

# MINUTES OF THE METRO COUNCIL MEETING

April 6, 2000

Metro Council Chamber

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

Councilors Absent: None

Presiding Officer Bragdon convened the Regular Council Meeting at 2:01 p.m.

## 1. INTRODUCTIONS

None.

## 2. CITIZEN COMMUNICATIONS

**Art Lewellan**, 3205 SE 8<sup>th</sup> Ave, Portland OR 97201, LOTI, provided a written copy of his statement which may be found in the permanent record of this meeting. He wished to reaffirm his support for the Regional Center concept planning. Second, he suggested that Metro should continue to pursue lightrail in the southeast area. Third, he spoke about the Ross Island Bridge repairs. He suggested that the decision not to widen the sidewalk could be a violation of the federal ADA and the state Uniform Building Codes.

## 3. EXECUTIVE OFFICER COMMUNICATIONS

None.

## 4. AUDITOR COMMUNICATIONS

None.

## 5. BUDGET/FINANCE COMMUNICATIONS

**Councilor McLain**, Budget Committee chair, said there had been three budget meetings this week and another one would follow this meeting. She reviewed where the committee was and what amendments would be coming forward for consideration at next week's meetings.

## 6. MPAC COMMUNICATIONS

**Presiding Officer Bragdon** said MPAC had not met since the last council meeting, but noted a letter from Mayor Ogden that he had asked Mr. Burton's staff to help with some of the legislative history for the next MPAC meeting April 12.

## 7. CONSENT AGENDA

7.1 Consideration of minutes of the March 30, 2000 Regular Council Meeting.

**Motion:** **Councilor McLain** moved to adopt the meeting minutes of the March 30, 2000 Regular Council meeting.

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

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed, Councilor Atherton was absent from the vote.

## 8. ORDINANCES –FIRST READING

8.1 **Ordinance No. 00-858**, For the Purpose of Amending Metro Code Chapter 5.02 to Extend the Sunset Date for the Regional System Fee Credit Program to June 20, 2001.

Presiding Officer Bragdon assigned Ordinance No. 00-858 to the REM Committee.

## 9. RESOLUTIONS

9.1 **Resolution No. 00-2917A**, For the Purpose of Appointing Thomas Donaca, Washington County, Christine Cook, Multnomah County and Robert Traverso, Clackamas County, to the Metro Boundary Appeals Commission.

**Motion:** **Councilor Washington** moved to adopt Resolution No. 00-2917A.

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

**Councilor Washington** introduced the resolution and asked Mr. Cooper to explain further.

**Dan Cooper**, General Counsel, said this commission's jurisdiction was extremely limited compared to the jurisdiction and authority of the former boundary commission.

**Councilor Washington** said there was a nominee from each of the three counties that would hear boundary appeals sent to Metro. He said the terms were to be for 4 years and would be staggered, which explained the difference in terms on the Resolution.

**Mr. Cooper** said the statute that abolished the boundary commission required Metro to create a Boundary Appeals Commission to hear appeals from boundary change decisions made by local governments where the appeal was filed by another local government. It further required the commission to be appointed by the Executive Officer from nominees from the counties, subject to approval by the Council.

**Councilor Washington** said there was an appeal pending so the committee needed to get up and running. He urged an aye vote on the resolution.

**Councilor Atherton** asked Mr. Cooper if there was an appeal process for this three-member commission's decisions.

**Mr. Cooper** said it would probably be LUBA but there was no specific statute to say that. There was a possibility, if there was no land use issues involved, that it could be appealed to circuit court. That would be up to the lawyer representing the parties to figure out where to file.

**Councilor Atherton** asked if all of those cases would be based on the record.

**Mr. Cooper** said that was correct.

**Councilor Kvistad** expressed concern about Ms. Cook, who in the past had represented 1000 Friends of Oregon. He would oppose her nomination if she was still representing them.

**Councilor Washington** noted that Ms. Cook's resume reflected that she was staff attorney to 1000 Friends from 1992 to 1998, and was now a sole practitioner of law concentrating on Oregon land use law, representing individuals, organizations and business entities in local and state level appeals.

**Councilor Kvistad** said it was not personal towards Ms. Cook, but directed towards the interest because of the number of suits against Metro from 1000 Friends dealing with land use issues. He said unless he knew for a fact that she no longer represented 1000 Friends, he could not support her nomination. He was unsure how to proceed because he could support the other two people named in the resolution.

**Presiding Officer Bragdon** offered clarification. He said his investigation revealed that she had represented individuals who had appealed to the Metro Council pertaining to the UGB, and in fact had appeared before Metro this year regarding those appeals. He said that was a concern to him as well until Mr. Cooper explained to him that this boundary commission would deal with appeals between governments and not UGB decisions.

**Mr. Cooper** said that was correct, but each councilor had the authority to move to delete any particular candidate from the resolution if they could not support that candidate, or to vote against the entire resolution.

**Presiding Officer Bragdon** said he was commenting on the question of whether the person was involved in any cases that could come before the committee, not on their ideology or affiliations in any way.

**Councilor Kvistad** noted Ms. Cook's resume said under professional experience "concentration in Oregon land use law representing individuals, organizations and business entities in local proceedings and state level appeals". He perceived a conflict in this particular nomination. He reiterated that it was not directed at Ms. Cook individually, but if she was indeed an attorney representing people in land use interests, he was not comfortable with the nomination. He said he would make a motion to split out the individuals.

**Motion to**

**Amend:** **Councilor Kvistad** moved to separate the question three ways and vote on each individual separately prior to the final vote.

**Seconded:** **Councilor Park** seconded the amendment.

**Councilor Kvistad** said his concern was putting an attorney who dealt with local land use proceedings on this committee. He felt that made a conflict of interests a real possibility. He said splitting them out would give him the opportunity to support the other nominees, which he did.

**Councilor Monroe** asked Mr. Cooper what would happen if they approved some of the appointees and not all of them. He asked if they could function with fewer than three members in place. He noted there was an urgency to this resolution because of the pending case.

**Mr. Cooper** said it was possible, but without a third member to guarantee there could not be a tie vote, there could be problems.

**Councilor Atherton** asked Councilor Kvistad why he was not also concerned about Mr. Traverso.

**Councilor Kvistad** responded that the other two individuals had not been before the Council lobbying on behalf of land use organizations.

**Presiding Officer Bragdon** clarified that they were not speaking to individual qualifications but to the motion to split.

**Vote to**

**Amend:** The vote was 3 aye/ 4 nay/ 0 abstain. The motion failed with Councilors Atherton, McLain and Monroe and Presiding Officer Bragdon voting no.

**Councilor Monroe** felt all of the nominees had been involved in things that had land use implications. He noted Ms. Cook's resume said she had represented 1000 Friends until 1998. He assumed that since it said "until 1998" she was no longer representing them, and in fact if she was, then her resume was inaccurate. He said he had known Mr. Donaca for many years and knew he had an interest in land use decisions for many years as a lobbyist for Associated Oregon Industries. He noted that Mr. Traverso's background was wide and varied and included a lot of rural activities that had at various times an interest in land use and land use law. He said all three had different backgrounds and a considerable amount of experience in dealing with issues that affected land use. He was convinced that between the three of them they could make rational decisions regarding boundary disputes that would come before them.

**Councilor Washington** asked for clarification. He wanted to know if they would have voted on each individual separately had the vote been to separate the question. He felt this situation was similar to many of the Council's concerns or perceptions with regard to ethics. He commented that while they each knew how they should act, whenever the issue came up, they always said it was the perception that they had to guard against.

**Mr. Cooper** responded yes, they would have had to vote each individual separately. He said the Oregon Ethics law for all public officials applied to this body so if any member had a financial interest they must declare it. If there was an actual conflict, they would be precluded from participation unless their vote was required to break a tie. They could not vote in a way that would be of direct financial benefit to them. He noted there were also Oregon State Bar ethical requirements that would apply to attorney members of the board that would also affect their ability to sit on cases where they had a client as well.

**Councilor Washington** asked if the separation prevailed, would Councilor Kvistad have had the opportunity to express his vote against one person and still support the other two.

**Mr. Cooper** said in essence, that was correct.

**Councilor Kvistad** said he had asked one simple question, did one particular person represent an organization that was currently suing this body on land use issues. He said until that question was answered, he could not in good conscience vote to allow that person on this board. He said he had no choice then, but to vote against two qualified people because he was not given the opportunity to do otherwise. He said because of the fact that this person represented individuals, businesses and other entities in local proceedings on land use issues, he could not support the resolution.

**Councilor Monroe** asked Nancy Goss-Duran to come forward and asked her whether Ms. Cook was currently working for 1000 Friends or representing any other organization that was currently involved in land use disputes affecting Metro.

**Nancy Goss-Duran**, Executive Office, responded that to the best of her understanding Ms. Cook was a lawyer in independent practice and did not work for 1000 Friends, however she was involved in the Malinowski case.

**Councilor Park** asked Mr. Cooper if who was suing Metro directly in this particular situation was legally relevant.

**Mr. Cooper** said if the Councilor meant did this person have an inherent conflict of interest under the Oregon conflict of interest laws that would disqualify her from hearing any case brought before her, he believed the answer was no.

**Presiding Officer Bragdon** clarified the question was regarding the matter in which she was representing a party who has an involvement with Metro, and was that an issue that was likely to come to the body that she was proposed to be appointed to.

**Mr. Cooper** said no.

**Councilor McLain** said there were many times in life when they had to figure out if what they were doing would cause others to have problems with perception or conflict of interest. She said these three individuals seemed to be in positions to make them valuable to this particular board. She thought they all seemed to have an understanding of ethics law because of the fact they were all lawyers. It was her opinion that all three would bring balance, expertise, and good work to this board. She thought it was important to remember that the ethics code, which governed the council, would govern them. When there was a conflict, they would state so and do the appropriate thing. She said she would support the resolution.

**Councilor Atherton** asked Ms. Goss Duran about Mr. Donaca's Washington County property and if Mr. Traverso owned real estate in Clackamas County or in the region other than his home. He said property ownership in an area would be a clear conflict when deciding boundary issues.

**Ms. Goss Duran** said she did not know, but she would attempt to find out.

**Presiding Officer Bragdon** did not think property ownership went to the issue of conflict for the job these people were being appointed to since they would be adjudicating disputes among different local governments.

**Mr. Cooper** added that if the property owned by one of the individuals was within the territory that was the subject of the dispute, then a conflict of interest would exist and they would be

disqualified. If the concern was that one of these individuals held extensive property and would perhaps be more sympathetic to the views of other property owners, that was a different matter.

**Councilor McLain** said they had talked about the candidates and the ethics they would have to follow. She asked for a reconsideration of the motion to divide.

**Motion to**

**Amend:** **Councilor McLain** moved to reconsider the motion to split the vote on each nominee.

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

**Councilor McLain** said she suggested the reconsideration as a courtesy to Councilor Kvistad because, as Mr. Cooper had indicated, they would have to vote on all of it some time. She said dividing the question was not going to complicate the issue.

**Councilor Monroe** said he had a problem with dividing the issue because he was in support of all three of them as a group. Individually, he might vote against any one of them, but collectively, they had enough balance that he did not have a problem.

**Councilor Atherton** said he supported Councilor Monroe's position, but wanted to add that they had just demonstrated that if they started getting into nit-picking and pointing at an individual, they could find flaws anywhere. He said he was not in favor of splitting the motion.

**Vote on motion**

**to reconsider:** The vote was 5 aye/ 2 nay/ 0 abstain. The motion to reconsider passed with Councilors Monroe and Atherton voting nay.

**Vote on the  
motion to**

**separate:** The vote was 4 aye/ 3 nay/ 0 abstain. The motion to separate passed with Councilors Atherton and Monroe and Presiding Officer Bragdon voting nay.

**Motion:** **Councilor Kvistad** moved to consider Thomas Donaca for the position on the committee.

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

**Motion:** **Councilor Atherton** moved to consider Christine Cook for the position on the committee.

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

**Councilor Kvistad** reiterated his concerns regarding Ms. Cook's appointment to the committee.

**Presiding Officer Bragdon** repeated that although Ms. Cook was involved with a land use case with Metro, it would not be one that would come before this committee.

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

Councilor Kvistad voting nay.

**Motion:** **Councilor Kvistad** moved to consider Robert Traverso for the position on the committee.

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

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

**Presiding Officer Bragdon** commented that impartiality was important to any group of appeals functionaries and the impartiality needed to apply to what they were considering. He said he had objections raised to him about all three of the people in the resolution on ideological grounds, but none of the objections were relevant to the job they were being asked to do. He said he would support them individually and as a package.

**Councilor Atherton** said he would abstain on Mr. Traverso was in part, due to his failure in homework. He was concerned about Mr. Traverso's land holdings in Clackamas County that might make it difficult for him to participate on the committee.

**Councilor McLain** said she found all three people to be excellent candidates for the board. She said she supported the resolution and wished them well on their first appeal.

**Councilor Park** felt it was ironic that they had taken up so much time on this matter. He said the logical conclusion to avoid all this would be to get people outside of their jurisdictions who had no interest or property holdings to serve. He said there were already conflict of interest laws in place and he had confidence in all three candidates by virtue of the screenings they received through Metro's process as well as their county commissioners.

**Councilor Kvistad** thanked Councilor McLain for the courtesy. He said it had been his intention only to cast his vote quietly and move on, not to make it a convoluted process. He said he would abstain from the vote to not vote against the two individuals he did not have a problem with.

**Vote on the**

**Main Motion:** The vote was 6 aye/ 0 nay/ 1 abstain. The motion passed with Councilor Kvistad abstaining.

## 10. COUNCILOR COMMUNICATIONS

**Presiding Officer Bragdon** announced that the next Council meeting would be at 2 p.m. April . 13, 2000 at St. Anthony's Parish Hall, 3618 SE 79<sup>th</sup>, Portland. There will be a tour of St. Anthony's Village for interested Councilors at 1 p.m.

**Councilor Monroe** said he would be out of town for the next meeting.

**Councilor Atherton** announced Alternatives to Growth Oregon would have their second conference on April 15<sup>th</sup> at Portland State. He invited the councilors and said he had applications for anyone who wished to attend.

## 11. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Bragdon adjourned the meeting at 2:50pm.

Prepared by

Chris Billington  
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
040600c-01	3/30/2000	Minutes of the March 30, 2000 Regular Council Meeting		
040600c-02	4/6/2000	Written Testimony for Citizen Communications RE: Ross Island Bridge Repairs and Measure 82	Metro Council/Art Lewellan	