accept the appeal and return this process to the Executive Officer.

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

Councilor McLain spoke against the motion. She explained that the first step in this appeal process for her was to go back and look at the rules and see if Metro had followed the rules in the Code. There were rules for contracts, bids and proposals. She had looked at the rules and the actual appeal and did not find the appeal to have merit. She found that there was fairness in the process looking at the review of Mr. Burton's letter explaining why he believed the process should be held as being meritorious and having followed the basic Code. She would be supporting rejection of the appeal.

The second area had to do with changing from a proposal process to a bid process. There were many times when staff may be used to using old rules. There was a difference between a proposal and a bid process. She had looked very carefully at all of the letters, the Executive's responses to make sure that the Executive Officer had answered all of the very specific reasons that it was felt this appeal had merit. She believed that the Executive Officer had demonstrated, where following the bid process, the staff did the right thing and did follow the process that was set in front of the Council for the bid.

She thought the new terminology dealing with the 72 hour advanced notice when accepting an approved equal was a situation where there was probably more gray area in this appeal as well as in the response by the Executive. What was meant by approved equal, it didn't mean that the compactor that was held up as the one Metro had in place was the example, that this meant that they necessarily had an inside track. What the approved equal definition was was that it met the performance standards that we were going to have to use when we bought a piece of equipment. Metro got to choose. It was Metro's manager, Metro's transfer station and Metro's staff that would have to use that equipment, to management that equipment and to help with the maintenance of that equipment. Metro got to decide what that approved equal meant. She added that her husband did bids all of the time. As pointed out by the staff, approved equal didn't mean that the bolts were in the same place, approved equal meant that it was going to do the job that they had set out for the bid in the first place. Metro needed a new compactor.

She also pointed out that looking at the specific issues of rejection as far as the bale density, there were two ways of getting that density to a product of a bale, there was a one cylinder process and one that had a different configuration. It was Metro staff's responsibility to decide which of those cylinders was going to do the best job for the purpose that the compactor was being bought for at the transfer station. She could not find anything in the remarks or the review that demonstrated staff didn't make a good choice. On the issue of the oil containment, there was a response by both staff and the extra party that demonstrated that they choose not to have the same oil containment system that SSI had and gave an explanation of that choice. It was the purchaser's responsibility to decide if that fits the purpose of the machine and would actually take care of the job that the machine had to do. The staff indicated that they believed the exception that they asked for was

O.K. because it was going to be able to still do the job and seemed to do the job as well if not better than the SSI system that was proposed. The bid indicated that Metro wanted to see how that system worked but did not indicate that Metro couldn't understand a change of design.

Finally, there was an issue of making sure there was state status for contractor. The legal staff indicated that as long as the subcontractor who would be installing the machine had that status it was legitimate to the Code. Again, there was nothing in this process that made her feel that either of the parties couldn't have gone out and gotten that particular status if they wanted to or that they could have questioned any more or in a different way the reason for the status being required, requested or a nice thing to have. She did not find anything there that would support accepting this appeal.

If Metro was going to be doing their business appropriate, like private business, they probably did not want to be dependent upon one vendor. Many business that she knew had a two vendor policy. She thought the staff had done an excellent job with this bid process to point out that Metro was always looking for a better compactor, a better maintenance contract and was making sure that each party was out there bidding against each other and trying to be competitive towards each other. She did not expect them to believe that anyone else's design was better than their design. Up to this point she had to depend upon the staff who went through an appropriate fair bid process. Next time, SSI may come up with the appropriate bid. She felt that because of the above mentioned reasons, her belief in competition and a capitalistic system, she thought SSI and Harris was here because they both had a good product. She did not see any reason to reject the process as produced by the staff.

Councilor Park said he felt that the staff was very professional and dedicated to Metro in the job they were trying to do. He had a concern in terms of that same dedication. It may lead to ways that looked like they were good on the surface in order to get to the best product for Metro but may lead them to or others to go further. As Council was looking at these issues, what items did the bidders rely upon. It had been brought up that the language in the request for bid was extraneous to the process, really wasn't necessary, and one really didn't have to abide by it. Then why was it in the original proposal. He said if you were not going to rely upon these items then you didn't put them in the proposal. He noted that Councilor McLain had talked about the bid process and being competitive. He believed in that process but if it had been mentioned in the process that Metro was trying to even things out, SSI wouldn't have wasted their time or would have protested it at the beginning of this process if that was one of Metro's criteria being used. He did not think that was necessarily the criteria that the Council was reviewing. He expressed concern about the team review where additional information was requested of Harris. He wasn't saying this was an incorrect process. His concern, however, was the fairness issue to the competitors in asking for potential changes that would reduce their cost on the containment issue. If there were going to be changes for one bidder, then there should have been opportunity for changes from all bidders. He wasn't sure about the constant density bale issue. He understood the physics involved, that there was a potential for this. The only way to prove this was to go out and run both at the same time with the same type of garbage and see if you get an equal distribution in the load. This was one of those technicalities that was beyond this policy board. He thought that there had been enough question raised that he would be supporting Councilor Kvistad's motion. In terms of the fairness issues, hoping that something would be brought back to Council, that everyone, win or lose, was still happy because they felt it was a fair process.

Councilor Bragdon said in evaluating this appeal he clarified what he was evaluating. He could spend a lot of time and still not be in a position to judge between the two machines. He said the Harris machine, the three cylinder approach, the type of steel and the spillage system may all be

superior. He believed that it was his job, when spending \$750,000 of the rate payers money and involving intelligent private sector people, that it being conducted fairly and openly and we were getting the best value and giving a fair shot to vendors who had served us well. He had just heard enough questions raised through this inquiry that he had his doubts about this so he would be supporting this appeal with the understanding that the bid may go back out and Harris may still receive the award. His vote today was not any judgment on these two machines, it was more a judgment on the staff work that went into the process. He said what had raised the doubts to cause him to vote the way he would be voting had to do with one, the language on the construction contractor board, but he thought you had to be beyond reproach. If you lay out a system you stick with the system. If it was in a boiler plate RFB and you no longer wanted that requirement, you took it out before it went to bid. As far as he was concerned, if the bid requirements required certain documentation to bid, then they should have that with their bid, not after the fact. He said it looked like the rule was not followed. He was not disturbed by the technical matters, it was the staff response to those matters that disturbed him and whether there was even-handedness. The spillage was one example where an exception was granted. Again, he was not in a position to judge whether one system was superior to the other but he needed to have the confidence the staff handled that issue fairly between the two bidders and he had doubts about how this process occurred. In conclusion, he would be supporting the appeal.

Councilor McLain said it looked to her that Councilor Kvistad's motion was going to pass. She said there were several issues that were extraordinarily important to get on the record. She did not believe that there was anything in the RFB process or in the Code that indicated that Metro's staff did not go through the appropriate process. She heard two contending competitive bidders tell her their interpretation of what they thought was the bid process. There was nothing compelling in any comments made by anyone other than their own personal analysis of what they thought they heard in front of the Council. She said there was a difference between an RFP process, which the vendors had been used to, and an RFB process which was being utilized this time. The only goodness out of the motion was the fact that everyone was more educated and everyone would be much more careful about reading our Code and the language as we go forward. She did not want this appeal to go down as having everyone on the Council saying that this was not a fair process or that the rules were not followed or that there was an ability for this Council to do better job than a team of experts in a field deciding which one of these machines was a better machine. She thought that Councilor Bragdon made that delineation. He was talking about a process versus the quality of the machine. She did not think there was anything on this record that demonstrated that Metro staff did not do their work appropriately.

Councilor Washington said he could go either way on this issue but he had decided that he was going to support the appeal. It had nothing to do with the staff not doing an appropriate job, he did not believe this was the issue at all. He also thought that this was one of those unusual situations where both of the bidders were very close. To support the appeal did not mean that he would not support the decision of the department when the appeal was returned to Council. He wanted clarity because of the closeness of the nuances. He thought what he had gotten out of this was an education. He would be talking with staff as the REM chair to see what could be done with the closeness of these two bids that they find clarity about the issue. He reiterated that it had nothing to do with what the staff did. On top of that was the low bid process. He would be supporting the appeal but asked that no one read his support of the appeal as an indication that he would change his vote in a future situation. At this point he was unsure who would ultimately get the bid. He was willing to have opportunity for further discussion and further clarity.

Presiding Officer Monroe said that no one could accuse this body of being a rubber stamper to the staff. Sometimes councils and legislative committees had been accused of rubber stamping

whatever staff brought to them. He thought it was very clear that this had not happened in this situation. He was very proud of this council because every member of this council took their job very seriously and had tried to do what was right in terms of public policy. Whether or not the council reached the proper conclusion or not, at least everyone had nothing but the very soundest intent in terms of the conclusion that was being reached today. He announced that he would be urging, after the vote, the Executive Officer to resubmit this issue to bid. He thought this was the only appropriate action for him to take after this vote today.

Councilor Kvistad closed by saying that there wasn't much he could add to Councilor Bragdon's comments. This was not a matter of black and white, it was a matter of a shade of gray, a matter of a policy position. Was there a question of fairness, was there something missed? He said the approved equal was of concern to him as well as some of the other questions raised. He also concur with the Presiding Officer that direction to the Executive Officer would be appropriate. He asked for an aye vote on his motion.

Vote: The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed with Councilor McLain voting no.

Councilor McLain asked to formalize the Presiding Officer's suggestion to the Executive Officer.

Presiding Officer Monroe said the council could if they wished but he would personally be carrying that message to him.

Councilor McLain said she thought it was important that he knew that the rest of this council agreed with the Presiding Officer.

Motion: **Councilor McLain** moved to asked the Executive Officer to send this out to bid again.

Seconded: **Councilor Park** seconded the motion

Councilor Atherton asked if this was legitimate legal procedure. Can the council do this?

Presiding Officer Monroe said that the Council could ask him, could recommend but they could not force him. It was his prerogative to do what he thought was best but the Council could give him their opinion.

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

12. COUNCILOR COMMUNICATION

Presiding Officer Monroe announced that the Council had received the calendar for the next four months, critical time in the history of Metro. He reminded the Council that on September 23rd the Council would be meeting in Hillsboro for the beginning of our public hearing process. It was scheduled for 5:00pm. Other meetings include October 4th in Gresham at 5:00pm, October 7th at Metro at 2:00pm, October 12th in Milwaukie at 5:00pm and October 14th at Metro at 2:00pm.

He said the Council would also be meeting September 30th.

Jeff Stone, Chief of Staff, said tomorrow the council would be receiving a briefing book on the Solid Waste Disposal item.

Councilor Atherton offered a clarification to the viewers about the public hearing schedule. These public hearing would be before the full council on the entire growth issue, there would be an entire list of items related to growth including the forecasts, the Urban Growth Report, Urban Growth Boundary adjustments, and other proposals that the Council would be considering in the big picture. He said they knew that there were many who were interested in this issue and hoped that they could participate.

Councilor Kvistad asked Mr. Stone about the Executive Officer's proposal for the 60 million dollars. Had the Council received this proposal and how in-depth was it?

Mr. Stone said yes, the Council had received the proposal and it was two pages.

Presiding Officer Monroe indicated that proposal would be part of the briefing book.

Councilor Kvistad asked Mr. Stone about the extensiveness of the briefing book.

Mr. Stone responded that the book would provide the council with a background of technical material, all correspondences and minutes, media coverage and a list of options that had been created by Council staff.

Councilor McLain reminded the Council about WRPAC on Monday at 1:30pm. This meeting was particularly important because they would be briefed on the Goal 5 work. This Goal 5 work was important to ESA listings in the future but also as they were looking at compliance plans for the Functional Plan. This information would be added to the compliance issues once there was agreement.

13. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 4:38 p.m.

Prepared by,

Chris Billington
Clerk of the Council

Document Number	Docume nt Date	Document Title	TO/FROM	RES/ORD
090999c-01	9/9/99	Proposed Addition of EFU land in area 65 of the UGB - letter & photos	TO: Metro Council FROM: Greg Malinowski, Malinowski Farm 13450 NW Springville Lane Portland OR	Ord No 99-812

090999c-02	9/9/99	Proposed Ordinance No, 99-812 Urban Reserve Area 65	97229 TO: Metro Council FROM: MaryKyle McCurdy, 1000 Friends of Oregon 534 SW Third Suite 300 Portland OR 97204	Ord No 99-812
090999c-03	9/9/99	Proposed UGB Expansion in Bethany - letter and photos	TO: Metro Council FROM: David Miller 16415 NW Brugger Rd Portland OR 97229	Ord No 99-812
090999c-04	9/9/99	Urban Reserve Area 65 in Washington County email	TO: Metro Council FROM: Jan Regnier, 16965 NW Bernietta Ct Portland OR 97229	Ord No 99-812
090999c-05	9/9/99	Letter concerning Urban Reserve 65	TO: Metro Council FROM: Steven Claussen Williams, Fredrickson, & Littlefield 1515 SW 5th Ave Suite 844 Portland OR 97201	Ord No 99-812
090999-06	7/20/99	Staff report on Ordinance No 99-812	TO: Metro Council FROM: Lydia Neill Growth Management Services Dept.	Ord No 99-812