

MINUTES OF THE METRO COUNCIL MEETING

Thursday, June 29, 2006
Metro Council Chamber

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

Councilors Absent: Carl Hosticka (excused)

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

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSENT AGENDA

3.1 Consideration of minutes of the June 22, 2006 Regular Council Meeting.

Motion:	Councilor Newman moved to adopt the meeting minutes of the June 22, 2006 Regular Metro Council.
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Vote:	Councilors Burkholder, McLain, Park, Newman and Council President Bragdon voted in support of the motion. The vote was 5 aye/0 nay/1 abstain, the motion passed with Councilor Liberty abstaining from the vote.
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4. RESOLUTIONS

4.1 **Resolution No. 06-3707**, For the Purpose of Entering an Order Relating to the Warren and Virginia Young Claim for Compensation under ORS 197.352 (Measure 37)

Sonny Conder, Planning Department, said Paul Ketcham, Planning Department, would be providing a review of the Chief Operating Officer's report. Councilor Liberty said this third claim was similar to the two previous claims. He wasn't sure they needed to hear the entire claim process. Councilor McLain suggested that Mr. Ketcham provide a summary for consistency. She asked if we had received any additional claims. Dick Benner, Metro Senior Attorney, said there were no new claims. Councilor Liberty wanted to know if we had developed a routine of sending our claims to our partners. He also asked about purchase dates and the effects of comparison properties today. Dick Benner, Metro Senior Attorney, responded the fit of the statewide planning goals was different depending upon the claim. In this particular claim, there was a rezoning by Clackamas County. There was no applicability at the time Metro made its decision in 2002. He then explained why they did not see any notation of statewide planning goals.

Mr. Ketcham summarized the staff report for the Young claim. He also provided a summary of the Measure 37 claims process at Metro. The current claim sought compensation of \$195,000 for a claimed reduction in fair market value of property owned by the claimant. In lieu of

compensation, the claimant sought waiver of Metro's 20-acre lot size. The Chief Operating Officer's (COO's) recommendation was summarized on pages 3 and 4 of the report. Councilor Newman asked about zoning at the time of purchase. Mr. Ketcham responded to his question, RRFF5 zoning. Councilor Newman further clarified his question about zoning. Mr. Benner responded that what they had come to see was that it was the local zoning they should be looking at just before Metro Council took action. The zoning at the time the property was brought into the Urban Growth Boundary (UGB) was RRFF5. In the future they would be using the zoning at the time Metro took its action. They then looked at the reports that had been issued. For those claims that it made a difference, they were preparing supplemental analysis. In this particular claim there was no need to do a supplemental analysis. It would not effect the recommendation to Council on this claim. Councilor Liberty talked about the transitional zoning and impacts on the value as well as the methods being used.

Mr. Ketcham continued by reviewing the requirements of Metro Code and the applicability of the Functional Plan requirement to the claim. He reviewed the zoning history of the property. The City of Damascus adopted a resolution waiving its regulation of 5-acre minimum lot size and 20-acre minimum lot size. The resolution also made clear that the claimant must go to Metro to allow for a waiver of the 20-acre lot size. The COO's report addressed the effect of the Functional Plan requirement on fair market lot. The COO concluded that there was no reduction in value. The Metro staff developed methodologies to determine the effect of Metro's action on the claimant's property. He explained the methods that had been used. He explained what would have happened in the property was not brought into the UGB. Using the comparable sales method, the claimant did not suffer any loss. He further explained the second method used, Planting/Jaeger Method. They found no loss to the claimant using this method. The conclusion from the COO's report was that the fair market value was not reduced by Metro's action of bringing the property into the UGB.

Mr. Conder added that this would be the first of several claims were there was a slight change in the comparative sales method. He explained the change. Councilor Liberty asked about the assumption of development years. Mr. Conder responded to his question. He spoke to zoning differences and the impacts on value. Councilor Burkholder said that in each of the calculations used, we have tried to be very conservative in our assessment. We have also attempted to give the claimant the benefit of the doubt and were as liberal as possible on estimation of the value of the property. The issue was fairness. Councilor Liberty asked clarifying questions about values of other properties. Mr. Conder responded to his question.

Councilor Park asked about areas that had been brought into the UGB but have not been concept planned yet. Metro was making a guess on the holding zone that may or may not exist in its current format in several years depending upon the action of the City of Damascus and Land Conservation and Development Commission. He wasn't sure what Damascus was going to do in terms of their concept plan. He asked what was going to be the land designation. He felt Metro had been conservative in its assessment. Mr. Conder said there was considerable uncertainty in how the area would be developed. The claimant also had this concern. His answer was that he was unsure when the actual development in Damascus would occur. They used 10 years for residential purposes and 15 years for employment purposes. Councilor Park suggested additional information would have made it easier to determine the value of the land, such as geotechnical analysis. Mr. Ketcham added that the City of Damascus resolution had a condition that approval must comply with water and sewer requirements. Councilor McLain said they had to answer one simple question; did Metro's action devalue this property? The conclusion of the report was that Metro's action did not devalue the property. Mr. Ketcham said yes, based on the analysis and

assumptions used. Councilor McLain said the two actions were linked, bringing the property into the UGB and 20-acre minimum lot size.

Council President Bragdon opened a public hearing.

Matt Greenhite, Primogenitor Corporation, representing the owners, Virginia and Warren Young, provided a handout. He summarized the document (a copy of which is included in the meeting record). He also noted an email from Dave Hunnicutt about the intent of the Measure. Mr. Greenhite talked about his objection to the methodology Metro used to determine fair market value. He also noted how long Metro had taken to respond to the claim. He felt there was considerable evidence to support their claim. He talked about Metro's greenspaces purchases. He noted Damascus had approved the waiver of this plan. He then explained his methodology for determining value of the property (a copy of his summary is included in the meeting record). He provided a copy of the Table 4: Comparison of Estimated Market Value of Raw Land for Employment with Corridor Overlay and RA-1 Land Uses and his assessment of the differences he found (a copy of this document is included in the record). He then provided comparables of properties (copies of each documentation are included in the record). They were disputing some of the inputs.

Councilor McLain asked if the comparable properties were inside or outside the UGB. Mr. Greenhite responded that one property was in the UGB and the other was not in the UGB. Councilor Liberty asked about his methodology. Mr. Greenhite explained how he had used Metro's methodology and shared the flaws in the analysis. Councilor Park asked for clarification on what he was requesting. Mr. Greenhite said the claimant's intention was to divide the lot into three to four lots. Councilor Liberty said the staff report was based on four lots. Mr. Greenhite provided his interpretation of Metro's analysis. Councilor Liberty asked if they felt they needed more time. Mr. Greenhite said he wasn't sure but they could do a more thorough job with more time. He then said that the use of RRFF5 was totally wrong. He had never seen the use of this zoning with the City of Damascus.

Councilor President Bragdon closed the public hearing.

Councilor McLain suggested staff answer the issues raised by the claimants. Mr. Conder said their understanding was that there were two residences presently on the property. That was two one-acre lots. There was a possibility of two additional lots. Their assumption was that their loss was for two additional lots.

Motion:	Councilor Liberty moved to adopt Resolution No. 06-3707
Seconded:	Councilor Newman seconded the motion

Councilor Liberty said that Metro had covered our bases thoroughly. He then spoke to Goals 3 and 4 and the history of these goals. He concluded that Metro had determined no reduction in value. Councilor Park said the basic concept was that there was a reduction in value based on the action Metro took. Even without knowing what the zoning would actually be in the future, he would be supporting the COO's recommendation. Councilor McLain said this was an example of where Measure 37 fell short. She felt that the staff had been very conservative in its approach. She would also be supporting the resolution. Council President Bragdon concurred that he would be supporting the resolution. Metro's action was a solitary action. If there was no reduction in value, the claim was not valid. Councilor Liberty talked about the methodology used. Metro had actually enhanced the value of the property.

Vote:

Councilors Park, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

Councilor Liberty talked about the Damascus resolution. It would be useful to have inter-staff communication on how Damascus arrived at their conclusion. Council President Bragdon concurred with Councilor Liberty's remarks. Mr. Benner explained how governmental entities were dealing with Measure 37 claims. Many of the governmental entities had no staff or money to deal with analysis. Councilor McLain added her comments about determining the validity of the claim. Councilor Liberty said there was an assumption by some of these governmental entities that there was a reduction. Mr. Benner said there was another part of the analysis that was being disregarded which was what was the value of the waiver. He provided an example in Washington County. He suggested the value of the waiver should be equivalent to the value of the loss. Councilor McLain said the claimant still had to deal with the permit counter. Councilor Burkholder suggested having a work session about Measure 37 claims. Councilor Liberty said this was a good process for the first claims but they felt the process should be shorter.

5. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, said they would get through the first seven claims and then bring Council some recommendations for standardizing the process. He asked for clarification about intergovernmental conversation. Councilor Liberty suggested talking with staff about the differences in how they were processing claims, assessing claims and the potential impact of those differences.

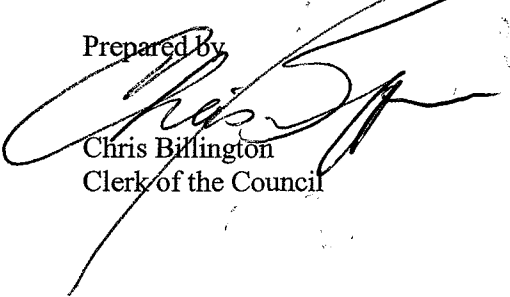
6. COUNCILOR COMMUNICATION

Councilor Newman suggested a work session on Eastside Streetcar. Council President Bragdon concurred and would schedule a session. Councilor Liberty reported on Metro Policy Advisory Committee (MPAC) last night.

7. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:53 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
JUNE 29, 2006**

Item	Topic	Doc Date	Document Description	Doc. Number
3.1	Minutes	6/22/06	Metro Council Meeting Minutes of June 22, 2006	062906c-01
4.1	Objections to the analysis	6/29/06	To: Metro Council From: Matt Greenhite Re: Assessment of Metro's analysis and interpretation of flaws in the analysis	062906c-02
4.1	Comments on Attachment 2	6/29/06	To: Metro Council From: Matt Greenhite Re: Analysis of Table 3 using Plantinga Haeger method	062906c-03
4.1	Table 4 analysis	6/29/06	To: Metro Council From: Matt Greenhite Re: Four comparisons of estimated value of raw land for employment with corridor overlay and RA-1 land uses	062906c-04