

## **MINUTES OF THE METRO COUNCIL WORK SESSION MEETING**

Tuesday, September 15, 2005  
Metro Council Chamber

Councilors Present: Rex Burkholder (Acting Council President), Susan McLain, Robert Liberty, Brian Newman

Councilors Absent: David Bragdon (Council President) (excused), Carl Hosticka (excused), Rod Park (excused)

Council President Bragdon convened the Metro Council Work Session Meeting at 2:00 p.m.

### **1. ADMINISTRATIVE/CHIEF OPERATING OFFICER AND CITIZEN COMMUNICATIONS**

Rex Burkholder asked for a report on the Court of Appeals decision. Dan Cooper stated that the Court of Appeals issued its decision on the appeal of the Land Conservation and Development Commission's action in 2003 where they acknowledged and approved the urban growth boundary decision the Council made in December 2002. The Court upheld LCDC's approval of Metro's determination of the need, finding that the agency had substantial evidence in the record to support the numbers approved by the Metro Council.. In addition, the Court of Appeals upheld the challenge to the area outside of Oregon City. It also made a rather significant ruling regarding one legal issue that involves how one interprets the statute on the priority of land, and reaffirmed what was always believed - that you are looking for particular land you need to have, rather than simply looking at the gross acreages available unique to the categories, and have them do a further exercise within each of those tiers. Mr. Cooper said this is significant for the work that has been done on industrial lands, and certainly will have significance in any future urban growth boundary expansions.

Mr. Cooper discussed two areas that the Court of Appeals remanded back to the commission - Area 37 outside of West Linn, and Area 94 to the west of Forest Park. The Court of Appeals found that while Metro had explained why the lands had been selected (consistent with the goals), the agency had not adequately addressed the criteria in its own code. In essence, the findings needed to explain why the land that was included was better than any of the land not included. The findings the Metro Council adopted in 2002 did not fully describe this as far as Area 37 and Area 94. Mr. Cooper added that he would like to give councilors some ideas about what choices may be made or what conversations they should be having with the commission and staff in response the Court of Appeals decision.

The issue at hand is basically what next to do. Area 94 was projected to have only room for another 55 housing units. Area 37, on the other hand, was projected as providing over 1,100 housing units. When action was taken in 2002, the Council concluded that 666 more housing units were provided beyond the precise need that was calculated. When that was brought to the attention of the commission and their staff, the issue was raised that the boundary had been moved too far. The commission concluded that 666 was close enough. Now with this deduction of Are 37 and Area 94, together with the deduction of residential land that resulted from the shift made in 2004 (where the twenty acres south of Highway 26 inside the City of Damascus had been included for residential land in 2002) and shifted it to an industrial category, Metro ends up somewhere around 700 acres short of a twenty year supply. So that leads to a policy question. The Metro Council can simply say it is close enough (from 666

over to 700 under), that if one swing isn't significant, then the other swing is not significant – in essence, simply end right now and move on to the next issue. On the other hand, the Metro Council could direct staff to try to prepare findings that meet the criteria in the code on Area 37 and Area 94, and send them back to the commission for review. Or the Metro Council could decide that in lieu of Area 37, a different area would be considered (i.e., Area 93 east). If the Metro Council went in this direction, then the differential would be closer to the absolute zero. These are three suggested options available for review by the councilors.

Councilor Newman asked what kind of work would be involved in submitting the findings. Dick Benner, Senior Counsel, explained what steps would be involved. At the very least, additional analysis of the information already at hand would need to be made. The consensus among councilors was to call this one good and move on.

## **2. FUNCTIONAL PLAN COMPLIANCE DISCUSSION**

Sherry Oeser, Senior Regional Planner, walked councilors through a readiness exercise for the Functional Plan compliance hearing (scheduled for two weeks from today). She noted that a public hearing on the compliance report is required every year. The upcoming hearing will focus on the 2004 Compliance Report. Ms. Oeser explained that anything received in 2004 will appear in the 2004 report; and that anything received in 2005 will be included in the 2005 Compliance Report. Ms. Oeser also explained the requirement to send notice out to all of the jurisdictions, along with a notice of a public hearing. This will provide them with the opportunity to tell the Metro Council where they are at in their compliance. She further explained that a specific letter was not sent out on Title 7 to all of those jurisdictions inviting them to come, as the Housing Choice Task Force had yet to finish its discussion as to how measure progress. However, they may come, and they may talk about Title 7, but a special effort was not made to invite them. Councilor Burkholder noted that recommendations from the task force are forthcoming. Ms. Oeser noted that four letters were sent out to the jurisdictions that still have compliance issues, and the Chief Operating Officer called them to ensure their awareness of the compliance issues.

Michael Jordan, Chief Operating Officer, said that the struggle facing the Metro Council is that there is broad-based acceptance of all of the titles except Title 7. Hence, the most productive way for the Metro Council to engage in this issue is not in some public hearing. It may be the start of the conversation to talk about Title 7. He said that he thought the Council would face a similar issue in January 2006 with Title 11. In essence, it involves a procedural issue when one of these really tough ones is encountered, where there is real controversy about compliance (for whatever reason). He said there needs to be a process to address them, reiterating that Metro does not really have one to engage and get through it. At least, the Council has been struggling with it up to this point.

Councilor Liberty spoke to the nature of objections, e.g., the burden and expense of reporting. He said that some of the non-compliant jurisdictions are declining strategies designed to move them towards compliance. He thought it would be helpful to know specifically why they are declining all of the strategies, or he said it would be helpful to hear about some examples of successes so they can be shared.

Councilor Burkholder summarized by saying there is a need to define what the problems are, and then define what the Council's choices are in terms of addressing them.

Ms. Oeser spoke about Title 1, the Wilsonville issue. She explained that every jurisdiction is required to submit a capacity analysis. It was originally due in 2002, and every year, jurisdictions are required to report on what the changes are (either positive or negative). This is the original capacity analysis that Wilsonville did not do. She said their capacity analysis was just received a couple of days ago. So while the 2004 report will not be changed, the Wilsonville report will be reflected in the 2005 report. Metro staff will need some time to review the report and make sure the analysis reflects compliance. This is a big deal, as everyone else did their analysis, and they actually started to submit the changes.

Ms. Oeser then spoke about Title 3, Lake Oswego and West Linn. Title 3 requires that local codes are changed to incorporate performance standards that require compliance. The original deadline for this was December 2002. She noted that Clackamas County has requested an exception for the Oak Lodge Center district (not the entire county). She said there would be a quasi-judicial hearing on this on the same day as the Functional Plan compliance hearing. She believes Lake Oswego and West Linn's issue is that they did not complete their work on this before Ballot Measure 37 passed. As a result, they now have concerns about the potential for this to open them up to some claims.

Finally, Ms. Oeser noted that a call was received from Washington County, saying that their Title 7 reports were submitted in December 2004. She said that the report will be revised to include Washington County report before the hearing. [For further details, see the reports submitted for the record]

### **3. CODE CHANGES**

Dick Benner spoke to the proposed revisions to Metro Urban Growth Boundary Code Chapter 3.01. [For further details, see the report submitted for the record]

### **4. COUNCIL BRIEFINGS/COMMUNICATION WORK PLANS FOR EXISTING PROJECTS**

None.

There being no further business to come before the Metro Council, Councilor Rex Burkholder adjourned the meeting at 3:30 p.m.

Prepared by,



Becky Shoemaker  
Acting Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF SEPTEMBER 15, 2005**

<b>Item</b>	<b>Topic</b>	<b>Doc Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
1	Report	9/2/05	To: Metro Council From: Dick Benner, OMA Re: Proposed Revisions to Metro UGB Code Chapter 3.01, Section by Section Analysis	091505c-01
4	Report	8/31/2005	To: Metro Council From: Sherry Oeser Re: Urban Growth Management Functional Plan Annual Compliance Report, Revised Draft	091505c-02
4	Report	9/15/2005	To: Metro Council From: Sherry Oeser Re: Update to Urban Growth Management Functional Plan Compliance	091505c-03