

**Metro Council Meeting
March 21, 1996
Minutes**

Council Chamber

1. CALL TO ORDER AND ROLL CALL

Councilors Present: Presiding Officer Jon Kvistad, Deputy Presiding Officer Susan McLain, Councilor Patricia McCaig, Councilor Rod Monroe, Councilor Ed Washington, Councilor Don Morissette and Councilor Ruth McFarland.

Councilors Absent: None.

The meeting was called to order by Presiding Officer Jon Kvistad at 2:10 PM.

2. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

4.1 Consideration of Minutes for the March 14, 1996 Metro Council Meeting.

Motion: Councilor Ruth McFarland moved the adoption of the Minutes of the March 14, 1996 Metro Council meeting.

Second: Councilor McLain seconded the motion.

Vote: The vote was 5/0 aye and Presiding Officer Kvistad declared the motion passed.

5. ORDINANCES - FIRST READING

5.1 **Ordinance No. 96-638, To Adopt the Hearings Officer Findings, Conclusions and Final Order; Denying Urban Growth Boundary Contested Case 95-2; Knox Ridge.**

The clerk read the Ordinance by title only.

Presiding Officer Jon Kvistad stated that the procedure to be followed would include a discussion of procedures by Counsel Dan Cooper; this is to be followed by a report and recommendation from the Hearings Officer, Larry Epstein; after this testimony from the applicant will be heard; following this other, significant testimony will be heard. Finally,

the council will conduct a discussion among themselves and recommend one of three options:

- A) Referral to the appropriate subcommittee;
- B) Make a ruling;
- C) Make a recommendation.

Dan Cooper, Chief Counsel, opened the hearing with a summarization of the significant legal aspects of this case. Mr. Cooper stated that in view of the fact that the applicant is requesting an amendment to the Urban Growth Boundary, this hearing acquires the nature of a quasi-judicial proceeding on a land use issue. Metro Code establishes the criteria that the applicant must meet in order gain approval from Metro Council. Whatever decision Metro Council makes must be supported by adequate findings to justify either saying 'yes' or saying 'no,' secondary to the quasi-judicial nature of the decision. Council was instructed that since they will be applying previously-existing criteria to the set of facts brought before them today. In light of the fact that this testimony has already been made in the presence of the Hearings Officer, all evidence that will be heard today is already present in the Hearings Officer's record and is part of the recommendations that he is bringing before Metro Council today.

Mr. Cooper explained the Stuart Todd, Associate Regional Planner, will present pertinent background information followed by Larry Epstein, Hearings Officer, who will present his report and recommendations. Following this, the applicant will be heard. The procedures require that anyone who disagrees with the Hearings Officer's recommendation file formal exceptions. Those have been duly filed and form the basis for the arguments to be heard by Metro Council today. Mr. Cooper announced that the choices available to Metro Council are:

- 1) Agree with the Hearings Officer's recommendations, in which case, the Council will move forward to adopt the ordinance and the findings that he has made;
- 2) The Council make also reach a conclusion that that is in disagreement with the Hearings Officer's findings. In this case, the Council will move forward to adopt the ordinance;
- 3) If a different conclusion is reached, a different set of findings are required to justify that conclusion.

Chief Counsel Cooper stressed that because of the quasi-judicial nature of this determination, any ex-party contacts that any Council members might have had must be disclosed in the record at this time or as an awareness develops that one member or another might have had such contact.

Chief Counsel Cooper cautioned the members of Metro Council that it had been brought to his attention that a letter has been sent by the attorney for the applicant which he (the attorney for the applicant) does not view as evidence but rather just a summary of the arguments he intends to make. On the other hand, Hearings Officer Epstein believes that

Metro's rules do not even allow for that to happen. Chief Counsel Cooper cautioned members of Metro Council to make aware to this hearing that they had read the letter. No Councilor responded to Mr. Cooper on this point.

Mr. Todd proceeded with a brief analysis of Metro's position accompanied by colored magic lantern slides to illustrate his major points. The issue at hand is a natural area locational adjustment originally submitted by Benchmark Land Company on Mar 15, 1995. The parcel of real estate in question is outside the existing Urban Growth Boundary. It is in the southwestern portion of Forest Grove. Real Estate Exchange Corporation is legal owner of record. The amendment was changed several times over the past year. Originally it was a 12.8 acre expansion parcel submitted in March of 1995. Then there was an interim adjustment down to 6.2 acres just prior to the June 1995 hearing. The current proposal is a 27.4 acre natural area adjustment.

Councilor Monroe requested an explanation as to the meaning of the phrase 'natural area adjustment.' Mr. Todd explained that this signifies a locational adjustment, usually limited to 20 acres or less (although now it can include up to 40 acres), half of which must be dedicated as natural area or open space, such as a park area.

The site under question is Tax Lot 26 which fronts on Gales Creek Road in Forest Grove. The City of Forest Grove annexed the entire 82 acre parcel recently on the basis of this development proposal. The Boundary Commission requested that the City of Forest Grove annex the entire 82 acres including a significant portion outside the Urban Growth Boundary. The proponents of the development then requested that the City of Forest Grove leave out the rural portion. The proposed amendment area outside the Urban Growth Boundary is in the 100-year flood plain. It is not in an Urban Reserve Study Area although this is not an issue.

It is in the Green Spaces Master Plan Inventory and is shown as a potential regional greenway. The site qualifies as a natural area amendment. There would be a housing development and in return, Real Estate Exchange Corporation would provide a park for the City of Forest Grove. The petition process on this site has been somewhat complicated, according to Mr. Todd. It has required three hearing dates and the record has been reopened subsequent to that.

The process began in March of 1995. It was scheduled for a June 7, 1995 hearing in Forest Grove. The Staff Report was made available prior to that date in mid-May, 1995. The petitioner submitted certain changes to the petition, making the amendment area smaller, from twelve to six acres in an attempt to address the staff concerns which were for denial based on criteria in the code. At the June 7, 1995 hearing, a continuance was requested by the petitioner. This was set for July 20, 1995 secondary to the petitioner's request for additional time to properly respond to staff concerns and recommendations addressing the Exclusive Farm Use lands, flood plain and environmental impact. Between June 7 and July 20, 1995, the petitioner met with staff to introduce the idea of a natural area amendment. As a result of the July 20, 1995 hearing, the petitioner again asked for a continuance to introduce amendments to the petition so that it could be considered as a locational adjustment. The Hearing Officer again granted a continuance

to September 21, 1995 inasmuch as the petitioner had not come forth with a natural area adjustment. This is the proposal before Metro Council today.

It is an amendment in its amended form consisting of a twenty-seven acre adjustment with 13.7 acres of natural area. In October of 1995, the petitioner asked to reopen the record which delayed the final hearings officer's report until January of 1996. The record was reopened so that conditions could be potentially attached to the case in favor of it. In January, the hearings officer's report was issued. Exceptions were filed by the petitioner in February of 1996.

Hearings Officer Larry Epstein, 722 SW Second Avenue, Portland OR, summarized for Metro Council his written report, a copy of which is included with the permanent record of this meeting. Mr. Epstein explained that this is a difficult case because it is only the second natural area locational adjustment that Metro has considered.

Mr. Epstein identified seven areas which concerned him and led to his recommendation in this case. These were

- A) The property is substantially in a native and unaffected state;
- B) The property is a developable area which, in this case, refers to any area proposed for development by the petitioner;
- C) Improve net efficiency of public facilities and services;
- D) Facilitate needed development in the Urban Growth Boundary;
- E) Positive EESE analysis;
- F) Superior Urban Growth Boundary;
- G) Inclusion of all similarly situated land.

NOTE: A large portion of the testimony at this point is unintelligible secondary to a malfunction of the wireless microphone.

Testimony was also received from Mr. Jack Orchard, representing Benchmark Land Company and Mr. Frank Angelo of WNH Pacific, the engineering and planning firm that prepared the application and completed the technical work. Mr. Orchard and Mr. Angelo presented graphic information on the property in question. The most distinguishing features, as identified by these two gentlemen included:

- A) Existing Urban Growth Boundary line;
- B) Existing flood plain;
- C) Location of the already-approved development, Knox Ridge development;
- D) Proposed area of inclusion within the locational adjustment;
- E) Areas that would not be included from Tax Lot 2600.

Mr. Orchard responded in turn to the hearings officer's findings.

- A) Natural area: There seems to be no clear definition of the phrase 'natural area;' this area is a natural area recognized by Metro as being in the natural space and open space inventory since it meets Metro criteria;

- B) Lack of uniqueness of the property: there are not many, if any, properties which have multiple designations as green space, open space and park areas which fit this property but not other, similar properties;
- C) Efficiency of services: Under the current approved subdivision design, there exists a street which has utilities at urban service levels serving one group of lots without a companion group of lots across the street from it. There is probably no more inefficient manner to expand infrastructure;
- D) Facilitation of development: There is a narrow neck of property that goes down into the southeast corner of the site; with this arrangement the necessary width for extension of services can be achieved as well as a functional street pattern for this property and the most efficient development format for the topography can be achieved;
- E) ESEE elements: A more positive environmental result will occur with the petitioners plan;
- F) Speculation: There is no truth to the comment from the hearings officer regarding the fact that such a plan would lead to speculation;
- G) The superior/inferior nature of the Urban Growth Boundary;
1. Should similarly situated land have been included within the area that is proposed for this adjustment?;
 2. A review of the map indicates that the area under consideration is a zone that is uniquely affected by the City of Forest Grove's planning authority;
 3. The present map reveals a logical mix of public and private uses;
- H) Loss of open space: This is open an open space.

Councilor Monroe requested information regarding the present status of the parcel of land that is north and east of the corner under question on the map. Mr. Angelo replied that this parcel of land represents the Forest Grove Cemetery. Councilor Monroe suggested that part of the undeveloped portion might work in well with the other parcel under consideration by the petitioner.

Carl Mossen, Community Development Officer of the City of Forest Grove, discussed the history of this parcel. The original request was simply for development within the flood plain. Mr. Mossen's first approach was to deny the application. Slight changes were made and were brought before the Forest Grove City Council. Upon taking a vote, a 3/3 split vote resulted and consequently no action was taken. The record indeed reflects the fact that the City of Forest Grove took no action whatsoever. Two weeks ago, the city council of Forest Grove was again approached with an informational item. As the case now stands, consideration of this parcel is now brought before the Metro Council

NOTE: A large portion of Mr. Mossen's testimony at this point is unintelligible secondary to a malfunction of the wireless microphone.

Mr. Mossen stressed the importance of the City of Forest Grove to make the connection with Gales Creek. He also stressed the importance of gaining additional park land.

The ditch that currently exists in this parcel is not particularly attractive is not useful to wildlife nor does it enhance wetlands. There is a loss of 5.5 acres of open space to roads and development. The rest of the open space is becoming enhanced, however and is more available to the public. This area has the excellent situation of development next to a natural resource buffer with agriculture on the other side of the natural resource buffer. This is part of a stream that connects to Gales Creek - a natural link to the open space area. From the city's standpoint, it is pretty obvious that Forest Grove is giving up 25 lots and in return will receive 25 acres of public land that can be developed as a park. Mr. Mossen stressed the enhanced wetland, wildlife and vegetation, neighborhood park, a buffer between agricultural activities and homes. That amount to an enhanced quality of life, something that Metro and communities like the City of Forest Grove are working towards.

Presiding Officer Jon Kvistad asked for clarification from Chief Counsel Cooper as to Metro Council's role. Should the Council consider options or must the Council simply accept or reject the application as presented. Mr. Cooper replied that Council has the option of returning this application to the Hearings Officer for further hearings and possible opportunities to change the application. It could also be sent to the Hearings Officer with instructions to consider various options.

Presiding Officer Jon Kvistad stated that Metro Council has three options on the table at this point:

- A) Accept the Hearings Officer's recommendation;
- B) Make another recommendation that would be taken to Mr. Cooper for legal advice;
- C) Adopt a position of some semblance of 'in between' in which case the matter would be returned to the Hearings Officer for further discussion.

Motion: Councilor Ruth McFarland moved that Metro Council accept hearing officer's recommendations.

Second: Councilor Patricia McCaig seconded the motion.

Discussion: Deputy Presiding Officer Susan McLain stated that she had received a telephone call from a constituent requesting additional information and he was given the telephone numbers of both the Boundary Commission and Mr. Todd. This is her only connection with the site other than the fact that she is able to view the parcel when moving her sheep from pasture to pasture. She stated that she would support this proposal for the following reasons:

- 1) The Hearings Officer noted the specific differences between the definitions of 'green space' and 'open space' as per the master plan as well as the 'natural area adjustment' under consideration in this proposal.
- 2) It is important to know that it is not in an Urban Reserve Study Area. It was not requested by the City of Forest Grove to be in an Urban Reserve Study Area.

3) It has no connection to either a natural feature or a man-made feature such as a road.

4) It has an isolated farming function in comparison with an isolated development function.

5) There has been a great deal speculation on just the Urban Reserve Study Areas to say nothing of the speculation that would result from an actual Urban Growth Boundary movement.

Presiding Officer Jon Kvistad stated that he would support the application. He stated his disagreement with the definition of 'natural state' as given by Mr. Epstein in 3.01.35. It would seem too broad a definition, according to Presiding Officer Kvistad. The designation of 'open spaces' under the improved net efficiency, is also too broad.

Chief Counsel cautioned the Council that this motion is just preliminary in nature and if the decision of the Council is to adopt the Hearings Officer's recommendation, the ordinance must be continued to a second reading and take a final vote later.

Vote: The vote was 5 aye and 2 no to continue this ordinance to its second reading. Councilors Kvistad and Morissette voted no.

5.2 **Ordinance No. 96-639, An Ordinance Amending the FY 1995-96 Budget and Appropriations Schedule For the Purpose of Adopting the FY 1995-96 Supplemental Budget and Declaring an Emergency.**

The clerk read the Ordinance by title only.

Presiding Officer Jon Kvistad assigned this ordinance to the Finance Committee for deliberations and scheduled a second reading.

6. PRESENTATION BY EXECUTIVE OFFICER BURTON: Executive Officer Mike Burton presented, as a symbolic gesture to Metro Council from Multnomah County, a piece of turf, technically the smallest park in the nation.

7. COUNCILOR COMMUNICATIONS

Councilor Don Morissette stated he wished the record to reflect that on the Parks Transfers Resolution, he voted 'no.'

Councilor Monroe stated that he had attended a meeting this morning of MPAC and JPACT with a goal of trying to work out an agreement on parking minimum and maximums. A preliminary agreement has been worked out and will be presented to a joint committee of MPAC and JPACT on April 11, 1996 at 7:15 AM.

Councilor Washington noted that he would be in Austin, Texas over the weekend, attending a workshop and conference on urban parks. He stated that he would give a report on that conference when he returns.

Councilor Morissette stated that he would not be in attendance next week due to his vacation schedule. He wondered if MPAC and JPACT had been properly notified of the joint meeting on April 11, 1996. Councilor Monroe stated that notifications had been properly made.

Councilor McCaig expressed her surprise to learn from Willamette Week that discussions were held concerning the 'take over' of Tri-Met by Metro. Councilor McCaig requested that before any future meetings are held with Tri-Met board members that Metro conducts a public hearing on this issue.

Presiding Officer Jon Kvistad stated that he had in hand a series of documents which would be copied and distributed to Councilor McCaig. He affirmed that a complete set of documents containing all the discussion points from 1969 to 1995 would be made available.

Councilor McCaig stated her concern for proper public input on this matter and that it be placed on a formal agenda. Presiding Officer Jon Kvistad stated that quiet conversations with members of the Tri-Met Board are appropriate at this time.

With no further business to come before Metro Council on this date, the meeting was adjourned by Presiding Officer Jon Kvistad at 4:05 PM

Prepared by

David Aeschliman
Recorder