

MINUTES OF THE METRO COUNCIL WORK SESSION MEETING

Tuesday, April 11, 2006
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Carl Hosticka, Rod Park, Rex Burkholder, Brian Newman

Councilors Absent: Robert Liberty (excused)

Council President Bragdon convened the Metro Council Work Session Meeting at 2:02 p.m.

1. DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, APRIL 13, 2006/ADMINISTRATIVE/CHIEF OPERATING OFFICER AND CITIZEN COMMUNICATIONS

Council President Bragdon reviewed the April 13, 2006 Metro Council agenda. Budget amendments are due next week.

2. TRANSPORTATION MEGA PROJECTS

Councilor Burkholder described the inconsistency of regional transportation planning. He referred to an issues memo circulated by Councilor Liberty (a copy is included in the meeting record). He thought it was timely to review existing procedures and make necessary adjustments.

Richard Brandman, Deputy Planning Director, provided a general overview of the policy issues. There were two types of projects: Metro-managed projects and non-Metro managed projects. He gave some examples. He was not aware of any formal agreements with regional partners delineating responsibility. It was being done on a case-by-case basis. The projects presented today were part of the Regional Transportation Plan (RTP). The intent was to use the RTP and the 2040 Growth Concept to underpin future planning. They needed to be able to adapt to changing growth projections.

For Metro-managed projects, there was usually a Council-approved advisory committee. Councilors who serve on these committees represent the Council as a whole as well as their own personal perspectives. The public has also had an opportunity to participate. Evaluation criteria and land use considerations were very important as well. Staff has been accustomed to check in at significant mileposts throughout a project timeline. The locally preferred alternative would be adopted at the end of this process.

For many non-Metro managed projects, there was a similar process, but with a somewhat different cast of characters. Occasional projects appeared to suffer from a lack of significant oversight. Andy Cotugno, Planning Director, described the financially constrained plans, which were the only ones eligible for federal submission. He felt that the issue of funding would impose serious constraints.

In response to Councilor Hosticka, Mr. Cotugno described the Projects of Statewide Significance, as identified by the state. These were projects that were outside the scope of funding provided by the State Transportation Implementation Program (STIP). Mr. Brandman's sense was that there was not complete agreement at the Oregon Department of Transportation (ODOT) on this issue.

Council President Bragdon asked what the difference was, in terms of outcome, regarding who managed these projects. Mr. Brandman thought that Metro-managed projects had a more open approach; Metro tended to have an eye toward multiple modes and larger issues than other entities.

Councilor Park brought up the issue of staffing. Metro was not currently staffed to manage all these mega projects. When would collaboration with other groups be unavoidable? Council President Bragdon agreed this was an important issue requiring future attention. Councilor Newman thought this was a very timely discussion, in view of the RTP update. He felt Metro involvement in all these projects would be a net benefit. He also thought that the opportunities for Council to make policy decisions were currently too far apart.

Councilor McLain commented that greater transparency around the whole process, with open public input, was more important than the specific project manager. Upon her request, Mr. Cotugno clarified past Council decision-making on policy oversight. Councilor Newman suggested that committee alternates might be helpful. Councilor Burkholder summarized some of the issues on the table. He thought there were opportunities for greater coordination between staff and Council.

Councilor Park reminded Council that there were regional partners who were moving ahead based on previous RTPs, and that those commitments should be respected. Also, we needed to recognize the limits of tolerance for Metro involvement. Councilor Hosticka supported the idea of alternate Council liaisons to the various committees. He did not have a specific process in mind, but he thought that better reporting back to Council would be appreciated. Council President Bragdon's main concern was the fiscal piece. We shouldn't be planning and raising expectations for projects that have no chance of being funded. The immediate issue was Council conduct and participation in projects currently on the table. He recognized Councilor Liberty's concern about greater Council/staff communication, although perhaps not on the same scale. Many times, the people implementing the project didn't share the vision for the project. He would appreciate seeing a timetable of major decision points. He was interested in a balance of a specific timeline along with Council flexibility. Mr. Brandman agreed that this would be appropriate information for his staff to share with Council.

Councilor Newman acknowledged the need to keep project costs in mind throughout the discussions. He also felt balance and flexibility, without micro managing, were crucial. Councilor McLain thought the existing process was not broken, by any means, but there were some improvements that could be made. The timelines for some of these projects were measured in decades, in some cases, long past the point where the policy decision-makers were out of the picture.

Mr. Brandman commented on the need to study and plan for projects that were not currently affordable. ODOT's project development shop has been severely constrained, due to Governor Kitzhaber's recognition in the 1990s of the need to use funds to maintain existing infrastructure. He felt that good planning could drive the acquisition of project funding.

Councilor Burkholder concurred. The lack of funding was a significant factor in the RTP. Councilor Park recognized the complexity of transportation planning in relationship to other policy and infrastructure issues. A clear description of current Council policy imperatives could help future Councils. Mr. Cotugno distributed a memo summarizing comments on the Region 1 STIP proposal (a copy is included in the meeting record).

Council President Bragdon reviewed the Council perspective. Basically, Council was looking for a bit better coordination and communication from staff, along the lines of Councilor Liberty's memo but not at the same depth.

3. MEASURE 37 CLAIMS

Richard Benner, Metro Attorney, summarized the process, status of claims, and potential impacts. Paul Ketcham, Planning, distributed a chart showing the claims (a copy is included in the meeting record). Mr. Benner said that nine of the claims were relevant to Metro; nine others had been received but were not under Metro jurisdiction (i.e., outside the urban growth boundary/UGB). The nine under consideration were inside the UGB. Councilor Hosticka asked how it was decided whether a claim was valid. Mr. Benner said the burden was on the claimant to define the reduction in value. Metro's process required an appraisal to be made. The total reduction in property value claimed by the claimants was over \$15 million. Many related to Metro's 20-acre lot size.

Mr. Ketcham reviewed the status of the claims—their place in the process, total dollar value, geographic location, zoning requirements in place at the time of purchase, reduction in value being claimed, and proposed use for the properties. Council and staff discussed issues of when zoning had changed and the various entities that had responsibility for land use regulation.

Mr. Benner stated that each claim would require a hearing. Staff would provide Council with more than one theory in how reduction in value could be measured. Council would have discretion to apply these theories to the individual claims. Councilor Burkholder had a question about sub-division and what decisions had been made about the issue of transferability. Most of these claims were based on the theory that the owner could subdivide and sell. But could they legally do this? Mr. Benner said the issue of transferability had not yet been decided. Dan Cooper, Senior Attorney, advised that there were more questions than answers about how the Measure 37 uncertainties would be resolved. Councilor Newman asked if Council should assume that the claims or waivers were not transferable. Mr. Benner agreed. Mr. Cooper said different jurisdictions have been approaching it differently. Councilor Newman asked what other jurisdictions had been approached by the claimants. Mr. Benner said that most of the claimants had already had their regulations waived by local jurisdictions and were now looking to Metro.

Council and staff discussed the risks to Metro in the different decision options. Councilor Park asked, without comprehensive planning in the disputed areas, how was reduction in value decided? Mr. Benner described some of the factors that staff had been considered. Staff stated that they were collecting market data on sales.

Michael Jordan, Chief Operating Officer, asked about some of the criteria used by buyers and sellers in settling on purchase price. Mr. Benner gave an example. Councilor Hosticka asked for clarification on how to interpret property value in light of the increased value associated with inclusion in the UGB. Council and staff debated the timeline for a property value before and after zoning changes, versus before and after inclusion in the UGB. Councilor Hosticka asked which analysis would take precedence—the “day before/day after regulation” value or the “price I could get on the market today” value. Staff described some of the various theories and criteria involved in assessing reduction in value. Mr. Benner recognized there was no way to know how these cases would be decided in the case they went to court. Councilor Hosticka observed that the cost of litigation would need to be accounted for. Mr. Cooper thought a plaintiff who won a judgment

against Metro might receive a broader waiver than a waiver that might have been granted by Metro during the claims process. Probably the claimant would not then be entitled to the payment of reduction in value. It was unclear whether Metro would have to pay plaintiff's attorney fees; possibly not.

Council debated the level of risk associated with paying claims, waiving regulation, or engaging in litigation. Councilor Newman wondered about the status of these issues, as currently before the courts. Staff gave an update. There are about 30 cases before the state right now. Council and staff discussed some various scenarios that might play out depending on the claimants and their interaction with Metro. Mr. Benner thought there were a variety of tools that Metro could use in deciding these cases.

Council President Bragdon recognized that the questions are extremely complex and not immediately resolvable. He wanted to give staff the direction they needed at this time. Mr. Benner thought there were only seven claims that we needed to worry about right now. He would like to schedule hearings, prepare reports, notify surrounding property owners, and hearings could be held in six weeks or so. Councilor Burkholder thought repeal of regulations was not the best option; Council agreed. The other options were more desirable, especially trying to work out a compromise with the claimants that didn't involve waiver or compensation. Staff described some potential negotiating strategies. Staff confirmed for Council that any final decisions would be brought back before Council. Councilor Park wanted to recognize that this would affect Metro's future risk assessment approach. Council President Bragdon speculated that a test case, with a thorough approach and research by Metro, showing firm commitment to thrashing out the issues, would deter frivolous claims.

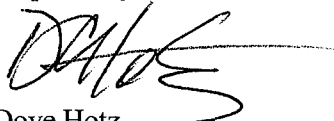
Councilor Burkholder asked for information about what would be expected of claimants, in terms of how they would present their case. Staff discussed the use of appraisals, both Metro's and claimant's, and their role in the process. Councilor Park theorized about Metro's option to just buy claimant's property and then resell it.

4. COUNCIL BRIEFINGS/COMMUNICATIONS

Councilor Hosticka reported that the Bull Mountain group was starting the process to incorporate into a city. No date had been set yet.

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:35 p.m.

Prepared by,



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**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
APRIL 11, 2006**

Item	Topic	Doc Date	Document Description	Doc. Number
1	Agenda	4/13/06	Agenda: Metro Council Regular Meeting, April 13, 2006	041106c-01
2	Transportation Mega Projects	4/10/06	To: Metro Council From: Robert Liberty Re: Council Consultation Points for Major Transportation Projects	041106c-02
2	Transportation Mega Projects	4/5/06	To: JPACT and Interested Parties From: Ted Leybold Re: TPAC Recommended comments on Region 1 STIP proposal	041106c-03
4	Measure 37 Claims	4/11/06	To: Metro Council From: Paul Ketcham Re: Metro M 37 Claims Inside UGB	041106c-04