

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ADOPTING A FINAL)
ORDER AND AMENDING THE METRO URBAN)
GROWTH BOUNDARY FOR CONTESTED)
CASE NO. 87-4: BRENNT PROPERTY)

ORDINANCE NO. 88-265


THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Council of the Metropolitan Service District hereby accepts and adopts as the Final Order in Contested Case No. 87-4 the Hearings Officer's Report and Recommendations in Exhibit B of this Ordinance, which is incorporated by this reference.

Section 2. The District Urban Growth Boundary, as adopted by Ordinance No. 79-77, is hereby amended as shown in Exhibit A of this Ordinance, which is incorporated by this reference.

Section 3. Parties to Contested Case No. 87-4 may appeal this Ordinance under Metro Code Section 2.05.050 and ORS ch. 197.

ADOPTED by the Council of the Metropolitan Service District
this 13th day of October, 1988.


Mike Ragsdale, Presiding Officer

ATTEST:


Clerk of the Council

I certify this ordinance was not
vetoed by the Executive Officer.

JH/sm
0120D/554
09/12/88


Deputy Clerk of the Council 12/30/88
Date

Meeting Date Oct. 5, 1988

CONSIDERATION OF ORDINANCE NO. 88-265 FOR THE
PURPOSE OF ADOPTING A FINAL ORDER AND AMENDING
THE METRO URBAN GROWTH BOUNDARY FOR CONTESTED
CASE NO. 87-4: BRENNT PROPERTY

Date: September 6, 1988

Presented by: Daniel B. Cooper

FACTUAL BACKGROUND AND ANALYSIS

Contested Case No. 87-4 is a petition from Willy and Thea Brennt for a locational adjustment of Metro's Urban Growth Boundary (UGB) in Clackamas County. The property proposed for inclusion within the UGB is a five-acre parcel located south of Lake Oswego, as shown on Exhibit A. Clackamas County adopted a neutral opinion; Lake Oswego has taken the position that it can provide urban service to the property.

Metro Hearings Officer Christopher Thomas held a hearing on this matter on June 29, 1988. Testimony was received both in support and in opposition to the petition. The Hearings Officer's Report and Recommendation, attached as Exhibit B, concludes that the petition meets all applicable standards and should be approved. Exceptions to his Report have been received from a neighbor, Ken Jensen, and neighbors Bill and Pam Clemons.

Following oral argument on exceptions, the Council may consider any motions to remand the findings to the Hearings Officer or to staff for revisions as requested by exceptions or as otherwise specified. If no such motions are approved, the Council may allow Ordinance No. 88-265 to proceed to a second reading with the findings as proposed in the Hearings Officer's Report.

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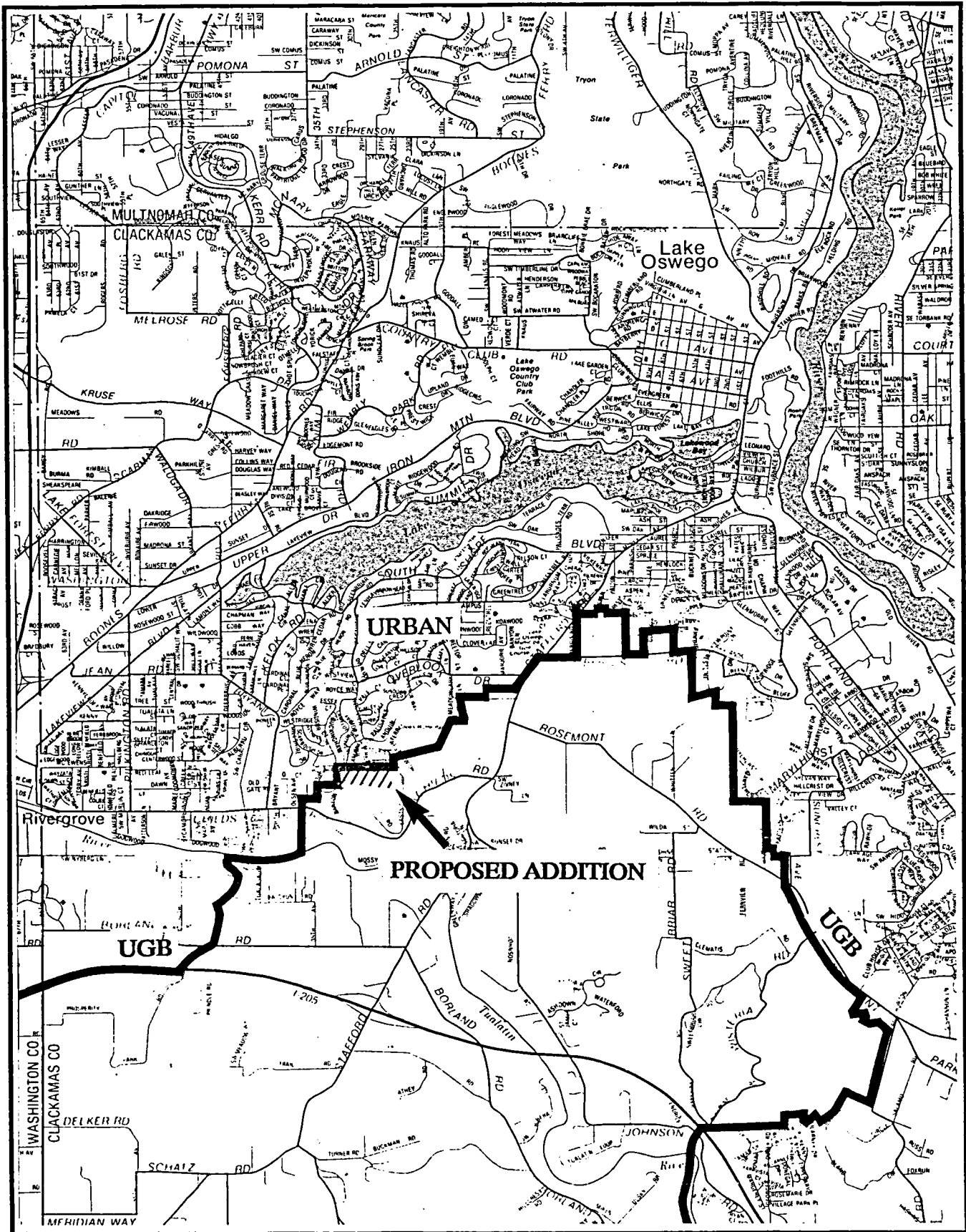
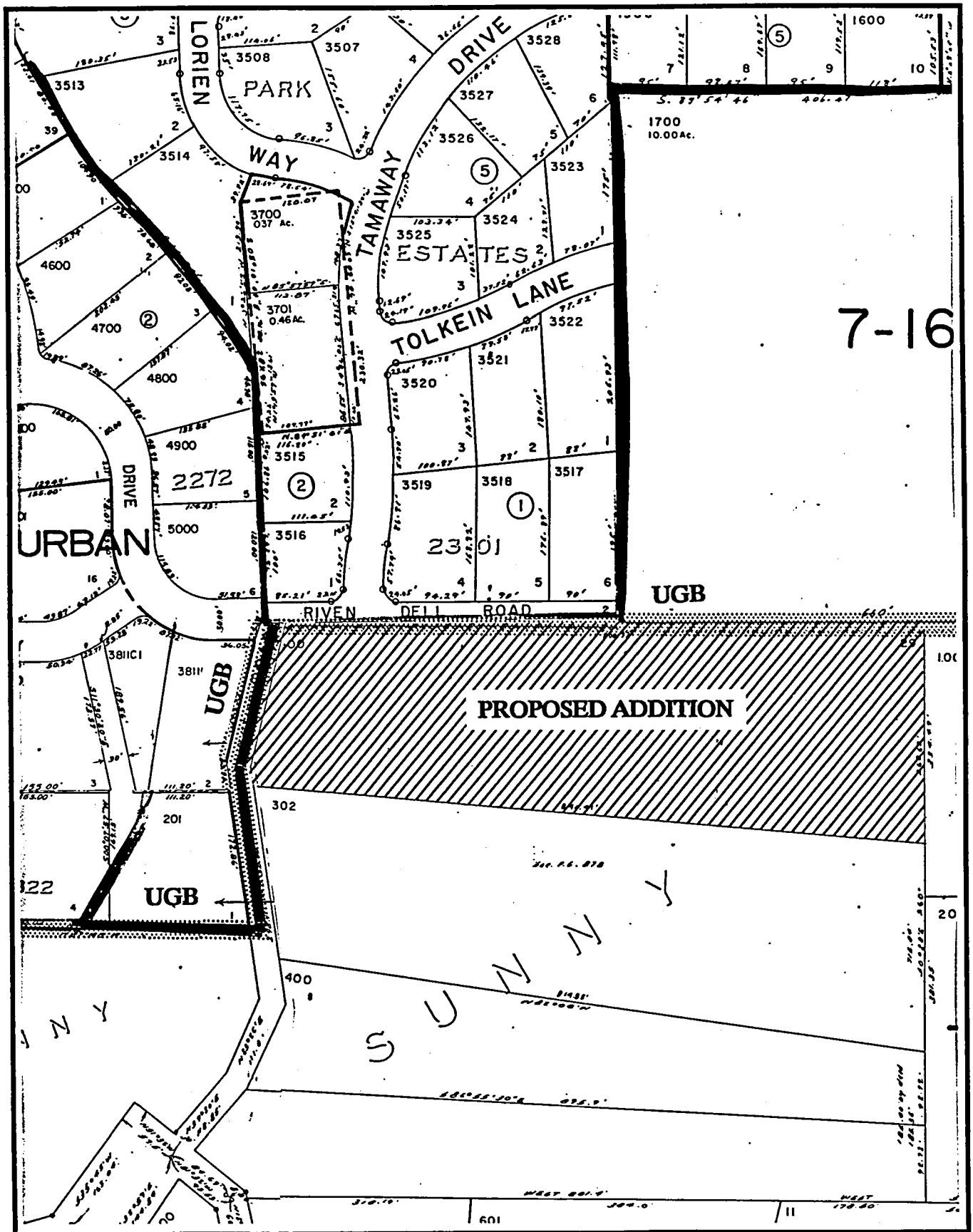


Exhibit A
Brennt
Vicinity Map



Brent

Site Map

BEFORE THE METROPOLITAN SERVICE DISTRICT

In the Matter of the Petition)
of WALLY and THEA BRENNT) Contested Case No. 87 - 4
for an Amendment to the) REPORT AND RECOMMENDATION
Urban Growth Boundary) OF HEARINGS OFFICER

I. Nature of the Case

This is a petition by Wally and Thea Brennt (Petitioners) to add approximately 4.61 acres to the area within the Urban Growth Boundary. The land is located south of Lake Oswego, adjacent to and south of Riven Dell Road and adjacent to and east of Barton Road. The land abuts the City of Lake Oswego. Petitioners state that if the petition is approved, they will seek annexation to Lake Oswego. A map showing the land is attached hereto as Exhibit A. The legal description of the land is:

Tax Lot 300
Township 2 S., Range 1 E., Section 20AA

The City of Lake Oswego has determined that the City can provide an adequate level of services to the land, but otherwise has taken a neutral position on the petition. Clackamas County has taken a neutral position on the petition.

II. Proceedings and Record

On June 29, 1988, following publication and mailing of a notice to property owners who were identified by Petitioner or the hearings officer as living within 250 feet of the proposed addition area, the hearings officer held a hearing on the

petition at Lake Oswego City Hall. Approximately 12 witnesses testified for and against the petition.

At the close of the June 29 hearing, the hearings officer left the record open in order for Ken and Jeanine Jensen, Robert Lyneis, and Susan Castleman to submit written evidence; for Petitioners to submit written evidence on the impact of the proposed amendment on public schools; for Petitioners to submit a photocopy of a topographic map; and for written rebuttal to these late submissions.

The following documents either are a part of Metro's public file in this matter, were introduced at the public hearing or were submitted following the hearing pursuant to the hearings officer's ruling on late evidence:

- Exhibit 1 - Petition for Locational Adjustment, 6/30/87
- Exhibit 2 - Comment, Lake Oswego Fire Department, 7/1/87
- Exhibit 3 - Comment, Lake Oswego School District, 7/6/87
- Exhibit 4 - Letter, Scott to Metro, 7/8/87
- Exhibit 5 - Comment, City of Lake Oswego, 7/9/87
- Exhibit 6 - Order No. 87-902, Clackamas County, 7/23/87
- Exhibit 7 - Memo, Scott to Harvey, 4/12/88
- Exhibit 8 - Lake Oswego City Council, Meeting Minutes, 4/19/88
- Exhibit 9 - Letter, Scott to Metro, 5/2/88
- Exhibit 10 - Property Ownership List
- Exhibit 11 - Five Assessment Maps
- Exhibit 12 - Notice of Proposed Action, 5/2/88
- Exhibit 13 - Staff Report, Hinckley to Thomas, 5/18/88
- Exhibit 14 - Notice of Public Hearing
- Exhibit 15 - Letter, Stark to Thomas, 6/24/88
- Exhibit 16 - Letter, Oeltjen to Thomas, 6/27/88
- Exhibit 17 - Sign In sheet, 6/29/88
- Exhibit 18 - Letter, Lower Tualatin Valley Homeowner's Association, Inc., 6/29/88
- Exhibit 19 - Memo, Thomas to parties, re procedure 7/6/88
- Exhibit 20 - Letter, Givens to Thomas, 7/7/88
- Exhibit 21 - Memo, Korach to Board of Directors, 5/2/88
- Exhibit 22 - Letter, Lyneis to Thomas, 7/8/88
- Exhibit 23 - Letter, Jensen to Thomas, 7/8/88

- Exhibit 24 - Topographic Map, undated
- Exhibit 25 - Letter, Clemons to Thomas, 7/14/88
- Exhibit 26 - Letter, Givens to Thomas with a map of Lake Oswego with Year 2000 Traffic Assignment, 7/14/88
- Exhibit 27 - Letter, Jensen to Thomas, 7/15/88
- Exhibit 28 - Letter, Ariens to Brennts, 12/1/86
- Exhibit 29 - Memo, from W.A. Korach Lake Oswego School Superintendent, 5/16/88
- Exhibit 30 - 6 maps

There were three exhibits submitted after the hearing that were outside the scope of the hearings officer's authorization to submit additional written evidence. These all will be excluded from consideration in this report and recommendation. They are Exhibit 31, Letter, Brennt to Thomas, 7/7/88; Exhibit 32, Letter, Stark to Thomas, 7/8/88; Exhibit 33, Letter Harvey to Thomas, 7/18/88. Mr. Lyneis submitted Exhibit 22, but failed to serve a copy on other parties, as required by the hearings officer. Since the exhibit contains no new evidence, it will be treated as an argument and not as evidence.

III. The Site and the Surrounding Area

The proposed addition area (Site) is located south of Lake Oswego, adjacent to and south of Riven Dell Road and adjacent to and east of Barton Road. The Site abuts the City of Lake Oswego, adjacent to the Westridge and Palisades Park Estates residential subdivisions. Zoning in the immediate vicinity is R-10, although most of the lots in the vicinity are 18,000 to 20,000 square feet.

The Clackamas County Comprehensive Plan designation for the Site is rural. The current zoning for the Site RRFF-5 permits one single-family dwelling per 5 acres.

The petitioners hope to develop the Site for single-family residential use at R-10 density.

The existing UGB adjoins the Site along its western and northern boundaries. Properties to the south are designated rural by the Clackamas County Comprehensive Plan. The Site is the only property in the area outside the UGB with frontage and direct access from City streets. It also is the only frontage on Riven Dell Road that is not inside the UGB.

The Site lopes downward from a 420 foot elevation at the southwest corner to a 320 foot elevation near the northwest corner, with a slope of up to 15%. It has a 325 foot elevation along Riven Dell Road.

Westridge Grade School is the closest school, due north of the Site. Lakeridge High School is considerably northeast of the Site.

IV. Legal Framework

In 1981, Metro adopted Ordinance No. 81-105, which established procedures and criteria for review of proposed "locational adjustments" to the UGB. The purpose of the ordinance was to provide a method for allowing relatively minor UGB amendments in a manner consistent with UGB amendment requirements established by the Oregon Land Conservation and

Development Commission.

LCDC's UGB amendment requirements are contained in Goals 14 (Urbanization) and 2 (Land Use Planning).

The pertinent portions of Goal 14 state:

"14. URBANIZATION

"GOAL: To provide for an orderly and efficient transition from rural to urban land use.

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.

"Establishment and change of the boundaries shall be based upon consideration of the following factors:

- "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;**
- "(2) Need for housing, employment opportunities, and livability;**
- "(3) Orderly and economic provision for public facilities and services;**
- "(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;**
- "(5) Environmental, energy, economic and social consequences;**
- "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,**
- "(7) Compatibility of the proposed urban uses with nearby agricultural activities.**

"The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning Goal (Goal 2) for goal exceptions.

"Land within [the UGB] shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- "(1) Orderly, economic provision for public facilities and services;
- "(2) Availability of sufficient land for the various uses to insure choices in the market place;
- "(3) LCDC goals; and,
- "(4) Encouragement of development within urban areas before conversion of urbanizable areas."

Goal 2, Land Use Planning, contains "Exceptions" requirements, which are the requirements that Goal 14 specifies must be met for UGB amendment. In 1983, however, the Oregon Legislature adopted ORS 197.732, which itself establishes "exceptions" requirements. Since then, LCDC has incorporated these requirements in OAR 660-04-010(c)(B). That regulation states in pertinent part:

"Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

"(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

"(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

"(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

At the time that Metro adopted its "locational adjustment" procedure for minor UGB amendments, Metro also adopted "Findings in Support of Ordinance 81-105, Establishing Procedures for Locational Adjustments to Metro's Urban Growth Boundary, February, 1981."

The findings pointed out that the standards for evaluating proposed locational adjustments did not require an evaluation of several factors contained in the LCDC Goals. Specifically, the standards did not require findings on:

- (1) Why the proposed use should be provided for (Goal 2, Factor 1);
- (2) Whether there was a demonstrated need for the adjustment to accommodate long-range urban population growth requirements (Goal 14, Factor 1), or to provide for the need for housing, employment opportunities, and livability (Goal 14, Factor 2);
- (3) Whether other suitable alternative sites were available (Goal 2, Factor 2).

Metro justified excluding these factors from consideration by stating that even if it were assumed there was no need for additional land to accommodate growth, there nevertheless might be other reasons why the UGB should be amended. It was for these "other reasons" cases that Metro adopted the locational adjustment process. (Cases based on the need for additional land go through a different process, the major amendment process, which addresses all of the factors of Goals 2 and 14.) A petitioner in the locational adjustment process thus is required to show that, notwithstanding that more land will be added to the

UGB than is needed, other reasons for adding the land are sufficiently strong to outweigh the negative impact of having too much land.

The locational adjustment standards at the outset provide that the process is available only for proposed additions of 50 acres or less. The impact of adding more than 50 acres without a showing of need is presumed to be so great that all proposals involving more than 50 acres must go through the major adjustment process, where a showing of need is required.

A potential loophole in the 50 acre requirement is that a petitioner could seek an amendment for one 50 acre parcel followed by another amendment for an abutting 50 acre parcel. This could allow a 100 acre addition with no showing of need. Metro closed this loophole by requiring that a locational adjustment petition include all similarly situated contiguous land. Thus if an area contains more than 50 acres of land that is similarly situated with reference to the locational adjustment standards, the land must go through the major adjustment process. It cannot be brought in piecemeal through the locational adjustment process.

In justifying its exclusion of the "need for land to accommodate growth" requirements for locational adjustments, Metro pointed out in its Findings that the underlying rationale for the State Goals limiting the UGB to only the land needed was as follows:

1. The limitation promoted maximum efficiency of major public facilities;
2. It promoted maximum efficiency of site specific public facilities and services;
3. It minimized the energy consumption and air pollution associated with travel within the urban area;
4. It protected agricultural lands not needed for urban use.

Regarding the first rationale, efficiency of major public facilities, Metro found that a 50 acre change, in an area served by a set of major public facilities, would have no significant effect on the efficiency of the facilities.

Regarding the efficiency of the site specific facilities and services and air pollution and energy consequences, the issue was more complex. Since the current UGB is based on need to accommodate growth through the year 2005, Metro started out its analysis by assuming that if a parcel were added at the periphery of the UGB, then to compensate, another parcel at the interior of the UGB would remain undeveloped. In terms of site specific public facilities, this would mean that there would be costs for having public facilities available to the interior parcel but unused, and there could be costs for making public facilities available to the exterior parcel. In addition, there could be added urban travel to the exterior parcel, as opposed to the interior parcel, resulting in increased energy consumption and air pollution. However small these potential problems, Metro concluded that they needed to be addressed. Metro thus

established standards for locational adjustment cases to require a showing that the benefits of adding the exterior parcel outweighed the costs of leaving the interior parcel undeveloped.

These "compensating" standards required consideration of whether addition of the exterior parcel would increase the efficiency of public facilities and services and facilitate needed development in adjoining areas within the UGB. If so, the benefit in relationship to the adjoining UGB area might outweigh the cost in relationship to the interior UGB area. Metro recognized, however, that the greater the size of the exterior parcel being added, and thus of the interior parcel being left undeveloped, the greater the costs in relationship to leaving the interior parcel vacant.

Metro found that for exterior parcels of 10 acres or less, the cost of leaving a 10 acre interior parcel vacant was so small that any benefit at all in relationship to UGB land abutting the exterior parcel was sufficient to overcome the cost. As the size increased between 10 and 50 acres, however, so did the cost in relationship to the undeveloped interior parcel. Metro therefore required that locational adjustments ordinarily should be only for 10 acres or less for vacant land and that, as size increased between 10 and 50 acres, so must the benefit to adjoining UGB areas increase.

Finally, regarding conversion of agricultural land, Metro required that agricultural land could be converted to urban land

only in the most compelling circumstances.

Based on the findings described above, Metro adopted standards for evaluating locational adjustments adding land to the UGB, contained in Metro Code Section 3.01.040, as follows:

"(a) As required by subsections (b) through (d) of this section, locational adjustments shall be consistent with the following factors:

"(1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB and any area to be added must be capable of being served in an orderly and economical fashion.

"(2) Maximum efficiency of land uses. Considerations shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

"(3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.

"(4) Retention of agricultural land. When a petition includes land with Class I-IV soils that is not irrevocably committed to non-farm use, the petition shall not be approved unless it is factually demonstrated that:

- Retention of the agricultural land would preclude urbanization of an adjacent area already inside the UGB, or
- Retention of the agricultural land would prevent the efficient and economical provision of urban services to an adjacent area inside the UGB.

"(5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

"(d) Petitions to add land to the UGB may be approved under the following conditions:

"(2) ...[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).

"(3) Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. ...[T]he larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section.

V. Findings

1. Public Facilities and Services. MC Section 3.01.040(a)(1)

"Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion."

Water Facilities and Services.

A 12 inch City of Lake Oswego water main is located in Riven Dell Road, along the street frontage of the Site. This line is available to and is capable of serving the Site.

Based on the presence of these water facilities, the Site is capable of receiving water service in an orderly and economical fashion.

If the Site were brought within the UGB, there would be a slight net improvement in the efficiency of the existing water

facilities within the UGB area, by virtue of greater use of existing capacity.

Sewer Facilities and Services. An 8 inch City of Lake Oswego sanitary sewer line is located on the west side of Barton Road, within 60 feet of the Site. This line presently only serves properties on the west side of Barton Road. With the exception of a small area in the southwestern portion of the Site, the Site can be serviced by gravity flow from this line. The small lower area probabbly would be left vacant on development. Extension of the sewer line would require a small amount of fill to cross a low point in Riven Dell Road.

The evidence indicates that sewer services can be made available to the Site in an orderly and economic fashion. There would be a slight net improvement in the efficiency of the existing sewer facilities within the UGB area, due to greater use of existing capacity.

Storm Drainage Facilities and Services. Storm water from the adjacent area inside the UGB presently drains through a swale which crosses the Site from Riven Dell Road and from there drains to the south. Any development on the Site would have the same storm water drainage pattern. Several witnesses expressed concern about drainage affecting Barton Road, which is a dirt road. Although development might accelerate storm water run off

due to the addition of impervious surfaces, there is no indication this would cause any harm.

It appears that storm drainage can be provided to the Site in an orderly and economical fashion. There would be no measurable change in the efficiency of storm drainage within the UGB.

Transportation Facilities and Services. The primary access of the Site to the residential developments to the north and east is over Riven Dell Road. Riven Dell connects to Tamaway Drive and to Hillshire Drive, which in turn connect to Westridge Drive and Bryant Road, which are designated as collector streets. At the present time, abutting the Site, only the northern half of Riven Dell Road is located in right-of-way dedicated to the City of Lake Oswego. The southern half of Riven Dell is located in an easement on the Site. The easement is outside the UGB. The easement, however, does not provide all of the right-of-way needed for the southern half of Riven Dell Road abutting the Site. There is a small area where the southern half of Riven Dell actually is missing. (See Exhibit A.) Although some of the neighbors testified that the missing portion of Riven Dell Road is beneficial because it slows down traffic, it is a traffic hazard with half the roadway ending and two directions of traffic having to use the remaining half. The Petitioners state that if the Site is brought within the UGB they will dedicate the

necessary right-of-way to complete Riven Dell Road. As an alternative, the City of Lake Oswego could condemn the needed right-of-way.

Development of the Site would generate not more than 150 vehicle trips per day. Although some of these might use Barton Road, which is a dirt road that connects to Childs Road, most of them would use Riven Dell, to Tamaway and Hillshire, to Westridge and Bryant.

Since Riven Dell, Tamaway, and Hillshire are neighborhood streets, they should not carry more than 1,200 vehicle trips per day, according to the Lake Oswego Comprehensive Plan. (Their actual capacity is significantly greater.) These three streets, and others in the present residential area, are very much local neighborhood streets. There are many children in the neighborhood, and maintaining traffic safety is important.

Neighbors expressed concern about a reduction in street traffic safety that might come from development of the Site. They particularly are concerned about teen-aged drivers, since neighborhood families are multi-car families. Teenagers therefore have easy access to cars, and teenagers drive less safely than adults.

On Riven Dell Road, there are 18 homes with 41 children. If the Site has the same number of children per home and 10 to 17 homes, then it would have 23 to 40 children. One sixth of these, or 4 to 7, would be in the 16 to 18 year age group.

It is unlikely that development of the Site would cause the neighborhood streets to exceed the desired limit of 1,200 vehicle trips per day. Further, it is unlikely that development would have a significant impact on street safety. There is no reason why the streets would be any less safe than in most urban residential areas. Indeed, since the area south of the Site is undeveloped, the neighborhood will experience less traffic than is common in neighborhoods that are fully surrounded by development.

The evidence thus establishes that transportation facilities and services can be provided to the Site in an orderly and economic fashion. An added benefit is that development of the Site would provide the right-of-way to complete Riven Dell Road, at no cost. In addition, the development of the Site would slightly increase the efficiency of neighborhood streets by using excess capacity.

Fire Protection. The Site presently is within the Tualatin Rural Fire District service area. Access to the Site from Childs Road over Barton Road is poor. Barton Road is a narrow gravel road, approximately 12 feet wide. Grades are steep, and the intersection with Childs is at an extremely acute angle. For those reasons, emergency vehicle access to the Site from the rural area is very difficult. Access from City streets is much better, with Lake Oswego vehicles being able to reach the Site in

the desired response time.

The evidence establishes that the Site can be served with fire facilities and services in an orderly and economic manner. There does not appear to be any impact on the efficiency of fire facilities and services to adjoining areas within the UGB.

Police Protection. The Site presently is served by the Clackamas County Sheriff's Office, which assigns one patrol car to service the entire unincorporated area west of the Willamette River. The adjoining areas within the UGB are not high crime areas. The Lake Oswego police currently serve the residential areas to the east, north, and west of the Site and would be able to serve the Site if it were brought within the UGB.

The evidence establishes that police services can be provided to the Site in an orderly and economic manner. There does not appear to be any impact on the efficiency of police facilities and services to adjoining areas within the UGB.

Schools. The Site presently is served by the Lake Oswego School District. Development of the Site would add students to the school system. At the most, development would add 20 to 35 students, assuming 2.3 per house, as is the case on Riven Dell Road, and assuming an even spread across the age groups. (The Lake Oswego School District estimates only .7 children per household will attend its schools. See, In the Matter of the

Petition of Blazer Homes, Inc., Contested Case No. 87-3,
Revisions to Report and Recommendations of Hearing officer, at
5.) The School District has a problem with overcrowding at some
of its elementary schools. Waluga Junior High School and
Lakeridge High School could accommodate any additional students.
The school that would serve the Site, Westridge, has a capacity
of 485 students and an enrollment of 513. Thus development of
the Site is likely to exacerbate the Westridge overcrowding
problem. The School District can deal with the Westridge
overcrowding problem by bussing kindergartners to Bryant school.
The District is studying two longterm options for dealing with
overcrowding, both of which would require voter approval of a
capital improvement levy, and one of which also would require
voter approval of a new tax base.

In locational adjustment cases such as this one, as stated
in part IV, "Legal Framework," it is assumed that an equivalent
parcel at the interior of the UGB will be left undeveloped if a
site is brought within the UGB. Thus over the entire planning
period, through the year 2005, the number of students added to
the Lake Oswego School District through addition of the present
Site is assumed to be matched by an equivalent number of students
that will not be added at an interior site because it will remain
undeveloped. It further is assumed in locational adjustment cases
that non-development of the interior site will leave specific
public facilities and services that serve the interior site

underused. Petitioners therefore must show that there will be an increase in the efficiency of public facilities and services to areas within the UGB adjacent to the proposed addition area to offset inefficiencies at the interior site. Thus the job of Petitioners here, with regard to schools, is to show that there will be gains in the efficiency of schools serving the adjoining area if the present Site is brought within the UGB.

Based on the evidence, it appears that students from residences developed on the Site would receive school services. Whether elementary school services could be provided in an orderly and economic fashion depends on whether the Lake Oswego School District is able to implement a long term solution to its overcrowding problem. Since the main solutions depend on voter approval of financing measures, it is not possible to predict with any certainty whether an orderly and economic solution will be found. Furthermore, there is no indication that bringing the Site within the UGB would improve the efficiency of school services to adjoining areas within the UGB. Indeed, the addition of school children from the Site will exacerbate the long term problem, adding to long term inefficiencies unless a long term solution is found. The extent of the exacerbation, however, will be small, given the small number of students that the addition would involve.

Summary. Water, storm drainage, transportation, fire, and police facilities and services can be provided to the Site in an orderly and economic fashion. Sewer facilities and services present a problem for a small portion of the Site, which cannot be served by gravity flow and therefore probably would be left vacant. Except for this small area, however, sewer facilities and services can be provided in orderly and economic fashion. School services will be subject to the elementary school overcrowding problem, for which there is a short-term solution, but for which a longterm solution is dependent on voter approval of a financing measure or measures.

Development of the Site would result in slight improvements in the efficiency of water, sewer, and transportation facilities and services that presently serve the adjoining area within the UGB. There would be no impact on storm drainage, police, and fire facilities and services. There will be a slight negative longterm impact on the efficiency of school facilities and services to the adjoining UGB areas, unless a longterm solution is implemented for the school overcrowding problem.

Considering these impacts together, there will be an overall slight net improvement in the public facilities and services serving adjoining areas within the UGB.

2. Land Use Efficiency. MC Section 3.01.040(a)(2)

"Maximum efficiency of land uses. Consideration shall include existing development densities on the area included within the amendment, and whether the amendment would

facilitate needed development on adjacent existing urban land."

The Site presently has only one residence and otherwise is vacant. The Site fronts on Lake Oswego streets. All but a small portion of the Site can be served by Lake Oswego water and sewer facilities. For these reasons, the Site is susceptible to highly efficient development.

Since the adjoining area within the UGB presently is developed to urban levels, the proposed amendment would not facilitate any additional development in the adjoining area.

3. Consequences. MC Section 3.01.040(a)(3)

"Environmental, energy, economical, and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed."

Due to the small size of the Site, there are no significant environmental, energy, economic, or social consequences associated with the proposed locational adjustment. There would be no impact on regional transit corridor development. There are no significant limitations imposed by the presence of hazard or resource lands.

4. Agricultural Land. MC Section 3.01.040(a)(4)

Clackamas County, as part of its planning process, established that this area, though designated as Rural, should be treated as not being subject to agricultural land requirements.

Because of this, the Metro Code's agricultural land requirements do not apply to this site.

5. Compatibility With Agricultural Uses. MC Section

3.01.040(a)(5)

"Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility."

There are no agricultural activities in proximity to the Site.

6. Superiority; Contiguous Land. MC Sections

3.01.040(d)(2) and (3)

"[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a)."

"Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. ...[T]he larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section."

Based on a consideration of the factors in MC Section 3.01.040(a), the proposed UGB is slightly superior to the UGB as presently located. The proposed UGB addition is only 4.61 acres. As discussed under Part IV (Legal Framework), above, Metro found

that for a proposed addition to the UGB of 10 acres or less, any improvement at all from the proposed change in relationship to UGB land abutting the addition area is enough of an improvement in the UGB to establish superiority. Petitioners therefore have met the superiority requirement.

Petitioners also have established that there is not similarly situated contiguous land which could also be included within the UGB based on factors the considered above. The steep slopes of adjoining areas would make it uneconomic to develop them.

VI. Conclusion

The petition meets the requirements of the Metro Code for locational adjustments. For that reason, the petition should be granted.

Dated: August 17 , 1988

Respectfully submitted,



Christopher P. Thomas
Hearings Officer

September 8, 1988

Mr. Daniel B. Cooper
Metro General Counsel
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

Re: Hearings Officer's report on
Contested Case #87-4

Dear Mr. Cooper:

Thank you for the opportunity to file an exception to the Hearings Officer's report on the petition of Wally and Thea Brennt to include approximately 4.61 acres south of Lake Oswego within the regional Urban Growth Boundary.

The Hearings Officer's report states that Westridge Elementary presently has an enrollment of 513 students and a capacity of 485 students. The enrollment this fall at Westridge is currently 544 students. Granted we are temporarily bussing our kindergarten students to Bryant Elementary to help the overcrowding problem, however, this is only a temporary solution as new home construction is occurring in the Bryant area which will add to their student population. The Lake Oswego School District is planning to seek a new tax base in May, however, it seems premature to second guess the voters in our city as to whether a tax increase will receive approval. There are two new developments currently underway on Childs Road which will send students to Westridge and the pending case of Blazer Homes which would also add additional students. On page 19 of the Metro Report it goes into great detail the problems the school district faces and states that if the Brennt's development is approved the number of students added to the district would be small, however, has it taken into consideration other new construction in our area that is underway and will be affecting Westridge enrollment.

The Metro Report on page 14 talks about the easement on Riven Dell Road. The Report says that the petitioners would dedicate the necessary right-of-way to complete

Mr. Daniel B. Cooper
Page two

Riven Dell Road to solve the traffic hazard that currently exists. When Tolkien Heights was developed in 1980 the Brennts were approached by the developer to sell this portion of land so the neighborhood would not have a traffic hazard and they refused to sell. In 1983 the neighbors on Riven Dell Road again approached the Brennts to sell this portion of land and he again refused. As a homeowner on Riven Dell who lives across from the hazard it is hard for me to understand how the Brennts have suddenly become concerned about this hazard and would now dedicate the land. Yes, the City of Lake Oswego can condemn the land and solve the problem, however, this is only being considered by the city because the neighbors have written letters regarding the hazard. It seems if the Brennts cared about Riven Dell Road they would have sold this parcel of land that creates a traffic hazard and if they chose to develop their 4.61 acres they would have requested lot sizes that were comparable to the other homes, 15,000-20,000 sq ft, instead of the 10,000 sq ft lot sizes they are requesting. With their request to build 17 homes, by the time they put in streets, sidewalks and easements we would be lucky to have lots larger than 7,500 sq ft.

On page 23 of the Metro Report it states that there is not similarly situated contiguous land which would also be included within the UGB because of steep slopes adjoining the area. Earlier in the report it mentions that the Brennt's land is unique since it abuts Riven Dell Road. However, if the Brennt's receive approval and construct their 17 proposed homes the lot bordering on theirs would immediately become unique and why should they not have the opportunity for annexation and development down the hill to Childs Road. Please don't let our neighborhood be piece meal developed. We would like the Metro Council to determine that the Brennt's property is sufficiently different from the other contiguous properties to prevent developers from using the same argument that their property is unique like the Brennts have.

We want to preserve the character and aesthetic quality of our neighborhood. The Brennt's property and surrounding county land provides a unique natural area to the community and our neighborhood with many beautiful stands of trees that will surely be destroyed if small lots are developed without concern for the surrounding homes. We hope that Metro Council will not surcome to a piece meal development of land on Barton Road and instead consider a comprehensive plan if development is unavoidable.

Sincerely yours,

Bill and Pam Clemons
Bill and Pam Clemons

2937 Riven Dell Road
Lake Oswego, OR 97034

9/6/88

Recd 9/7/88
4:45 PM

Daniel B. Cooper
Metro General Counsel
Metropolitan Service District
2000 S.W. First
Portland, Oregon

Dear Mr. Cooper,

This letter takes exception to the Hearings Officer's report on Contested Case #87-4, the petition from Wally and Thea Brennt to include approximately 4.61 acres south of Lake Oswego within the regional Urban Grow Boundary.

The major points we contest are the following:

- A. Sewage flow and drainage
- B. Traffic & Transportation
- C. Uniqueness and superiority of Brennt property from contiguous properties

* Also discussed are school facilities

SEWAGE FLOW AND STORM DRAINAGE

Although it is correct that sewer drainage for the Brennt property can be served by gravity flow, we contend that this is not a unique feature. In testimony by Mr. Buford, a licensed surveying engineer, the point was made that the properties to the south and east of the applicants property can also be served by gravity flow.

We believe that Mr. Buford's testimony was not given adequate consideration in the recommendation of the hearings officer.

TRAFFIC & TRANSPORTATION

At the hearing the petitioner's counsel anticipated that the City of Lake Oswego would require that Barton Road be paved from Riven

Dell to the south side of the applicants property. Barton Road is currently being used as an undeveloped access to I-205. If the Brennt property is developed and improvements are made to Barton Road, this will increase the use of Barton Road as a thoroughfare to I-205 and thus significantly increase the current neighborhood traffic flow. Furthermore, there has been no objective evidence presented by the petitioners regarding current, actual traffic flow. We believe that speculative estimates of traffic flow should not be accepted as adequate measures.

In addition, the petitioner argues that a small piece of land (approximately 1,000 square feet) on the south side of Riven Dell, if annexed, would constitute a substantial improvement to safety. We contend that annexation is not necessarily the only solution since the City of Lake Oswego can deal with the safety hazard by virtue of mechanisms within its own jurisdictional powers, such as purchase from the Brennts.

OVERCROWDING IN NEIGHBORHOOD SCHOOLS

The issue of schooling was given too little weight in the conclusions of the Hearings Officer. It is most inappropriate to admit that a school has reached beyond its capacity in numbers of students, while simultaneously concluding that further overcrowding is acceptable. We feel that Metro Council should give this matter greater importance in the overall decision to approve enlargement of the UGB than that allowed by the Hearings Officer.

UNIQUENESS/SUPERIORITY OF BRENNT PROPERTY FROM CONTIGUOUS PROPERTIES

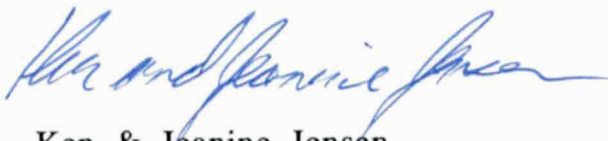
It is our belief that the Brennt's property is effectively similar to much of the other property between Riven Dell and Childs Road.

In terms of sewage flow and drainage issues, the statement is made by the hearings officer that these services can be made available in an "orderly and economic" fashion, thus making it unique by virtue of its adjacent location to city sewer, storm drainage and water lines. If the Urban Growth Boundary is expanded, this "uniqueness" would then apply to the next petitioner adjacent to the south side of the Brennt's property, which is also **similar** in size.

According to MC 3.01.040(d) (2) and (3) referred to by the Hearings Officer on page 22 of his recommendations, it is stated that "The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a)." The Hearings Officer did not specifically argue why land adjacent to the Brennts property should be excluded in this application except on the basis of water and sewage issues which we have contested above as being similar to the Brennts property.

Finally, we request that should Metro Council determine that the Brennt's property is sufficiently different from the contiguous properties and approve annexation, that those differences are **clearly defined** and stated. Without such a definitive statement it is our concern that contiguous property owners will in time also request annexation using the same argument of uniqueness as the Brennts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken and Jeanine Jensen", written in a cursive style.

Ken & Jeanine Jensen
18490 Tamaway Drive
Lake Oswego, Oregon 97034

BEFORE THE METROPOLITAN SERVICE DISTRICT

In the Matter of the Petition)
of WALLY and THEA BRENNT) Contested Case No. 87 - 4
for an Amendment to the) REPORT AND RECOMMENDATION
Urban Growth Boundary) OF HEARINGS OFFICER

I. Nature of the Case

This is a petition by Wally and Thea Brennt (Petitioners) to add approximately 4.61 acres to the area within the Urban Growth Boundary. The land is located south of Lake Oswego, adjacent to and south of Riven Dell Road and adjacent to and east of Barton Road. The land abuts the City of Lake Oswego. Petitioners state that if the petition is approved, they will seek annexation to Lake Oswego. A map showing the land is attached hereto as Exhibit A. The legal description of the land is:

Tax Lot 300
Township 2 S., Range 1 E., Section 20AA

The City of Lake Oswego has determined that the City can provide an adequate level of services to the land, but otherwise has taken a neutral position on the petition. Clackamas County has taken a neutral position on the petition.

II. Proceedings and Record

On June 29, 1988, following publication and mailing of a notice to property owners who were identified by Petitioner or the hearings officer as living within 250 feet of the proposed addition area, the hearings officer held a hearing on the

2.10
petition at Lake Oswego City Hall. Approximately 12 witnesses testified for and against the petition.

At the close of the June 29 hearing, the hearings officer left the record open in order for Ken and Jeanine Jensen, Robert Lyneis, and Susan Castleman to submit written evidence; for Petitioners to submit written evidence on the impact of the proposed amendment on public schools; for Petitioners to submit a photocopy of a topographic map; and for written rebuttal to these late submissions.

The following documents either are a part of Metro's public file in this matter, were introduced at the public hearing or were submitted following the hearing pursuant to the hearings officer's ruling on late evidence:

- Exhibit 1 - Petition for Locational Adjustment, 6/30/87
- Exhibit 2 - Comment, Lake Oswego Fire Department, 7/1/87
- Exhibit 3 - Comment, Lake Oswego School District, 7/6/87
- Exhibit 4 - Letter, Scott to Metro, 7/8/87
- Exhibit 5 - Comment, City of Lake Oswego, 7/9/87
- Exhibit 6 - Order No. 87-902, Clackamas County, 7/23/87
- Exhibit 7 - Memo, Scott to Harvey, 4/12/88
- Exhibit 8 - Lake Oswego City Council, Meeting Minutes, 4/19/88
- Exhibit 9 - Letter, Scott to Metro, 5/2/88
- Exhibit 10 - Property Ownership List
- Exhibit 11 - Five Assessment Maps
- Exhibit 12 - Notice of Proposed Action, 5/2/88
- Exhibit 13 - Staff Report, Hinckley to Thomas, 5/18/88
- Exhibit 14 - Notice of Public Hearing
- Exhibit 15 - Letter, Stark to Thomas, 6/24/88
- Exhibit 16 - Letter, Oeltjen to Thomas, 6/27/88
- Exhibit 17 - Sign In sheet, 6/29/88
- Exhibit 18 - Letter, Lower Tualatin Valley Homeowner's Association, Inc., 6/29/88
- Exhibit 19 - Memo, Thomas to parties, re procedure 7/6/88
- Exhibit 20 - Letter, Givens to Thomas, 7/7/88
- Exhibit 21 - Memo, Korach to Board of Directors, 5/2/88
- Exhibit 22 - Letter, Lyneis to Thomas, 7/8/88
- Exhibit 23 - Letter, Jensen to Thomas, 7/8/88

- Exhibit 24 - Topographic Map, undated
- Exhibit 25 - Letter, Clemons to Thomas, 7/14/88
- Exhibit 26 - Letter, Givens to Thomas with a map of Lake Oswego with Year 2000 Traffic Assignment, 7/14/88
- Exhibit 27 - Letter, Jensen to Thomas, 7/15/88
- Exhibit 28 - Letter, Ariens to Brennts, 12/1/86
- Exhibit 29 - Memo, from W.A. Korach Lake Oswego School Superintendent, 5/16/88
- Exhibit 30 - 6 maps

There were three exhibits submitted after the hearing that were outside the scope of the hearings officer's authorization to submit additional written evidence. These all will be excluded from consideration in this report and recommendation. They are Exhibit 31, Letter, Brennt to Thomas, 7/7/88; Exhibit 32, Letter, Stark to Thomas, 7/8/88; Exhibit 33, Letter Harvey to Thomas, 7/18/88. Mr. Lyneis submitted Exhibit 22, but failed to serve a copy on other parties, as required by the hearings officer. Since the exhibit contains no new evidence, it will be treated as an argument and not as evidence.

III. The Site and the Surrounding Area

The proposed addition area (Site) is located south of Lake Oswego, adjacent to and south of Riven Dell Road and adjacent to and east of Barton Road. The Site abuts the City of Lake Oswego, adjacent to the Westridge and Palisades Park Estates residential subdivisions. Zoning in the immediate vicinity is R-10, although most of the lots in the vicinity are 18,000 to 20,000 square feet.

The Clackamas County Comprehensive Plan designation for the Site is rural. The current zoning for the Site RRFF-5 permits one single-family dwelling per 5 acres.

The petitioners hope to develop the Site for single-family residential use at R-10 density.

The existing UGB adjoins the Site along its western and northern boundaries. Properties to the south are designated rural by the Clackamas County Comprehensive Plan. The Site is the only property in the area outside the UGB with frontage and direct access from City streets. It also is the only frontage on Riven Dell Road that is not inside the UGB.

The Site lopes downward from a 420 foot elevation at the southwest corner to a 320 foot elevation near the northwest corner, with a slope of up to 15%. It has a 325 foot elevation along Riven Dell Road.

Westridge Grade School is the closest school, due north of the Site. Lakeridge High School is considerably northeast of the Site.

IV. Legal Framework

In 1981, Metro adopted Ordinance No. 81-105, which established procedures and criteria for review of proposed "locational adjustments" to the UGB. The purpose of the ordinance was to provide a method for allowing relatively minor UGB amendments in a manner consistent with UGB amendment requirements established by the Oregon Land Conservation and

Development Commission.

LCDC's UGB amendment requirements are contained in Goals 14 (Urbanization) and 2 (Land Use Planning).

The pertinent portions of Goal 14 state:

"14. URBANIZATION

"GOAL: To provide for an orderly and efficient transition from rural to urban land use.

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.

"Establishment and change of the boundaries shall be based upon consideration of the following factors:

- "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- "(2) Need for housing, employment opportunities, and livability;
- "(3) Orderly and economic provision for public facilities and services;
- "(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- "(5) Environmental, energy, economic and social consequences;
- "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- "(7) Compatibility of the proposed urban uses with nearby agricultural activities.

"The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning Goal (Goal 2) for goal exceptions.

"Land within [the UGB] shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- "(1) Orderly, economic provision for public facilities and services;
- "(2) Availability of sufficient land for the various uses to insure choices in the market place;
- "(3) LCDC goals; and,
- "(4) Encouragement of development within urban areas before conversion of urbanizable areas."

Goal 2, Land Use Planning, contains "Exceptions" requirements, which are the requirements that Goal 14 specifies must be met for UGB amendment. In 1983, however, the Oregon Legislature adopted ORS 197.732, which itself establishes "exceptions" requirements. Since then, LCDC has incorporated these requirements in OAR 660-04-010(c)(B). That regulation states in pertinent part:

"Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

"(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

"(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

"(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

At the time that Metro adopted its "locational adjustment" procedure for minor UGB amendments, Metro also adopted "Findings in Support of Ordinance 81-105, Establishing Procedures for Locational Adjustments to Metro's Urban Growth Boundary, February, 1981."

The findings pointed out that the standards for evaluating proposed locational adjustments did not require an evaluation of several factors contained in the LCDC Goals. Specifically, the standards did not require findings on:

- (1) Why the proposed use should be provided for (Goal 2, Factor 1);
- (2) Whether there was a demonstrated need for the adjustment to accommodate long-range urban population growth requirements (Goal 14, Factor 1), or to provide for the need for housing, employment opportunities, and livability (Goal 14, Factor 2);
- (3) Whether other suitable alternative sites were available (Goal 2, Factor 2).

Metro justified excluding these factors from consideration by stating that even if it were assumed there was no need for additional land to accommodate growth, there nevertheless might be other reasons why the UGB should be amended. It was for these "other reasons" cases that Metro adopted the locational adjustment process. (Cases based on the need for additional land go through a different process, the major amendment process, which addresses all of the factors of Goals 2 and 14.) A petitioner in the locational adjustment process thus is required to show that, notwithstanding that more land will be added to the

UGB than is needed, other reasons for adding the land are sufficiently strong to outweigh the negative impact of having too much land.

The locational adjustment standards at the outset provide that the process is available only for proposed additions of 50 acres or less. The impact of adding more than 50 acres without a showing of need is presumed to be so great that all proposals involving more than 50 acres must go through the major adjustment process, where a showing of need is required.

A potential loophole in the 50 acre requirement is that a petitioner could seek an amendment for one 50 acre parcel followed by another amendment for an abutting 50 acre parcel. This could allow a 100 acre addition with no showing of need. Metro closed this loophole by requiring that a locational adjustment petition include all similarly situated contiguous land. Thus if an area contains more than 50 acres of land that is similarly situated with reference to the locational adjustment standards, the land must go through the major adjustment process. It cannot be brought in piecemeal through the locational adjustment process.

In justifying its exclusion of the "need for land to accommodate growth" requirements for locational adjustments, Metro pointed out in its Findings that the underlying rationale for the State Goals limiting the UGB to only the land needed was as follows:

1. The limitation promoted maximum efficiency of major public facilities;
2. It promoted maximum efficiency of site specific public facilities and services;
3. It minimized the energy consumption and air pollution associated with travel within the urban area;
4. It protected agricultural lands not needed for urban use.

Regarding the first rationale, efficiency of major public facilities, Metro found that a 50 acre change, in an area served by a set of major public facilities, would have no significant effect on the efficiency of the facilities.

Regarding the efficiency of the site specific facilities and services and air pollution and energy consequences, the issue was more complex. Since the current UGB is based on need to accommodate growth through the year 2005, Metro started out its analysis by assuming that if a parcel were added at the periphery of the UGB, then to compensate, another parcel at the interior of the UGB would remain undeveloped. In terms of site specific public facilities, this would mean that there would be costs for having public facilities available to the interior parcel but unused, and there could be costs for making public facilities available to the exterior parcel. In addition, there could be added urban travel to the exterior parcel, as opposed to the interior parcel, resulting in increased energy consumption and air pollution. However small these potential problems, Metro concluded that they needed to be addressed. Metro thus

established standards for locational adjustment cases to require a showing that the benefits of adding the exterior parcel outweighed the costs of leaving the interior parcel undeveloped.

These "compensating" standards required consideration of whether addition of the exterior parcel would increase the efficiency of public facilities and services and facilitate needed development in adjoining areas within the UGB. If so, the benefit in relationship to the adjoining UGB area might outweigh the cost in relationship to the interior UGB area. Metro recognized, however, that the greater the size of the exterior parcel being added, and thus of the interior parcel being left undeveloped, the greater the costs in relationship to leaving the interior parcel vacant.

Metro found that for exterior parcels of 10 acres or less, the cost of leaving a 10 acre interior parcel vacant was so small that any benefit at all in relationship to UGB land abutting the exterior parcel was sufficient to overcome the cost. As the size increased between 10 and 50 acres, however, so did the cost in relationship to the undeveloped interior parcel. Metro therefore required that locational adjustments ordinarily should be only for 10 acres or less for vacant land and that, as size increased between 10 and 50 acres, so must the benefit to adjoining UGB areas increase.

Finally, regarding conversion of agricultural land, Metro required that agricultural land could be converted to urban land

only in the most compelling circumstances.

Based on the findings described above, Metro adopted standards for evaluating locational adjustments adding land to the UGB, contained in Metro Code Section 3.01.040, as follows:

"(a) As required by subsections (b) through (d) of this section, locational adjustments shall be consistent with the following factors:

"(1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB and any area to be added must be capable of being served in an orderly and economical fashion.

"(2) Maximum efficiency of land uses. Considerations shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

"(3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.

"(4) Retention of agricultural land. When a petition includes land with Class I-IV soils that is not irrevocably committed to non-farm use, the petition shall not be approved unless it is factually demonstrated that:

- Retention of the agricultural land would preclude urbanization of an adjacent area already inside the UGB, or
- Retention of the agricultural land would prevent the efficient and economical provision of urban services to an adjacent area inside the UGB.

"(5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

"(d) Petitions to add land to the UGB may be approved under the following conditions:

"(2) ...[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).

"(3) Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. ...[T]he larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section.

V. Findings

1. Public Facilities and Services. MC Section 3.01.040(a)(1)

"Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion."

Water Facilities and Services.

A 12 inch City of Lake Oswego water main is located in Riven Dell Road, along the street frontage of the Site. This line is available to and is capable of serving the Site.

Based on the presence of these water facilities, the Site is capable of receiving water service in an orderly and economical fashion.

If the Site were brought within the UGB, there would be a slight net improvement in the efficiency of the existing water

facilities within the UGB area, by virtue of greater use of existing capacity.

Sewer Facilities and Services. An 8 inch City of Lake Oswego sanitary sewer line is located on the west side of Barton Road, within 60 feet of the Site. This line presently only serves properties on the west side of Barton Road. With the exception of a small area in the southwestern portion of the Site, the Site can be serviced by gravity flow from this line. The small lower area probabbly would be left vacant on development. Extension of the sewer line would require a small amount of fill to cross a low point in Riven Dell Road.

The evidence indicates that sewer services can be made available to the Site in an orderly and economic fashion. There would be a slight net improvement in the efficiency of the existing sewer facilities within the UGB area, due to greater use of existing capacity.

Storm Drainage Facilities and Services. Storm water from the adjacent area inside the UGB presently drains through a swale which crosses the Site from Riven Dell Road and from there drains to the south. Any development on the Site would have the same storm water drainage pattern. Several witnesses expressed concern about drainage affecting Barton Road, which is a dirt road. Although development might accelerate storm water run off

due to the addition of impervious surfaces, there is no indication this would cause any harm.

It appears that storm drainage can be provided to the Site in an orderly and economical fashion. There would be no measurable change in the efficiency of storm drainage within the UGB.

Transportation Facilities and Services. The primary access of the Site to the residential developments to the north and east is over Riven Dell Road. Riven Dell connects to Tamaway Drive and to Hillshire Drive, which in turn connect to Westridge Drive and Bryant Road, which are designated as collector streets. At the present time, abutting the Site, only the northern half of Riven Dell Road is located in right-of-way dedicated to the City of Lake Oswego. The southern half of Riven Dell is located in an easement on the Site. The easement is outside the UGB. The easement, however, does not provide all of the right-of-way needed for the southern half of Riven Dell Road abutting the Site. There is a small area where the southern half of Riven Dell actually is missing. (See Exhibit A.) Although some of the neighbors testified that the missing portion of Riven Dell Road is beneficial because it slows down traffic, it is a traffic hazard with half the roadway ending and two directions of traffic having to use the remaining half. The Petitioners state that if the Site is brought within the UGB they will dedicate the

necessary right-of-way to complete Riven Dell Road. As an alternative, the City of Lake Oswego could condemn the needed right-of-way.

Development of the Site would generate not more than 150 vehicle trips per day. Although some of these might use Barton Road, which is a dirt road that connects to Childs Road, most of them would use Riven Dell, to Tamaway and Hillshire, to Westridge and Bryant.

Since Riven Dell, Tamaway, and Hillshire are neighborhood streets, they should not carry more than 1,200 vehicle trips per day, according to the Lake Oswego Comprehensive Plan. (Their actual capacity is significantly greater.) These three streets, and others in the present residential area, are very much local neighborhood streets. There are many children in the neighborhood, and maintaining traffic safety is important.

Neighbors expressed concern about a reduction in street traffic safety that might come from development of the Site. They particularly are concerned about teen-aged drivers, since neighborhood families are multi-car families. Teenagers therefore have easy access to cars, and teenagers drive less safely than adults.

On Riven Dell Road, there are 18 homes with 41 children. If the Site has the same number of children per home and 10 to 17 homes, then it would have 23 to 40 children. One sixth of these, or 4 to 7, would be in the 16 to 18 year age group.

It is unlikely that development of the Site would cause the neighborhood streets to exceed the desired limit of 1,200 vehicle trips per day. Further, it is unlikely that development would have a significant impact on street safety. There is no reason why the streets would be any less safe than in most urban residential areas. Indeed, since the area south of the Site is undeveloped, the neighborhood will experience less traffic than is common in neighborhoods that are fully surrounded by development.

The evidence thus establishes that transportation facilities and services can be provided to the Site in an orderly and economic fashion. An added benefit is that development of the Site would provide the right-of-way to complete Riven Dell Road, at no cost. In addition, the development of the Site would slightly increase the efficiency of neighborhood streets by using excess capacity.

Fire Protection. The Site presently is within the Tualatin Rural Fire District service area. Access to the Site from Childs Road over Barton Road is poor. Barton Road is a narrow gravel road, approximately 12 feet wide. Grades are steep, and the intersection with Childs is at an extremely acute angle. For those reasons, emergency vehicle access to the Site from the rural area is very difficult. Access from City streets is much better, with Lake Oswego vehicles being able to reach the Site in

the desired response time.

The evidence establishes that the Site can be served with fire facilities and services in an orderly and economic manner. There does not appear to be any impact on the efficiency of fire facilities and services to adjoining areas within the UGB.

Police Protection. The Site presently is served by the Clackamas County Sheriff's Office, which assigns one patrol car to service the entire unincorporated area west of the Willamette River. The adjoining areas within the UGB are not high crime areas. The Lake Oswego police currently serve the residential areas to the east, north, and west of the Site and would be able to serve the Site if it were brought within the UGB.

The evidence establishes that police services can be provided to the Site in an orderly and economic manner. There does not appear to be any impact on the efficiency of police facilities and services to adjoining areas within the UGB.

Schools. The Site presently is served by the Lake Oswego School District. Development of the Site would add students to the school system. At the most, development would add 20 to 35 students, assuming 2.3 per house, as is the case on Riven Dell Road, and assuming an even spread across the age groups. (The Lake Oswego School District estimates only .7 children per household will attend its schools. See, In the Matter of the

Petition of Blazer Homes, Inc., Contested Case No. 87-3,
Revisions to Report and Recommendations of Hearing officer, at
5.) The School District has a problem with overcrowding at some
of its elementary schools. Waluga Junior High School and
Lakeridge High School could accommodate any additional students.
The school that would serve the Site, Westridge, has a capacity
of 485 students and an enrollment of 513. Thus development of
the Site is likely to exacerbate the Westridge overcrowding
problem. The School District can deal with the Westridge
overcrowding problem by bussing kindergartners to Bryant school.
The District is studying two longterm options for dealing with
overcrowding, both of which would require voter approval of a
capital improvement levy, and one of which also would require
voter approval of a new tax base.

In locational adjustment cases such as this one, as stated
in part IV, "Legal Framework," it is assumed that an equivalent
parcel at the interior of the UGB will be left undeveloped if a
site is brought within the UGB. Thus over the entire planning
period, through the year 2005, the number of students added to
the Lake Oswego School District through addition of the present
Site is assumed to be matched by an equivalent number of students
that will not be added at an interior site because it will remain
undeveloped. It further is assumed in locational adjustment cases
that non-development of the interior site will leave specific
public facilities and services that serve the interior site

underused. Petitioners therefore must show that there will be an increase in the efficiency of public facilities and services to areas within the UGB adjacent to the proposed addition area to offset inefficiencies at the interior site. Thus the job of Petitioners here, with regard to schools, is to show that there will be gains in the efficiency of schools serving the adjoining area if the present Site is brought within the UGB.

Based on the evidence, it appears that students from residences developed on the Site would receive school services. Whether elementary school services could be provided in an orderly and economic fashion depends on whether the Lake Oswego School District is able to implement a long term solution to its overcrowding problem. Since the main solutions depend on voter approval of financing measures, it is not possible to predict with any certainty whether an orderly and economic solution will be found. Furthermore, there is no indication that bringing the Site within the UGB would improve the efficiency of school services to adjoining areas within the UGB. Indeed, the addition of school children from the Site will exacerbate the long term problem, adding to long term inefficiencies unless a long term solution is found. The extent of the exacerbation, however, will be small, given the small number of students that the addition would involve.

Summary. Water, storm drainage, transportation, fire, and police facilities and services can be provided to the Site in an orderly and economic fashion. Sewer facilities and services present a problem for a small portion of the Site, which cannot be served by gravity flow and therefore probably would be left vacant. Except for this small area, however, sewer facilities and services can be provided in orderly and economic fashion. School services will be subject to the elementary school overcrowding problem, for which there is a short-term solution, but for which a longterm solution is dependent on voter approval of a financing measure or measures.

Development of the Site would result in slight improvements in the efficiency of water, sewer, and transportation facilities and services that presently serve the adjoining area within the UGB. There would be no impact on storm drainage, police, and fire facilities and services. There will be a slight negative longterm impact on the efficiency of school facilities and services to the adjoining UGB areas, unless a longterm solution is implemented for the school overcrowding problem.

Considering these impacts together, there will be an overall slight net improvement in the public facilities and services serving adjoining areas within the UGB.

2. Land Use Efficiency. MC Section 3.01.040(a)(2)

"Maximum efficiency of land uses. Consideration shall include existing development densities on the area included within the amendment, and whether the amendment would

facilitate needed development on adjacent existing urban land."

The Site presently has only one residence and otherwise is vacant. The Site fronts on Lake Oswego streets. All but a small portion of the Site can be served by Lake Oswego water and sewer facilities. For these reasons, the Site is susceptible to highly efficient development.

Since the adjoining area within the UGB presently is developed to urban levels, the proposed amendment would not facilitate any additional development in the adjoining area.

3. Consequences. MC Section 3.01.040(a)(3)

"Environmental, energy, economical, and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed."

Due to the small size of the Site, there are no significant environmental, energy, economic, or social consequences associated with the proposed locational adjustment. There would be no impact on regional transit corridor development. There are no significant limitations imposed by the presence of hazard or resource lands.

4. Agricultural Land. MC Section 3.01.040(a)(4)

Clackamas County, as part of its planning process, established that this area, though designated as Rural, should be treated as not being subject to agricultural land requirements.

Because of this, the Metro Code's agricultural land requirements do not apply to this site.

5. Compatibility With Agricultural Uses. MC Section

3.01.040(a)(5)

"Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility."

There are no agricultural activities in proximity to the Site.

6. Superiority; Contiguous Land. MC Sections

3.01.040(d)(2) and (3)

"[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a)."

"Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. ...[T]he larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section."

Based on a consideration of the factors in MC Section

3.01.040(a), the proposed UGB is slightly superior to the UGB as presently located. The proposed UGB addition is only 4.61 acres. As discussed under Part IV (Legal Framework), above, Metro found

that for a proposed addition to the UGB of 10 acres or less, any improvement at all from the proposed change in relationship to UGB land abutting the addition area is enough of an improvement in the UGB to establish superiority. Petitioners therefore have met the superiority requirement.


Petitioners also have established that there is not similarly situated contiguous land which could also be included within the UGB based on factors the considered above. The steep slopes of adjoining areas would make it uneconomic to develop them.

VI. Conclusion

The petition meets the requirements of the Metro Code for locational adjustments. For that reason, the petition should be granted.

Dated: August 17 , 1988

Respectfully submitted,



Christopher P. Thomas
Hearings Officer

September 8, 1988

Mr. Daniel B. Cooper
Metro General Counsel
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

Re: Hearings Officer's report on
Contested Case #87-4

Dear Mr. Cooper:

Thank you for the opportunity to file an exception to the Hearings Officer's report on the petition of Wally and Thea Brennt to include approximately 4.61 acres south of Lake Oswego within the regional Urban Growth Boundary.

The Hearings Officer's report states that Westridge Elementary presently has an enrollment of 513 students and a capacity of 485 students. The enrollment this fall at Westridge is currently 544 students. Granted we are temporarily bussing our kindergarten students to Bryant Elementary to help the overcrowding problem, however, this is only a temporary solution as new home construction is occurring in the Bryant area which will add to their student population. The Lake Oswego School District is planning to seek a new tax base in May, however, it seems premature to second guess the voters in our city as to whether a tax increase will receive approval. There are two new developments currently underway on Childs Road which will send students to Westridge and the pending case of Blazer Homes which would also add additional students. On page 19 of the Metro Report it goes into great detail the problems the school district faces and states that if the Brennt's development is approved the number of students added to the district would be small, however, has it taken into consideration other new construction in our area that is underway and will be affecting Westridge enrollment.

The Metro Report on page 14 talks about the easement on Riven Dell Road. The Report says that the petitioners would dedicate the necessary right-of-way to complete

Mr. Daniel B. Cooper
Page two

Riven Dell Road to solve the traffic hazard that currently exists. When Tolkien Heights was developed in 1980 the Brennts were approached by the developer to sell this portion of land so the neighborhood would not have a traffic hazard and they refused to sell. In 1983 the neighbors on Riven Dell Road again approached the Brennts to sell this portion of land and he again refused. As a homeowner on Riven Dell who lives across from the hazard it is hard for me to understand how the Brennts have suddenly become concerned about this hazard and would now dedicate the land. Yes, the City of Lake Oswego can condemn the land and solve the problem, however, this is only being considered by the city because the neighbors have written letters regarding the hazard. It seems if the Brennts cared about Riven Dell Road they would have sold this parcel of land that creates a traffic hazard and if they chose to develop their 4.61 acres they would have requested lot sizes that were comparable to the other homes, 15,000-20,000 sq ft, instead of the 10,000 sq ft lot sizes they are requesting. With their request to build 17 homes, by the time they put in streets, sidewalks and easements we would be lucky to have lots larger than 7,500 sq ft.

On page 23 of the Metro Report it states that there is not similarly situated contiguous land which would also be included within the UGB because of steep slopes adjoining the area. Earlier in the report it mentions that the Brennt's land is unique since it abuts Riven Dell Road. However, if the Brennt's receive approval and construct their 17 proposed homes the lot bordering on theirs would immediately become unique and why should they not have the opportunity for annexation and development down the hill to Childs Road. Please don't let our neighborhood be piece meal developed. We would like the Metro Council to determine that the Brennt's property is sufficiently different from the other contiguous properties to prevent developers from using the same argument that their property is unique like the Brennts have.

We want to preserve the character and aesthetic quality of our neighborhood. The Brennt's property and surrounding county land provides a unique natural area to the community and our neighborhood with many beautiful stands of trees that will surely be destroyed if small lots are developed without concern for the surrounding homes. We hope that Metro Council will not surcome to a piece meal development of land on Barton Road and instead consider a comprehensive plan if development is unavoidable.

Sincerely yours,

Bill and Pam Clemons
Bill and Pam Clemons

2937 Riven Dell Road
Lake Oswego, OR 97034

9/6/88

Recd 9/7/88
4:45 PM

Daniel B. Cooper
Metro General Counsel
Metropolitan Service District
2000 S.W. First
Portland, Oregon

Dear Mr. Cooper,

This letter takes exception to the Hearings Officer's report on Contested Case #87-4, the petition from Wally and Thea Brennt to include approximately 4.61 acres south of Lake Oswego within the regional Urban Grow Boundary.

The major points we contest are the following:

- A. Sewage flow and drainage
- B. Traffic & Transportation
- C. Uniqueness and superiority of Brennt property from contiguous properties

* Also discussed are school facilities

SEWAGE FLOW AND STORM DRAINAGE

Although it is correct that sewer drainage for the Brennt property can be served by gravity flow, we contend that this is not a unique feature. In testimony by Mr. Buford, a licensed surveying engineer, the point was made that the properties to the south and east of the applicants property can also be served by gravity flow.

We believe that Mr. Buford's testimony was not given adequate consideration in the recommendation of the hearings officer.

TRAFFIC & TRANSPORTATION

At the hearing the petitioner's counsel anticipated that the City of Lake Oswego would require that Barton Road be paved from Riven

Dell to the south side of the applicants property. Barton Road is currently being used as an undeveloped access to I-205. If the Brennt property is developed and improvements are made to Barton Road, this will increase the use of Barton Road as a thoroughfare to I-205 and thus significantly increase the current neighborhood traffic flow. Furthermore, there has been no **objective** evidence presented by the petitioners regarding current, actual traffic flow. We believe that speculative estimates of traffic flow should not be accepted as adequate measures.

In addition, the petitioner argues that a small piece of land (approximately 1,000 square feet) on the south side of Riven Dell, if annexed, would constitute a substantial improvement to safety. We contend that annexation is not necessarily the only solution since the City of Lake Oswego can deal with the safety hazard by virtue of mechanisms within its own jurisdictional powers, such as purchase from the Brennts.

OVERCROWDING IN NEIGHBORHOOD SCHOOLS

The issue of schooling was given too little weight in the conclusions of the Hearings Officer. It is most inappropriate to admit that a school has reached beyond its capacity in numbers of students, while simultaneously concluding that further overcrowding is acceptable. We feel that Metro Council should give this matter greater importance in the overall decision to approve enlargement of the UGB than that allowed by the Hearings Officer.

UNIQUENESS/SUPERIORITY OF BRENNT PROPERTY FROM CONTIGUOUS PROPERTIES

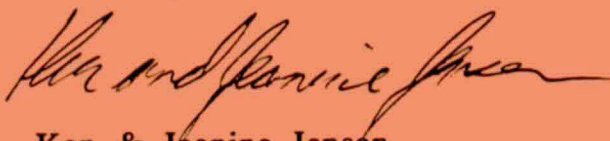
It is our belief that the Brennt's property is effectively similar to much of the other property between Riven Dell and Childs Road.

In terms of sewage flow and drainage issues, the statement is made by the hearings officer that these services can be made available in an "orderly and economic" fashion, thus making it unique by virtue of its adjacent location to city sewer, storm drainage and water lines. If the Urban Growth Boundary is expanded, this "uniqueness" would then apply to the next petitioner adjacent to the south side of the Brennt's property, which is also similar in size.

According to MC 3.01.040(d) (2) and (3) referred to by the Hearings Officer on page 22 of his recommendations, it is stated that "The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a)." The Hearings Officer did not specifically argue why land adjacent to the Brennts property should be excluded in this application except on the basis of water and sewage issues which we have contested above as being similar to the Brennts property.

Finally, we request that should Metro Council determine that the Brennt's property is sufficiently different from the contiguous properties and approve annexation, that those differences are clearly defined and stated. Without such a definitive statement it is our concern that contiguous property owners will in time also request annexation using the same argument of uniqueness as the Brennts.

Sincerely,



Ken & Jeanine Jensen
18490 Tamaway Drive
Lake Oswego, Oregon 97034

Ordinance No. 88-265

October 10, 1988.

Michael Ragsdale,
Metro General Counsel,
Metropolitan Service District,
2000 S.W. First,
Portland, Oregon.

RE: CONTESTED CASE #87-4
Wally & Thea Brennt Extension to UGB

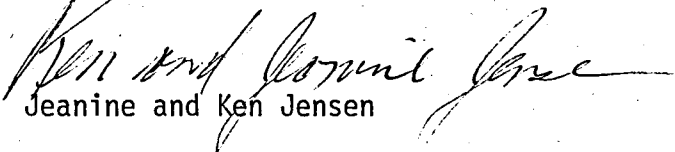
Dear Mr. Ragsdale;

It was apparent at the September 22nd. Metro Council Meeting that several councillors felt that the topographic contiguity issue was a pivotal factor in their vote. Mr. Buford, a party to the dispute and a licensed land survey engineer testified on 9-22-88 with maps in hand that the topography of the Brennt (petitioner's) property was very similar to contiguous land to the south. The issue was raised that his testimony may not be acceptable since it was possibly new evidence.

Upon review of the ORIGINAL tapes of testimony before Mr. Thomas (Hearings Officer) it is evident that topographical contiguity was extensively discussed by Mr. Buford as well as Mr. Lines, both of whom were opposed to UGB extension.

We therefore strongly recommend that council recognize and accept the expert testimony of Mr. Buford on 9-22-88 stating that there is similar topography of the petitioner's land and contiguous land to the south. Thus on the basis of MCC33011040 (d) (2) and (3) stating "the minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factor in subsection (a)", we feel that the Brennt petition for UGB extension is unacceptable and should be rejected.

Sincerely,


Jeanine and Ken Jensen

P.S. We would ask to be recognized at the meeting of October 13 to further explain this issue for the benefit of those councillors who have not had a chance to review this material.

CC: All councillors

EXHIBIT B

Excerpt from Report and Recommendation of Hearings Officer, In the Matter of the Petition of WALLY and THEA BRENNT for an Amendment to the Urban Growth Bounday, Metro Contested Case No. 87-4, adopted by the Metro Council, Ordinance No. 88-265.

IV. Legal Framework

In 1981, Metro adopted Ordinance No. 81-105, which established procedures and criteria for review of proposed "locational adjustments" to the UGB. The purpose of the ordinance was to provide a method for allowing relatively minor UGB amendments in a manner consistent with UGB amendment requirements established by the Oregon Land Conservation and

Development Commission.

LCDC's UGB amendment requirements are contained in Goals 14 (Urbanization) and 2 (Land Use Planning).

The pertinent portions of Goal 14 state:

"14. URBANIZATION

"GOAL: To provide for an orderly and efficient transition from rural to urban land use.

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.

"Establishment and change of the boundaries shall be based upon consideration of the following factors:

"(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;

"(2) Need for housing, employment opportunities, and livability;

"(3) Orderly and economic provision for public facilities and services;

"(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;

"(5) Environmental, energy, economic and social consequences;

"(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

"(7) Compatibility of the proposed urban uses with nearby agricultural activities.

"The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning Goal (Goal 2) for goal exceptions.

"Land within [the UGB] shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- "(1) Orderly, economic provision for public facilities and services;
- "(2) Availability of sufficient land for the various uses to insure choices in the market place;
- "(3) LCDC goals; and,
- "(4) Encouragement of development within urban areas before conversion of urbanizable areas."

Goal 2, Land Use Planning, contains "Exceptions" requirements, which are the requirements that Goal 14 specifies must be met for UGB amendment. In 1983, however, the Oregon Legislature adopted ORS 197.732, which itself establishes "exceptions" requirements. Since then, LCDC has incorporated these requirements in OAR 660-04-010(c)(B). That regulation states in pertinent part:

"Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

"(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

"(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

"(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

At the time that Metro adopted its "locational adjustment" procedure for minor UGB amendments, Metro also adopted "Findings in Support of Ordinance 81-105, Establishing Procedures for Locational Adjustments to Metro's Urban Growth Boundary, February, 1981."

The findings pointed out that the standards for evaluating proposed locational adjustments did not require an evaluation of several factors contained in the LCDC Goals. Specifically, the standards did not require findings on:

- (1) Why the proposed use should be provided for (Goal 2, Factor 1);
- (2) Whether there was a demonstrated need for the adjustment to accommodate long-range urban population growth requirements (Goal 14, Factor 1), or to provide for the need for housing, employment opportunities, and livability (Goal 14, Factor 2);
- (3) Whether other suitable alternative sites were available (Goal 2, Factor 2).

Metro justified excluding these factors from consideration by stating that even if it were assumed there was no need for additional land to accommodate growth, there nevertheless might be other reasons why the UGB should be amended. It was for these "other reasons" cases that Metro adopted the locational adjustment process. (Cases based on the need for additional land go through a different process, the major amendment process, which addresses all of the factors of Goals 2 and 14.) A petitioner in the locational adjustment process thus is required to show that, notwithstanding that more land will be added to the

UGB than is needed, other reasons for adding the land are sufficiently strong to outweigh the negative impact of having too much land.

The locational adjustment standards at the outset provide that the process is available only for proposed additions of 50 acres or less. The impact of adding more than 50 acres without a showing of need is presumed to be so great that all proposals involving more than 50 acres must go through the major adjustment process, where a showing of need is required.

A potential loophole in the 50 acre requirement is that a petitioner could seek an amendment for one 50 acre parcel followed by another amendment for an abutting 50 acre parcel. This could allow a 100 acre addition with no showing of need. Metro closed this loophole by requiring that a locational adjustment petition include all similarly situated contiguous land. Thus if an area contains more than 50 acres of land that is similarly situated with reference to the locational adjustment standards, the land must go through the major adjustment process. It cannot be brought in piecemeal through the locational adjustment process.

In justifying its exclusion of the "need for land to accommodate growth" requirements for locational adjustments, Metro pointed out in its Findings that the underlying rationale for the State Goals limiting the UGB to only the land needed was as follows:

1. The limitation promoted maximum efficiency of major public facilities;
2. It promoted maximum efficiency of site specific public facilities and services;
3. It minimized the energy consumption and air pollution associated with travel within the urban area;
4. It protected agricultural lands not needed for urban use.

Regarding the first rationale, efficiency of major public facilities, Metro found that a 50 acre change, in an area served by a set of major public facilities, would have no significant effect on the efficiency of the facilities.

Regarding the efficiency of the site specific facilities and services and air pollution and energy consequences, the issue was more complex. Since the current UGB is based on need to accommodate growth through the year 2005, Metro started out its analysis by assuming that if a parcel were added at the periphery of the UGB, then to compensate, another parcel at the interior of the UGB would remain undeveloped. In terms of site specific public facilities, this would mean that there would be costs for having public facilities available to the interior parcel but unused, and there could be costs for making public facilities available to the exterior parcel. In addition, there could be added urban travel to the exterior parcel, as opposed to the interior parcel, resulting in increased energy consumption and air pollution. However small these potential problems, Metro concluded that they needed to be addressed. Metro thus

established standards for locational adjustment cases to require a showing that the benefits of adding the exterior parcel outweighed the costs of leaving the interior parcel undeveloped.

These "compensating" standards required consideration of whether addition of the exterior parcel would increase the efficiency of public facilities and services and facilitate needed development in adjoining areas within the UGB. If so, the benefit in relationship to the adjoining UGB area might outweigh the cost in relationship to the interior UGB area. Metro recognized, however, that the greater the size of the exterior parcel being added, and thus of the interior parcel being left undeveloped, the greater the costs in relationship to leaving the interior parcel vacant.

Metro found that for exterior parcels of 10 acres or less, the cost of leaving a 10 acre interior parcel vacant was so small that any benefit at all in relationship to UGB land abutting the exterior parcel was sufficient to overcome the cost. As the size increased between 10 and 50 acres, however, so did the cost in relationship to the undeveloped interior parcel. Metro therefore required that locational adjustments ordinarily should be only for 10 acres or less for vacant land and that, as size increased between 10 and 50 acres, so must the benefit to adjoining UGB areas increase.

Finally, regarding conversion of agricultural land, Metro required that agricultural land could be converted to urban land

only in the most compelling circumstances.

Based on the findings described above, Metro adopted standards for evaluating locational adjustments adding land to the UGB, contained in Metro Code Section 3.01.040, as follows:

"(a) As required by subsections (b) through (d) of this section, locational adjustments shall be consistent with the following factors:

"(1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB and any area to be added must be capable of being served in an orderly and economical fashion.

"(2) Maximum efficiency of land uses. Considerations shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

"(3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.

"(4) Retention of agricultural land. When a petition includes land with Class I-IV soils that is not irrevocably committed to non-farm use, the petition shall not be approved unless it is factually demonstrated that:

- Retention of the agricultural land would preclude urbanization of an adjacent area already inside the UGB, or
- Retention of the agricultural land would prevent the efficient and economical provision of urban services to an adjacent area inside the UGB.

"(5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

"(d) Petitions to add land to the UGB may be approved under the following conditions:

"(2) ...[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).

"(3) Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. ...[T]he larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section.

Jeff Kleinman
1207 SW 6th Ave
Portland, OR 97204

Tom Kloster
City of Gresham
1333 NW Eastman Parkway
Gresham, OR 97030

Christopher Thomas, Attorney at Law
Hearings Officer
2000 SW First Avenue
Portland, OR 97201

Dan Cooper, Attorney at Law
Metro
Legal Counsel
2000 SW First Avenue
Portland, OR 97201

Motion: Councilor Waker moved to defer consideration of Resolution No. 88-971 to October 13, 1988. Councilor Kirkpatrick seconded the motion.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried.

4.1 Report on the Status of the Performance Auditing Program

Councilor Collier, Chair of the Council Finance Committee, briefly reviewed the history of the need for performance auditing and the contractor selection process. She explained the firm of Talbot & Korvala had been selected to assist Councilors and Council staff in developing a work program and schedule for performance auditing. She then introduced Jack Talbot who explained the project in more detail.

Mr. Talbot discussed the benefits of a performance auditing program including dollar savings, efficiency and clarification of agency goals. He intended to complete his work within 90 days which would include interviews with all Councilors and key staff. He also planned to distribute bi-weekly reports on project progress to Councilors.

5. CONSENT AGENDA

Motion: Councilor DeJardin moved, seconded by Councilor Kirkpatrick, to approve items 5.1 and 5.2 of the Consent Agenda.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried and the following items were approved:

5.1 Minutes of August 25, 1988

5.2 Resolution No. 88-986, Approving the Tri-Met Section 9 Portion of the FY 1990 Unified Work Program

6. ORDINANCES

6.1 Consideration of Ordinance No. 88-265, Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 87-4: Brennt Property (Public Hearing)

The Clerk read the ordinance a first time by title only. Dan Cooper, General Counsel, explained that the matter before the

Council was a major amendment to the Urban Growth Boundary (UGB) and must be decided according to state land use goals. He also reviewed a letter from himself to Presiding Officer Ragsdale, dated September 14, 1988, which outlined options and procedures for Council decisions relating to the case. He said because timelines for preparing alternative findings were substantial and because of expense and uncertainty to the parties, it could be desirable for the Council to indicate at this meeting its intentions regarding the case, even though a final vote for approval could not occur until after the second reading of the ordinance on October 13.

Hearings Officer's Report

Chris Thomas, Hearings Officer for the case, summarized the "Report and Recommendations of Hearings Officer" document which was included in the agenda packet. He explained this case was similar to the Blazer Homes case recently before the Council except that less acreage was involved. The applicant therefore had a lesser responsibility to prove the need for urbanization, he said. Mr. Thomas then discussed specific ways in which the applicant had proven that need. Water, sewer, and transportation services would all improve. No changes would result in storm water, fire and police protection services. Some overcrowding could result in schools (he pointed out the record relating to schools for this case was identical to the Blazer Homes case record). The Hearings Officer had also concluded that most of the Brennt property could be served by a gravity sewer system with the exception of a small portion which was not suitable for development. Contiguous land could also be served by a gravity system but some of the land was not suitable for development due to uneven topography, he said. Mr. Thomas concluded that an overall improvement in urban services would result by the land being included in the UGB and he recommended the Council approve the Petitioner's request.

Testimony of the Petitioner

John Shonkwiler, an attorney representing Willy and Thea Brennt, reviewed the opponents' objections to his client's application. He discussed problems with the opponents' arguments relating to the issues of road improvements, traffic, public services, sewers and schools. He thought proposed road improvements were sufficient to handle projected traffic on Riven Dell and Barton Roads. He also explained the applicant had clearly demonstrated the property would support a gravity flow sewer system. Regarding the impact of the application on nearby schools, Mr. Shonkwiler explained the development could result in the addition of as few of seven to ten students of various ages to local schools. He concluded the applicant had fully substantiated the need for the Boundary amendment and requested the Council's approval of the application.

In response to Councilor Van Bergen's question, Mr. Shonkwiler recalled the Brennt property had been recommended to be included in the UGB as originally recommended but the quantity of urban land was later cut back by about 20 percent. He said it was clear the land should be added because subsequent development in that area had been consistent with the Boundary as originally proposed.

Councilor Knowles asked Mr. Shonkwiler to explain why the Brennt petition met the "contiguous land" requirement. Mr. Shonkwiler explained that due to topographical problems, the land surrounding the Brennt property could not be developed and was not accessible by major roads.

Answering Councilor Kelley's question, Mr. Shonkwiler said the record relating to the issue of the applicant's proposal and its effect on local schools was identical to the record the Council recently reviewed by the Blazer Homes case. Councilor Kelley noted a letter from the Lake Oswego School District Superintendent was not included in the Brennt case record.

Testimony of Opponents

Bob Lyneis, 18495 Tamaway, Lake Oswego, testified that if the Brennt application were approved, Barton Road -- currently a little used, unpaved "shortcut" to I-205 -- would attract more traffic, especially from Lakeridge High School students. He was concerned Barton Road could not handle the additional traffic. He also thought the UGB should not be extended beyond Riven Dell Road and was concerned that "patchwork" development would result if the Brennt application were approved.

In response to Councilor Waker's question, Mr. Lyneis said although he did not support the Brennt's application at this time, he might support the amendment in the future if it were part of a larger, cohesive development plan for the area. He did not support piecemeal development of that area.

Ken Jensen, 18490 Tamaway Drive, Lake Oswego, was concerned about traffic that would result on Barton Road if the Brennt application were approved. Referring to a letter from James H. Schell, Assistant Superintendent of the Lake Oswego School District, he also pointed out that the area schools could not handle the additional students resulting from growth that would result if the property were developed. Mr. Jensen claimed the land surrounding the Brennt property could be developed in spite of claims to the contrary by the applicant. He requested the Council clarify its rules concerning contiguous land and piecemeal development. He urged the Council to overturn the Hearings Officer's recommendation.

Councilor Waker questioned Mr. Jensen regarding whether schools could accomodate anticipated growth if the application were approved. Mr. Jensen said the schools could probably accomodate more children but the school district would then be in the risky position of increasing the tax base and asking the voters to pay for educating additional students.

Concerning the topography of land adjacent to the Brennt property, Councilor DeJardin said it appeared the land grade was too steep to support a housing development.

Gary Buford, 415 N. State Street, Lake Oswego, a consulting engineer practicing in Lake Oswego, testified he owned two land parcels near the Brennt property which were characteristically similar to that property. He said he came to the meeting to observe the Council's procedures in case he should decide to apply for an application to amend the UGB for his land parcels. He noted, however, after attending the Blazer Homes hearing, he wanted the Council to know that the contiguous land near the Brennt property was physically similar to the Blazer Homes property. He took issue with previous testimony there was no similar, contiguous land near the Brennt property.

Concerning Mr. Buford's questions about the possibility of his two land parcels being included in the UGB, Councilor Waker explained a Council subcommittee would soon begin discussions concerning the Council's process for performing an overall review of the Boundary.

Petitioner's Rebuttal of the Opponents' Testimony

Mr. Shonkwiler objected to concerns raised that traffic on Barton Road would be a problem if the application were approved. He explained a letter from Pete Harvey, Lake Oswego City Manager, stating that Barton Road was not needed had been included in the case record. He also thought the statement by Mr. Jensen that the Lake Oswego School District Assistant Superintendent was not in support of the Boundary change was misleading. He noted the letter had actually addressed the issue of bussing which the School District had to deal with on its own. Mr. Shonkwiler also discussed specific elevations of adjacent property in support of his earlier position that contiguous property was unsuitable for development due to topological problems.

Council Questions and Deliberation

In response to Councilor Kirkpatrick's question, Mr. Thomas, the Hearings Officer, said no testimony had been submitted during the hearing relating to Lake Oswego's long-term planning. The City, however, had testified they could serve the area in question.

Councilor Waker asked if the Brennt property were included in the Lake Oswego School District. Mr. Thomas responded the property was included in the District and the record for this case concerning school issues was the same as the Blazer Homes case record.

Presiding Officer Ragsdale asked Counsel to comment on Mr. Buford's testimony. Mr. Cooper explained the Hearings Officer's findings had not relied on Mr. Buford's testimony. In response to Councilor Collier's question, Mr. Cooper said the Council could only consider Mr. Buford's testimony as it related to the record. Councilor Collier and the Presiding Officer expressed concern that a process needed to be established to monitor testimony before the Council concerning UGB contested cases.

Discussion followed on what evidence the Council could consider in determining the impact of the application on schools. Presiding Officer Ragsdale suggested that if the Council were to evaluate the Brennt case according to the Blazer Homes case record, the Council would have to adopt a motion to direct General Counsel to prepare findings to support that request. Councilor Knowles thought that action unnecessary.

There was no further discussion and the Presiding Officer announced the second reading of the ordinance was scheduled for October 13, 1988.

The Council recessed from 7:25 p.m. to 7:40 p.m.

7. RESOLUTIONS

7.1 Consideration of Resolution No. 88-987, for the Purpose of Expressing Council Intent to Amend Metro's Urban Growth Boundary for Contested Case No. 88-1: Zurcher Property

Dan Cooper, General Counsel, explained the Zurcher Property case was a request for a major amendment to the Urban Growth Boundary (UGB). As such, the Council would determine the case based on state land use criteria. He also noted the Council would hear arguments on exceptions at this meeting.

Hearings Officer's Report and Recommendation

Chris Thomas, Hearings Officer for the case, reviewed the "Report and Recommendation of the Hearings Officer" document included in the meeting agenda packet. He reported the applicants -- the City of Forest Grove and Glenn, Theodore and Eva Zurcher -- had to determine that the amendment was needed. The applicants had successfully demonstrated the land was needed to attract business to the Forest Grove area that to correct a situation of low assessed property

value, low per capita income and high property tax rates. He had also concluded the applicant had successfully demonstrated there was no other land available within the UGB to meet the applicant's needs. In conclusion, he explained that central to the applicant's argument was the liveability of the Forest Grove area and he recommended the application be approved in order to improve liveability.

In response to Councilor Waker's and Van Bergen's questions, Mr. Thomas explained that land outside of the Forest Grove area had been determined unsuitable for the applicant's purposes. A central issue was that the amendment was needed to improve the liveability of the Forest Grove area, he said. Mr. Thomas compared the Zurcher case with the recent BenjFran application which had been denied by the Council. He said that BenjFran had been unable to demonstrate their land parcel had to be in a specific area.

Councilor Van Bergen asked if the Hearings Officer had considered whether voter approval of special measures could solve Forest Grove's problems. Mr. Thomas said he had considered that but due to low per capita income, low assessed value, and high tax rates that solution would not enhance the liveability of the area.

Councilor Kirkpatrick questioned how the Hearings Officer could isolate the Forest Grove area from the rest of the UGB. She pointed out that the City of Oregon City could make the same claim as Forest Grove concerning low per capita income, low assessed values and high tax rates.

Councilor Knowles asked if there were previous UGB cases where a need had been demonstrated for land in a specific location. Mr. Thomas said the Kaiser case had demonstrated need for a large land parcel in the Sunset Corridor. A case had also been made for land to be added for a mobile home park in Clackamas County although Mr. Thomas did not think the Clackamas County case represented a good precedent.

Councilor Van Bergen questioned how "liveability" could be used as a measurement for need.

Applicant's Testimony

Al Benkendorf, representing the Zurcher family and Forest Grove, first pointed out the Forest Grove City Council ruled against its policy of neutrality on UGB matters in recognition of the importance of this decision. He then introduced Clifford Clerk, Forest Grove Mayor.

Mayor Clark discussed the history of economic problems in the Forest Grove area that had occurred in spite of new reports about economic



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: October 17, 1988

To: Rena Cusma, Executive Officer

From: Marie Nelson, Clerk of the Council *amn*

Regarding: TRANSMITTAL OF ORDINANCE NO. 88-265 FOR CONSIDERATION OF VETO

Attached for your consideration is a true copy of Ordinance No. 88-265 adopted by the Council on October 13, 1988.

If you wish to veto this ordinance, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, August 18, 1988. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time stated above, this ordinance will be considered finally adopted.

I, Kathleen Indall, received this memo and a true copy of Ordinance No. from the Council Clerk on

Dated: October 17, 1988

amn/gpwb
Mac-alt.2

10/18

*Sent in error... quasi-judicial
action not subject to veto.
Katie will destroy copy.*

gpwb



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

October 20, 1988

Mr. Charles D. Cameron
County Administrator
Washington County Courthouse
150 N. First Avenue
Hillsboro, OR 97123

Dear Mr. Cameron:

Enclosed is a true copy of the following ordinance adopted by the Metro Council. Please file this ordinance in the Metro file maintained by your county.

- * Ordinance No. 88-265, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 87-4: Brennt Property

Sincerely,

A handwritten signature in cursive script, reading "A. Marie Nelson".

A. Marie Nelson
Clerk of the Council

AMN:gpwb

enclosure

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Corky Kirkpatrick
Deputy Presiding
Officer
District 4

Richard Waker
District 2

Jim Gardner
District 3

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

October 20, 1988

Ms. Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, OR 97204

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Corky Kirkpatrick
Deputy Presiding
Officer
District 4

Richard Waker
District 2

Jim Gardner
District 3

Tom DeJardin
District 5

George Van Bergen
District 6

Sharon Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Dear Jane,

Enclosed is a true copy of the following ordinance adopted by the Metro Council. Please file this ordinance in the Metro file maintained by your county.

- * Ordinance No. 88-265, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 87-4: Brennt Property

Sincerely,

A handwritten signature in cursive script, reading "Marie".

A. Marie Nelson
Clerk of the Council

AMN:gpwb

enclosure



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

October 20, 1988

Mr. John Kauffman, County Clerk
Clackamas County
8th and Main
Oregon City, OR 97045

Dear Mr. Kauffman:

Enclosed is a true copy of the following ordinance adopted by the Metro Council. Please file this ordinance in the Metro file maintained by your county.

- * Ordinance No. 88-265, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 87-4: Brennt Property

Sincerely,

A. Marie Nelson
Clerk of the Council

AMN:gpwb

enclosure

Executive Officer
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