

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: September 24, 1998
DAY: Thursday
TIME: 7:00 PM
PLACE: Hillsboro School District Office-West (Board Room)
215 SE 6th Avenue, Hillsboro (Corner of 6th and Washington)

Presenter

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. EXECUTIVE OFFICER COMMUNICATIONS

4. AUDITOR COMMUNICATIONS

5. MPAC COMMUNICATIONS

6. CONSENT AGENDA

6.1 Consideration of Minutes for the September 17, 1998 Metro Council Regular Meeting.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 98-774**, Approving Urban Growth Boundary Locational Adjustment Case 98-5: Valley View, and Adopting Hearing Officer's Report Including Findings and Conclusions. (*Presentation of Hearing Officer's Report and Recommendation*) Valone/
Epstein

8. MCCI PRESENTATION

8.1 MCCI Report Durtschi
A. Status of MCCI following reorganization
B. Status of new subcommittees
C. Subcommittee projects chosen for Public Involvement Planning
8.2 Council Goals for MCCI
8.3 Discussion

9. COUNCILOR COMMUNICATION

ADJOURN

CABLE VIEWERS: Council Meetings, the second and fourth Thursdays of the month are shown on City Net 30 (Paragon and TCI Cablevision) the first Sunday after the meeting at 8:30 p.m. The entire meeting is also shown again on the second Monday after the meeting at 2:00 p.m. on City Net 30. The meeting is also shown on Channel 11 (Community Access Network) the first Monday after the meeting at 4:00 p.m. The first and third Thursdays of the month are shown on Channel 11 the Friday after the meeting at 2:00 p.m. and the first Sunday and Wednesday after the meeting on Channels 21 & 30 at 7:00 p.m.

PUBLIC HEARINGS: Public Hearings are held on all Ordinances second read and on Resolutions upon request of the public. All times listed on the agenda are approximate; items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Consideration of the September 17, 1998 Metro Council Regular meeting minutes.

Metro Council Meeting
Thursday, September 24, 1998
Hillsboro School District Administration Bldg Board Room

MINUTES OF THE METRO COUNCIL MEETING

September 17, 1998

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer) Ruth McFarland, Ed Washington, Don Morissette, Patricia McCaig, Susan McLain, Rod Monroe

Councilors Absent:

Presiding Officer Kvistad convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

None.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the September 10, 1998 Regular Council Meeting.

Motion: Councilor McFarland moved to adopt the meeting minutes of September 10, 1998 Regular Council Meeting.

Seconded: Councilor Washington seconded the motion.

Councilor Morissette requested amendments to the minutes as follows: On page 10 change 1) "he said he did not believe he was responsible for affordable housing problems" adding at the beginning of the sentence "As a citizen we all share equally in the solutions for affordable

housing, a very important problem, as a home builder I don't cause the affordable housing problem and share any disproportionate responsibility." 2) "He said having task force was great but that there was need for more people who ~~actually do it~~" replace with "build housing". 3) "And less people ~~to regulate it~~" replace with "who regulate it."

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously as amended.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 98-771**, For the Purpose of Granting a Yard Debris Processing Facility License to Northwest Environmental and Recycling, Inc. to Operate a Yard Debris Processing Facility and Declaring an Emergency.

Presiding Officer Kvistad assigned Ordinance No. 98-771 to the Regional Environmental Management Committee.

8. RESOLUTIONS

8.1 **Resolution No. 98-2686**, For the Purpose of Approving the Air Quality Conformity Determination for the 1995 Regional Transportation Plan.

Motion: **Councilor Washington** moved to adopt Resolution No. 98-2686.

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

Discussion: **Councilor Washington** deferred to Mr. Andy Cotugno, Transportation Planning Director, to explain this complex issue.

Andy Cotugno said that we were required to demonstrate both a short range plan, in the form of the funding that we allocate, and a long range plan, in the form of the Regional Transportation Plan to meet the air quality standards. This was done through modeling the traffic levels and the emissions from that traffic, assuming the various transportation improvements that were in the plans. In both cases it was limited to the set of improvements that Metro thought we could afford, not the set that we thought we would want, so the plan was referred to as a fiscally constrained transportation plan. Metro's current transportation plan conformity determination had lapsed, since it lapsed Metro was in fact holding up highway construction until the plan was reconfirmed. The Transportation Planning Department had completed a new estimate of vehicle emissions that was included as part of this conformity and had demonstrated that it continued to meet those federal standards. This would now go to federal highways and be approved by the Federal Transit and EPA.

Councilor Morissette asked if this resolution focused on our region, the situations we faced and what we hoped to be able to solve. Was it correct that this was not a regulatory situation or Metro was not requiring anything more than what the law already required?

Mr. Cotugno said that was correct. This demonstrated that if Metro implemented all of the plans we had already adopted in terms of transportation projects, the air actions, industrial regulations and vehicle emissions regulations, that the result was a level of emission that met the standard.

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

8.2 **Resolution No. 98-2691**, For the Purpose of Supporting State Funding for Modernization of Civic Stadium.

Motion: **Councilor Monroe** moved to adopt Resolution No. 98-2691.

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

Discussion: **Councilor Monroe** said this resolution asked the state to help fund the plan to upgrade and improve Civic Stadium. It had been suggested to the Council that if they took this action that there was good likelihood that the governor would include this request in his budget. The study group found that the best solution available to Metro was to upgrade the Stadium to the tune of about \$45 million. This would allow the Stadium to continue to be used by Portland State University for their football program. For Portland State University to build a stadium would be much more costly. It would also allow the Stadium to continue to be used by high school football games and playoffs, helpful in the greater Portland area, because there is no other large stadium in this area. It would also allow for major league soccer to come to Portland. And perhaps Mark and Sammy would even be hitting home runs in Portland in the future. This would be wonderful. Councilor Monroe urged the council's support for this resolution.

Councilor McFarland reviewed an amendment that she was considering bringing forward to Council. She requested Mr. Cooper's presence. She distributed the proposed amendment to the council. She said the amendment would be inserting another paragraph after the third whereas because there had been some question as to whether Metro were advocating the Civic Stadium over all of the other considerations of money that the state had. This amendment would clarify that this concern was not true. She read "whereas Metro supports the concept of state funding for education at an appropriate level consistent with needs of Oregonian as we enter the twenty-first century." She felt this clarified that Metro was not advocating for funding for the stadium over other kinds of legitimate concerns that the state had.

Councilor Morissette said he thought part of the genesis for bringing this amendment forward was his concern over the other priorities that Metro had in the state budget. He had never felt that it was his position to say that someone could not ask for funding. However, he could not support a resolution that said we 'recommend' the use of state funds. Even with the amendment there was still a statement in the resolution which said "be it resolved that the Metro Council hereby supports state funding for modernization of the Civic Stadium in accordance with recommendations from Civic Stadium Advisory Committee." He suggested that without deleting that phrase from the resolution, he would have difficulty supporting the legislation. He was not suggesting that this amendment would in fact do that, he felt that this amendment made a good point but did not resolve his concern when this resolution was brought forward. There was an issue as we move forward on the Civic Stadium, not that he would represent himself as an expert on the stadium or how to use it but he did consider himself an expert on the private markets throughout this region, and he believed that there was some opportunities with the Civic Stadium where if Metro gave up control that some people may be willing to take the stadium over with some assurance as to what the requirements may be. They might not need any funding or much more limited funding. Schools could still use the Stadium and he had no problem, as stated earlier, giving someone the authority to ask for funding but he did have a problem with

recommending funding because he clearly understood the demands that would be on the state budget this session. He could not support, in any form, the request for funding.

Councilor McCaig added that she voted against this in committee for exactly those reasons. She felt very strongly that the competition for lottery dollars was unbelievable and it was not appropriate. She said she would not support a measure to dedicate those funds but she would support an amendment, if there was one, to send a resolution to the state regarding the importance of the Civic Stadium and how they would like to have it reviewed for possible consideration of funding. She would not be comfortable with the resolution as drafted.

Councilor McLain said she read the "be it resolved" clause to mean they were doing exactly that. She felt it said the Metro Council supported state funding for modernization of Civic Stadium in accordance with the recommendations of the Civic Stadium Advisory. She felt they were suggesting support while understanding there were competitions out there that had to be won. She said she could support the resolve clause because they had already supported the Civic Stadium concept as being workable and efficient and also because they had agreed to the lightrail and supported the housing and mixed use community being built around it. She said she had ridden lightrail in 4 days this week and saw that community as being anchored by the stadium in many ways. She felt it was appropriate for the Council to support that type of funding as the case was made. She did not feel they were trying to prioritize in any way, but that they recognized that they had a salesmanship job to do to convince the public, not just the legislature, that this was something that needed to happen in the short term this year out of this budget. She felt the "whereas" clause meant they were suggesting that this was a good project or a good conversation to have.

Presiding Officer Kvistad asked if Councilor McFarland would like to introduce her amendment at this time.

Councilor McFarland thanked him for the opportunity and said she did not want to introduce it if some councilors had trouble with it. She wanted to hear what other councilors had to say before she introduced it to see if there was enough support for it.

Councilor Washington asked if Councilor McFarland's amendment was saying they supported education and were not trying to do anything at the expense of education.

Councilor McFarland responded she had tried to convey with the amendment that they were not recommending this kind of funding over all others, but were recommending it be one of the ways considered. She said perhaps the language in the amendment was not totally pleasing to everyone.

Councilor Morissette said he understood what the amendment did. He asked Mr. Cooper if they were asking the state to consider funding the renovation of Civic Stadium. It was his position that he didn't want to recommend that the state fund the renovation.

Mr. Dan Cooper, Legal Counsel, said it was a policy matter not a legal matter and the councilors should vote the way they were most comfortable with.

Councilor Morissette did not feel his was a policy question. He said that even with the proposed amendment, as he understood Mr. Cooper's review, this resolution was requesting that the state fund the improvements to the Civic Stadium.

Mr. Cooper responded the amendment did not change the "be it resolved" portion of the resolution.

Councilor McLain said the last whereas clause said "Metro encourages all stakeholders to participate in a mixed funding plan" to see what opportunities were out there and to review what would be appropriate for the state to partner in the stakeholder's group. She thought that was a conversation that was needed. She said for those reasons, the resolution and the "be it resolved" clause didn't bother her. She said they all recognized there was a limited amount of dollars available and they would have to have the full debate on where those dollars would be used during this budget season. She said it did not say they recommended, rather that they supported state funding and if the money was available for this type of a mixed funding plan they believed Civic Stadium would be a good facility.

Councilor Washington clarified with Mark Williams that there was no guarantee of receiving the funding they were asking for, that they were saying they wanted money like everyone else and they hoped they would get it.

Mr. Mark Williams, MERC General Manager, responded yes.

Presiding Officer Kvistad commented that this request was at the direction of the City of Portland who owned the facility and Metro was concurring with direction from MERC who was asking to do this.

Mr. Williams said the City of Portland owned the facility which was managed by Metro through MERC pursuant to the consolidation agreement between the city and Metro.

Presiding Officer Kvistad said he fully supported the City of Portland going forward with whatever funding package they cared to and he would never criticize them for doing that. He said while he had some pretty harsh words for it when Metro was discussing taking over and possibly owning the facility. He was not sure he was comfortable asking the state for funding when Metro did not own the facility. He said he would not stand in the way of the City of Portland asking but that he would probably not vote in favor here.

Councilor McCaig added that in her brief experience Metro had never found a crisis they didn't want to fund and every time they got appointed to a task force they got a request for money. She asked for the record to be very clear that Metro was not a dream or a hope residing among any of the commission or task members to be asked for any money to contribute to this project.

Mr. Williams confirmed that Metro was neither a dream nor a hope with respect to this particular funding plan. The contemplation of the plan was that \$15 million would be sought from the state, \$15 million from the City of Portland, and the remaining \$15 million to be made up of other stakeholders. His view of what that meant was primarily private money. He was not contemplating asking Metro for any money.

Presiding Officer Kvistad said Metro needed to focus on their own facility needs and they were looking at a seismic problem at Expo that would need attention in pretty short order and could cost up to \$8 million to fix.

Councilor McFarland responded to Councilor McCaig that she had chaired the committee and had not heard anyone say Metro would be funding the Civic Stadium. She thought it was pretty clear to them that Metro would not provide funding. She said MERC had operated the stadium in the black over the past three years since they had taken over the operation of it. She felt it was a facility worth keeping and fixing. She recommended it as a good business move.

Councilor Washington said he would like to go ahead and vote.

Presiding Officer Kvistad said his vote today would not reflect his disapproval for the city going forward on this. What they chose to do was fine with him. His vote was to whether or not Metro participated.

Councilor Monroe said there seemed to be quite a bit of misunderstanding. He said no Metro dollars were being asked for, there was a \$45 million plan asking for \$15 million from the city, \$15 million from the state, and \$15 million from private developers and other sources. He said some people had eluded to the fact that this may reduce funding for public education. He said if that were the case he certainly would not be supporting it having been a public school teacher for 20 years and a strong supporter of school funding. He said education funding was a critical and most important need for the state and this measure would not change that in any way. He said there also seemed to be an attitude by some that they could just keep on going the way they were and do nothing. He said that was not an option. The stadium had to be fixed or torn down and replaced by something else. He thought it would be tragic to lose it as a sports site at a time when the rest of the nation had for the last 20-30 years been moving sports facilities out onto good farmland at the fringe, creating miles and miles of parking lot and increasing traffic congestion out of the city to the sports facilities and back in. Now we were seeing for the first time a movement in some cities to reverse that and to go back to building sports facilities in an inner city area where there were people that lived around them and where transit could take them to the sports facility. We had a facility like that right downtown and we just built a lightrail line right by it. This was completely consistent with 2040 development. This would allow for some housing and some commercial activity in the area, it was not just about the stadium itself but about a redevelopment of this entire area. A redevelopment that he thought was extremely exciting. He was very pleased to offer his support to this measure, it simply requested that the state consider this as an important issue in economic development and consider that \$15 million in lottery dollars would certainly be well spent as their share. He urged the council to vote aye.

Vote: The vote was 4 aye/ 3 nay/ 0 abstain. The motion passed with Councilors Morissette, McCaig and Presiding Officer Kvistad voting no.

Presiding Officer Kvistad thanked Mark Williams, Manager of MERC and Maria Rojo de Steffey, Manager of the Civic Stadium, for being available to answer questions on this matter.

8.3 **Resolution No. 98-2700**, For the Purpose of Accepting Nominee Phil Dreyer to the Metro Committee for Citizen Involvement (MCCI).

Motion: **Councilor McLain** moved to adopt Resolution No. 98-2700.

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

Discussion: **Councilor McLain** said this was for accepting a nominee, Phil Dreyer, to the Metro Committee for Citizen Involvement (MCCI). She said MCCI had gone through the appropriate process and there were MCCI representatives present if there were questions.

Councilor McFarland commented that Phil Dreyer had been a long-time activist interested in a lot of things. She noted his strong background and said she thought he would bring much to MCCI and to Councilors in the way of helping them understand some of the issues important to him. She felt he would be a good addition to the committee.

Councilor Monroe said he had known Phil Dreyer for at least 20 years. He said Mr. Dreyer would be a positive addition to MCCI and urged Council's support of the nomination.

Councilor McLain said his application had indicated his interests were water issues as well as the no sales tax issue. She thought Metro had a lot of watershed planning programs that he would be very interested in reviewing as part of the citizen participation.

Vote: The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed with Councilor McCaig voting no.

Aleta Woodruff noted that Mr. Dreyer was unavailable due to jury duty.

9. CONTRACT REVIEW BOARD

9.1 **Resolution No. 98-2693A**, For the Purpose of Authorizing the Issuance of a Request for Proposals for Parking Management Services for the Grand and Irving Parking Garage.

Motion: **Councilor McCaig** moved to adopt Resolution No. 98-2693A.

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

Discussion: **Councilor McCaig** said this item had passed out of the Regional Facilities Committee unanimously. She said since Metro had been managing the parking garage since about 1991 they had contracted with a firm who did the day to day management. That contract would expire October 31. She explained this was the authorization to go forward with the request for proposal. In the context of the RFP a person showed up to testify. As a result of his thoughtful comments, the RFP was amended to make it easier for some competition. The cumulative operating expense was changed from \$250,000 to \$200,000 and the 5 years operating experience originally requested was changed to 4 years which he felt would allow greater ability for other people to apply for the contracts. She said the contract would be roughly \$35-40,000 when it was finally approved and be for 3 years.

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

10. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.

10.1 **Resolution No. 98-2702**, For the Purpose of Authorizing the Executive Officer to Purchase Property in the East Buttes/Boring Lava Domes Target Area.
Members Present: Jim Desmond, Charles Ciecko, Tim O'Neil, members of the media, Joel Morton, William Edy, Amy Chestnut.

Motion: **Councilor McFarland** moved to adopt Resolution No. 98-2702.

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

Discussion: **Councilor McFarland** said a research report on birds she had just read said it was more important than we had realized to have contiguous pieces of habitat for various and sundry kinds of animals. She said one might not think that would be so important for birds as for ground animals, but it was so that the animals could move unimpeded from one place to another and have the population open to more production.

Councilor Morissette felt the reason this was before the Council as opposed to just going through the normal channels was that in the due diligence process the staff had found there was a landfill there. He said he been satisfied in the Executive Session that Metro would be held harmless and any potential or continuing liability this property would generate would be minimal. He said he did not have any problems with acquiring the property.

Councilor McCaig said she was impressed with the book list and said she would support the resolution.

Councilor McFarland to clarify for Councilor McCaig that when she was dealing in politics her games and fun were science and when she was being a scientist, her games and fun were politics. Somehow they balanced.

Mike Burton, Executive Officer, asked to have the DEQ representative on record with the department's position.

Alan Kiphut, 811 SW 6th Ave., Portland, Coordinator of Voluntary Clean up Program, DEQ, said he was here to answer questions about the purchase agreement program which had been in existence for about 3 years. He said it was basically to limit the liability of innocent parties buying property that had some contamination on it.

Presiding Officer Kvistad said it was his understanding that Mr. Kiphut had looked at the property and Metro would be held harmless in perpetuity.

Mr. Kiphut said that was correct.

Presiding Officer Kvistad said Metro would do monitoring for a 5 year period.

Mr. Kiphut clarified that the negotiations between DEQ and the Council specified a 3 year period of monitoring of the surface water with some additional sampling of the sediments in the creek.

Councilor Washington asked about construction in the area. He asked if the land could be farmed in the future.

Mr. Kiphut said one of the conditions being discussed was if Metro did any kind of excavation work or development of the property, which would probably be paths or hiking trails and nothing major, it could kick in some responsibility to deal with whatever was found during that construction.

Councilor McFarland insisted the land would be purchased for human and animal habitat as well as plant life, and not to dig up and cash in on in the future. She urged an aye vote.

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

11. COUNCILOR COMMUNICATION

Councilor Morissette asked the Presiding Officer to have a discussion about the proposed public hearings for the movement of the UGB.

Presiding Officer Kvistad said determinations for notice requirements and hearings would be met at the Metro Growth Management Committee at next Tuesday's meeting.

Councilor Morissette reiterated that the things to be discussed at the Growth Management Committee were the process to move the UGB, the review of the Urban Reserves Productivity Study and Peer Review, specific Urban Reserves including what the Executive had recommended, dates for public hearings and final decisions. He said his goal would be to move the tentative schedule for the final decision from December 17, which was the last meeting of the year, and use December 3 as the target date due to the enormous amount of work involved in the process.

Presiding Officer Kvistad said they would shoot for December 3 for finalizing and making the determination and if there was further work to do the other dates would be the fall backs. He said the productivity analysis and peer review were not necessarily scheduled for the Growth Management Committee as they were going to have a pretty good sized discussion already, but they could discuss it. He said he wanted to discuss generally the things to come and then move forward as quickly as possible. He thought the Council had general agreement that the public hearings should be done in a timely manner. He said it was his intention following the Growth Management meeting to get the finalized meeting schedule to Council so everyone knew exactly what was coming and where they were.

Councilor Morissette said this was the final decision on where the boundary would be moved.

Presiding Officer Kvistad said they all realized this was to facilitate the 50% move they were required to make this year, and not to facilitate 100% of the need. He said the other 50% need would be considered in a process next year.

Councilor Morissette wanted to make sure the 45 day notifications would be in compliance so meeting the December 3 goal date actually had an opportunity to happen. He thanked the Presiding Officer for his reassurances.

Councilor McLain said it was her understanding that, in the past, i.e. in Wilsonville, they had a resolution from the full Council to go ahead with that 45 day notice. She asked if this schedule accommodated that council decision so it would be a council notice and not a singular committee notice.

Presiding Officer Kvistad said the notice would come from the decision made at the committee meeting next Tuesday. He said it did not necessarily need to come from the Council as a whole. He did not foresee any problems because they were already mostly in agreement. He said he wanted it to be very open and everyone was welcome to sit through it. He said once the decision was made about the timeline it would be noticed almost immediately.

Councilor McLain asked Mr. Cooper if what the Presiding Officer just said, that the notice would be let after the committee meeting next Tuesday, did that mean it would be a council sanctioned notice or simply some committee members making a decision.

Mr. Cooper said the giving of the notice was an administrative act and did not in any way bind the council to make any particular decision. He said it gave notice that they could potentially be making a decision. He said under council rules, the Presiding Officer administered the council department and could take whatever guidance he wanted to in putting the notice out and how he would do that.

Presiding Officer Kvistad said rather than make the notice decision himself, he was going to make sure it happened in committee.

Councilor McLain asked Mr. Cooper and Presiding Officer Kvistad if the notice itself was generic and would not specifically name out sites but simply say a decision would be made that could potentially include the following material.

Mr. Cooper said the notice would have to specify all of the properties that would potentially be considered for being included inside the urban growth boundary. He said it did need to be property specific.

Councilor McLain said her understanding then, was the notice they would be giving would simply be a wide net of the possible decisions that might be before Council in the next 3 months.

Presiding Officer Kvistad they would try to give a range of what they felt would be discussed so the sites would be noticed.

Councilor McLain was concerned about the specificity of this particular process because they had given every indication to their MPAC partners that it would be a review of a particular set of first tier, or productivity results on particular urban reserves. She wanted to make sure they did not give a mixed message and that it was very clear this was simply giving notice that there were potential decisions to be made, and that it did not in itself make a decision.

Presiding Officer Kvistad said it would give notice that a decision would be moving forward and which sites could potentially be included, but beyond that there were no proposals from the Council on the table at MPAC. He said the Executive had moved forward a proposal but it was just a recommendation and was not before council as an action item. He said they could look at that as well.

Mr. Cooper said there were two relevant notice requirements, first notice had to be published in the newspaper 45 days before the hearings as to which properties were potentially being considered. He said it needed to give property description so someone reading it could know where it was. Secondly, 20 days before the hearing, individual mailed notice to all property owners in the area being considered plus anybody who lived within 500' of those boundaries needed to be sent. He said those were the 2 turning points for making decisions on how much notice to give on what land. He said the printed notice in the paper was just one step.

Presiding Officer Kvistad said the determination would be made at Growth Management Committee and everyone was free to come and participate. He said the dates for the Council public hearings had been set for November 10th, 12th, 16th, and 19th.

Councilor Morissette hoped that they would have an opportunity to discuss the final conclusions and still meet the notice requirements. He assumed the dates would work but said it made him nervous with the site specific notification of 20 days that it would not lead to a December 3 decision. He wanted to know if the dates could be reviewed so between now and next Tuesday.

Mr. Cooper responded yes they could.

Presiding Officer Kvistad introduced the new intern, Wendy Kirkpatrick, a PSU graduate student, who had been previously working for Bev Stein at the Multnomah County Commission. He noted the council meeting on September 24th would be held at the Hillsboro School District's administrative building west, in the board room.

Councilor McLain invited the council for dinner before that meeting, her treat. She encouraged the councilors to use the new lightrail line as it stopped right next to the building where the meeting was to be held. She asked Mr. Cooper to remind council of the process for the upcoming public hearing officer's first report on one of the urban growth boundary locational adjustments. She asked if it was for the information to be presented.

Mr. Cooper said it was a first reading of the ordinance and did not go to committee. He said people could testify in favor or against the hearing officer's report and then the council would continue it. He said if there was a problem and it needed to be sent back to the hearing officer a tentative vote on that could occur, otherwise it would be passed over for second reading and a final vote the following week. He said he would send a memo to the councilors explaining the quasi-judicial process and procedures for locational adjustments.

Councilor Monroe noted why he could not attend the next council meeting.

Presiding Officer Kvistad urged attendance at the Growth Management Committee meeting Tuesday, September 22nd.

Metro Council Meeting

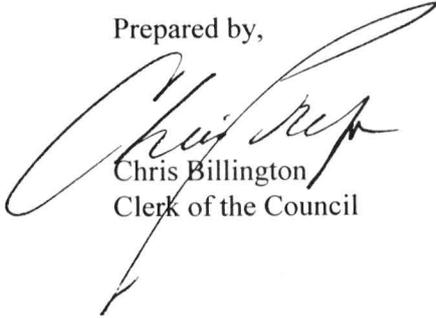
September 17, 1998

Page 12

12. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Kvistad adjourned the meeting at 3:25 p.m.

Prepared by,

A handwritten signature in cursive script, appearing to read "Chris Billington".

Chris Billington
Clerk of the Council

Agenda Item Number 7.1

Ordinance No. 98-774, Approving the Urban Growth Boundary Locational Adjustment Case 98-5; Valley View, and Adopting Hearing Officer's Report Including Findings and Conclusions.

Presentation of Hearing Officer's Report and Recommendation

Metro Council Meeting
Thursday, September 24, 1998
Hillsboro School District Administration Bldg Board Room

BEFORE THE METRO COUNCIL

APPROVING URBAN GROWTH BOUNDARY) ORDINANCE NO. 98-774
LOCATIONAL ADJUSTMENT CASE 98-5:)
VALLEY VIEW, AND ADOPTING THE HEARING)
OFFICER'S REPORT INCLUDING FINDINGS) Introduced by Mike Burton,
AND CONCLUSIONS) Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for 19.18 acres located north of Tualatin Valley Highway immediately east of the City of Cornelius in Washington County, as shown in Exhibit A; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearing Officer, recommending denial of the petition due to existence of similarly situated contiguous land to the site which caused the petition to exceed the 20-acre maximum; and

WHEREAS, the petitioner amended the application to exclude the similarly situated land and reduce the acreage to 15.27 acres, as shown in Exhibit B, and staff changed its recommendation to approval; and

WHEREAS, Metro held a hearing to consider the petition on June 29, 1998, conducted by an independent Hearing Officer; and

WHEREAS, The Hearing Officer submitted his report on July 29, 1998, recommending approval of the amended petition for 15.27 acres; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. To accept the Hearing Officer's *Report and Recommendation*, as attached herein as Exhibit C; and
2. The Hearing Officer's *Findings, Conclusions & Final Order*, attached herein as Exhibit D, be adopted approving the petition in Case 98-5: Valley View.

3. The urban growth boundary is amended to include approximately 15.27 acres as shown on map in Exhibit C.

ADOPTED by the Metro Council this ____ day of _____, 1998.

Jon Kvistad
Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper
General Counsel

I:\GM\UGBadmt.98\98-5,ValleyView\MCordinance

Attachment A Site Map

Proposed UGB Locational Adjustment
Case: 98-5 Valley View

 Subject Property

 Urban Growth Boundary

98-5 Valley View

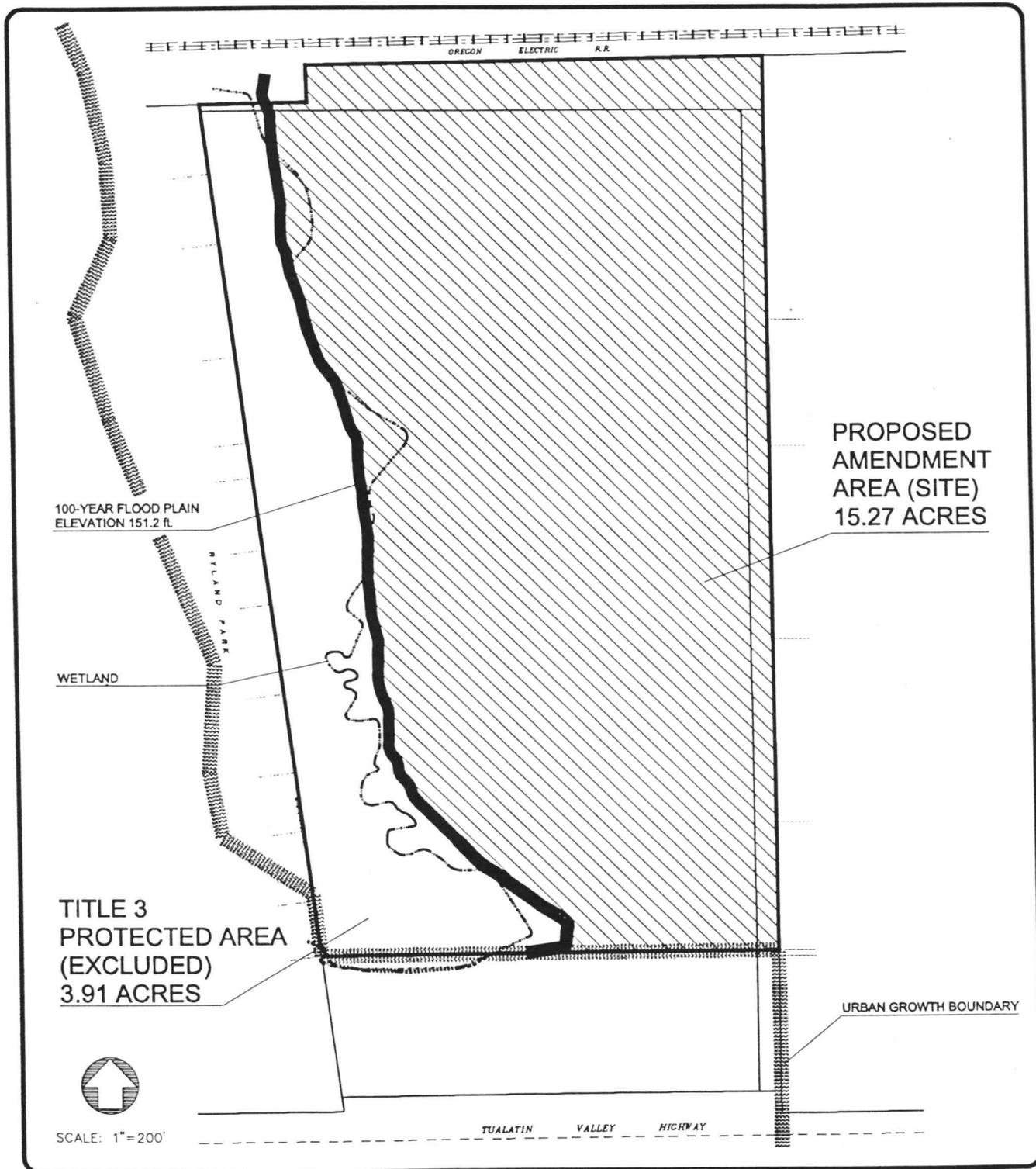


1" = 600 feet



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us



SCALE: 1" = 200'

PREPARED FOR:

Jerry Davis
 34265 S.W. T.V. Highway
 Hillsboro, Oregon 97123
 ph: (503) 648-7826

CONSULTING ENGINEERS
 LAND SURVEYORS
LDC DESIGN GROUP
 233 S.E. WASHINGTON ST.
 HILLSBORO, OREGON 97123
 PH: (503) 648-4061
 FAX 503 - 681-7846
 EMAIL: lrd@l-d.com



DRAWING TITLE:

Valley View Mobile Court
 100-Year Floodplain Map
 Tax Map 1N3-35C
 Washington County, Oregon

CADD File: 2223flood, plotted 6/29/98 by CEB

JOB NO.:

2223

DRAWING NO.:

1
 of 1

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Valley View Mobile Court) HEARINGS OFFICER'S
4 Inc. for a Locational Adjustment to the Urban Growth) REPORT AND
5 Boundary at 34265 SW Tualatin Valley Hwy. east of the) RECOMMENDATION
6 City of Cornelius in unincorporated Washington County) **Contested Case No. 98-05**
7

8 I. INTRODUCTION

9
10 This report contains a summary of the findings the hearings officer recommends to
11 the Metro Council regarding a petition for a locational adjustment to the Urban Growth
12 Boundary ("UGB"). The petition raises the following major issues:
13

- 14 • Whether the petitioners bore the burden of proof that including the proposed
15 developable area in the UGB increases the efficiency of service to land already in the UGB;
16
17 • Whether the petition includes all similarly situated lands;
18
19 • Whether granting the petition results in a superior UGB; and
20
21 • Whether petitioners bore the burden of proof that granting the petition will not
22 result in adverse environmental, energy, economic or social consequences.
23

24 II. SUMMARY OF BASIC FACTS

25
26 1. On April 23, 1998, Valley View Mobile Court ("petitioners") completed filing a
27 petition for a locational adjustment to the UGB. The amended petition proposes to add to
28 the UGB a 15.27-acre parcel identified as portions of tax lots 500, 590 and 600 (the
29 "subject property"). It is now situated in unincorporated Washington County. If included
30 in the UGB, the subject property could be annexed to the City of Cornelius or remain in
31 unincorporated Washington County.
32

33 a. The subject property is north of the Tualatin Valley Highway, east of the
34 City of Cornelius and south of the Oregon Electric Railroad right of way. Land already in
35 the UGB (in Cornelius) abuts the south boundary of the property and a small portion of the
36 west boundary.

1 b. The Washington County Comprehensive Plan designation for the subject
2 property is Rural/Natural Resource. It is zoned AF-5 (Agriculture/Forest, 5-acre minimum
3 lot size). The subject property is in an exception area to Statewide Goals 3 and 4. Adjoin-
4 ing land to the south in the City of Cornelius is designated and zoned for commercial use.
5 Land to the west, also in the City of Cornelius, is designated and zoned for residential use.
6

7 c. The subject property is currently developed with a 63-unit mobile home
8 park. The mobile home park is currently served by on-site septic systems that have failed.
9 Failure of the existing drainfields is creating a public health hazard.
10

11 d. The majority of the subject property is relatively flat with areas of steeper
12 slopes along the west and southwest edges where it slopes down towards the Job Creek
13 floodplain. In addition, a drainage swale extends into the site from the west just north of
14 the middle of the site.
15

16 d. With the exception of public sewers, all urban services are currently
17 provided to the subject property. The petition was accompanied by comments from
18 relevant service providers, each of whom certified they can provide urban services in an
19 orderly and timely manner. The City of Hillsboro Water Department, the Cornelius Rural
20 Fire Department, the Oregon Department of Transportation and Tri Met took a neutral
21 position regarding the application. The City of Cornelius and the Cornelius Police
22 Department opposed the application due to concerns about negative net tax consequences.
23

24 e. Petitioners propose to maintain and possibly expand the existing mobile
25 home park. They propose to extend public sewers to the subject property to replace the
26 failing septic systems and to eliminate the existing public health hazard.
27

28 2. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed
29 public hearing on June 29, 1998 to receive testimony and evidence in the matter of the
30 petition. Three witnesses testified in person, including a staff member from Metro, the
31 petitioner's representative, and a neighbor.

1 III. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS

2
3 1. A locational adjustment to add land to the UGB must comply with the relevant
4 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). Compliance with two of
5 these standards was not disputed (MC §§ 3.01.035(c)(4) and (c)(5)). The following
6 findings highlight the principal policy issues disputed in the case.

7
8 2. MC § 3.01.035(c)(1) requires the petitioner to show that public facilities can
9 serve the area to be added and that the adjustment results in a net improvement in the
10 efficiency of public facilities and services for land already in the UGB. Petitioners showed
11 that the subject property can be served by the relevant public facilities.

12
13 3. Metro rules do not define how to calculate net efficiency of urban services. The
14 hearings officer concluded the Council has used a two-tiered burden of proof regarding
15 public service efficiencies. When a petition involves property already developed for urban
16 uses and served by public facilities, the Council has required a lesser showing of service
17 efficiencies, presumably because the locational adjustment has relatively little impact.
18 When a petition involves undeveloped property, Council has required a greater showing of
19 service efficiencies, because the locational adjustment would allow a more significant land
20 use change.

21
22 a. In this case, the subject property is developed for urban residential uses
23 (and has been for more than 30 years) and is served by all urban facilities, except sanitary
24 sewers. Therefore the hearings officer applied the lower burden of proof.

25
26 b. The hearings officer found that the locational adjustment marginally
27 increases the efficiency of sewer service, because it allows extension of gravity flow
28 sewers through the site to serve adjacent properties within the UGB. It also facilitates
29 elimination of the existing public health hazard caused by failing septic systems on the
30 subject property.

31
32 4. MC § 3.01.035(c)(2) requires the amendment to facilitate permitted development
33 of adjacent land already in the UGB. The hearings officer found the petition complied with
34 this standard, because including the subject property in the UGB facilitates sewer service to
35 two commercially zoned properties south of the site necessary for permitted development of
36 those parcels.

1 5. MC 3.01.035(c)(3) requires consideration of environmental, energy, social and
2 economic consequences of the petition. It requires that any impact on regional transit
3 corridor development must be positive. It also requires hazards to be addressed.

4
5 a. The hearings officer found that the petition will result in positive
6 environmental impacts by eliminating the existing public health hazard on the subject
7 property and the potential contamination of wetlands and water bodies on and near the site.

8
9 b. The hearings officer found that there are no significant adverse
10 environmental, energy, social or economic consequences of the locational adjustment.

11
12 c. The hearings officer found that, because the subject property is already
13 developed, approval of the petition will have no impact on a regional transit corridor.

14
15 6. MC § 3.01.035(f)(3) requires a proposed location adjustment to include all
16 similarly situated lands. The hearings officer found that the proposed adjustment includes
17 all similarly situated lands. The subject property is developed with a mobile home park.
18 Adjacent lands are vacant or developed with low density rural residential uses.

19
20 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
21 UGB. The hearings officer found the proposed UGB is superior, because it allows
22 extension of public services to otherwise undevelopable properties within the UGB,
23 recognizes existing urban development and eliminates an existing public health hazard.

24
25 IV. ULTIMATE CONCLUSION AND RECOMMENDATION

26
27 For the foregoing reasons, the hearings officer concludes the petition complies with the
28 relevant approval standards for a locational adjustment adding land to the UGB. Therefore
29 the hearings officer recommends the Metro Council grant the petition, based on this Report
30 and Recommendation and the Findings, Conclusions and Final Order attached hereto.

31
32 Respectfully submitted this 29th day of July, 1998.

33
34 

35 Larry Epstein, AICP
36 Metro Hearings Officer

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Valley View Mobile Court) FINDINGS,
4 Inc. for a Locational Adjustment to the Urban Growth) CONCLUSIONS &
5 Boundary at 34265 SW Tualatin Valley Hwy. east of the) FINAL ORDER
6 City of Cornelius in unincorporated Washington County) **Contested Case No. 98-05**
7

8 I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD
9

10 1. On March 27, 1998, Valley View Mobile Court Inc. ("petitioner") completed
11 filing a petition for a locational adjustment to the Urban Growth Boundary ("UGB"),
12 including Exhibits required by Metro rules for locational adjustments. See Exhibit 1 for the
13 original petition for locational adjustment (the "petition"). The petitioner subsequently
14 revised the petition to exclude lands within the 100-year floodplain. See Exhibits 13, 14
15 and 15. Basic facts about the petition, as revised, include the following:
16

17 a. The land to be added to the UGB is described as portions of Tax Lots
18 500, 590 and 600, Section 19, Tax Map 1N3-35C, Washington County (the "subject
19 property"). It is north of Tualatin Valley Highway ("TV Highway"), south of and abuts
20 the Oregon Electric Railroad right of way and east of the City of Cornelius. The west
21 boundary of the subject property follows the upland boundary of the 100-year floodplain
22 for Job Creek. The UGB forms the south and a small portion of the west edge of the
23 subject property. Moving north, the UGB moves away from the subject property,
24 following the western edge of the 100-year floodplain. Land to the south and west of the
25 subject property is inside the UGB and the City of Cornelius. See Exhibits 1 and 11 for
26 maps showing the subject property.
27

28 b. The subject property is a roughly rectangular-shaped parcel about 1300
29 feet north-south by about 600 to 700 feet east-west. It contains 15.27 acres. It is in an
30 exception area to Statewide Planning Goals 3 and 4. It is designated "Rural/Natural
31 Resource" on the acknowledged Washington County Comprehensive Plan Map and is
32 zoned AF-5 (Agriculture/Forest, 5-acre minimum lot size).
33

34 c. The majority of the subject property is relatively flat with areas of steeper
35 slopes along the west and southwest edges where it slopes down towards Job Creek. A

1 drainage swale extends into the site from the west just north of the middle of the site. See
2 Exhibit 16.

3
4 d. The subject property is currently developed with a 63-unit mobile home
5 park. The mobile home park is currently served by on-site septic systems. Failure of the
6 existing drainfields is creating a public health hazard. The petitioner proposes to extend
7 public sewers to the subject property to replace the existing septic system.

8
9 e. The petition was accompanied by comments from affected jurisdictions
10 and service providers. See Exhibits 1, 2 and 5.

11
12 i. The City of Cornelius opposed the petition, arguing that the cost
13 of extending services to the subject property would exceed any tax benefit received. See
14 Exhibit 2.

15
16 ii. The Washington County Board of Commissioners adopted an
17 order in which it made no recommendation on the merits of the petition. See Exhibit 6.

18
19 iii. The City of Hillsboro Water Department, the Cornelius Rural
20 Fire Department, the Oregon Department of Transportation and Tri Met commented that
21 they currently provide services to the subject property and will continue to do so. Approval
22 of the petition would not improve efficiency of service delivery in the UGB. They took a
23 neutral position in regard to the petition. See Exhibit 15 to the petition, Exhibit 1.

24
25 iv. The Hillsboro School District testified that it was unable to
26 respond to the potential impacts of the petition without further information about potential
27 zoning changes on the subject property. See Exhibit 15 to the petition, Exhibit 1.

28
29 v. The Unified Sewerage Agency of Washington County (“USA”)
30 testified that the subject property is not located within the Agency’s service area, but is
31 located within the drainage basin. It appears the subject property can be served by gravity
32 sewers from an existing sewer line located 700 feet south of the subject property. USA
33 was unable to formulate an opinion regarding the relative efficiency or economic impact of
34 providing services to the subject property. See Exhibit 15 to the petition, Exhibit 1.

35

1 vi. The Washington County Sheriff's Office commented that it
2 could serve the subject property, and that approval of the petition would improve efficiency
3 of service delivery in the UGB. The Sheriff's Office expressed support for the petition.
4

5 vii. The Cornelius Police Department opposed the petition, citing
6 the City's opposition to annexation.
7

8 2. Metro staff mailed notices of a hearing to consider the petition by certified mail
9 to the owners of property within 500 feet of the subject property, to the petitioner, to
10 Washington County, to the City of Cornelius and to the Department of Land Conservation
11 and Development ("DLCD"). A notice of the hearing also was published in *The Oregonian*
12 at least 10 days before the hearing.
13

14 3. On June 29, 1998, Metro hearings officer Larry Epstein (the "hearings officer")
15 held a public hearing at the Cornelius City Hall to consider the petition. All exhibits and
16 records of testimony have been filed with the Growth Management Services Division of
17 Metro. The hearings officer announced at the beginning of the hearing the rights of
18 persons with an interest in the matter, including the right to request that the hearings officer
19 continue the hearing or hold open the public record, the duty of those persons to testify and
20 to raise all issues to preserve appeal rights, the manner in which the hearing will be
21 conducted, and the applicable approval standards. The hearings officer disclaimed any *ex*
22 *parte* contacts, bias or conflicts of interest. Three witnesses testified in person.
23

24 a. Metro planner Ray Valone verified the contents of the record and
25 summarized the staff report (Exhibit 11), including basic facts about the subject property,
26 the UGB and urban services, and comments from the service providers. He noted the
27 petitioner amended the petition to exclude land in the 100-year floodplain. The western
28 boundary of the subject property follows the upland boundary of the 100-year floodplain
29 and includes 15.27 acres. He testified that the petitioner showed that the proposed
30 locational adjustment, as revised, complies with all of the applicable approval criteria.
31

32 i. He argued that the initial petition to add 19.18 acres to the UGB
33 did not include similarly situated land and therefore did not comply with all of the approval
34 criteria. The subject property as originally proposed included portions of the 100-year
35 floodplain. The floodplain continued offsite to the north and south. These similarly
36 situated contiguous lands should have been included in the petition. The revised the

1 petition excluded all of the 100-year floodplain. Therefore the revised petition does not
2 violate the similarly situated contiguous lands standard.

3
4 b. Attorney Greg Hathaway testified on behalf of the petitioner.

5
6 i. He argued that the petition is consistent with the purpose of the
7 minor amendment process. Adding the subject property to the UGB would allow the
8 property to be rezoned consistent with its existing urban use, allowing the owners to
9 upgrade and improve the existing facilities. The mobile home park is a nonconforming use
10 under the current rural zoning. This limits the scope of improvements which can be made.

11
12 ii. He testified that approval of this petition is necessary to allow
13 development of properties within the existing UGB. The property abutting the south
14 boundary of the site and further south, across the TV Highway, are situated in the existing
15 UGB and zoned for commercial development. Sewer service must be extended through the
16 subject property to serve these properties. He introduced plans showing how gravity
17 sewer service can be extended to serve the site and the properties to the south, Exhibit 16.

18
19 iii. He testified that all necessary public services are or can be
20 provided to the subject property.

21
22 c. Dennis Fogarty, the owner of the property north of the site, across the
23 railroad right of way, questioned the location of the sewer line extension.

24
25 4. On June 29, 1998, the hearings officer filed with the Council a report,
26 recommendation, and draft final order granting the petition for the reasons provided
27 therein. Copies of the report and recommendation were timely mailed to parties of record
28 together with an explanation of rights to file exceptions thereto and notice of the Council
29 hearing to consider the matter.

30
31 5. The Council held a duly noticed public hearing to consider testimony and timely
32 exceptions to the report and recommendation. After considering the testimony and
33 discussion, the Council voted to grant the petition for Contested Case No. 98-05 (Valley
34 View Mobile Court), based on the findings in this final order, the report and
35 recommendation of the hearings officer in this matter, and the public record in this matter.

1 The record includes an audio tape of the public hearing on June 29, 1998 and the Exhibits
2 on the list attached to the final order.

3
4 II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

5
6 1. Metro Code section 3.01.035(c) contains approval criteria for all locational
7 adjustments. Metro Code section 3.01.035(f) contains additional approval criteria for
8 locational adjustments to add land to the UGB. The relevant criteria from those sections are
9 reprinted below in italic font. Following each criterion are findings explaining how the
10 petition does or does not comply with that criterion.

11
12 *Orderly and economic provisions of public facilities and*
13 *services. A locational adjustment shall result in a net improvement in the*
14 *efficiency of public facilities and services, including but not limited to,*
15 *water, sewerage, storm drainage, transportation, parks and open space in*
16 *the adjoining areas within the UGB; and any area to be added must be*
17 *capable of being served in an orderly and economical fashion.*

18 Metro Code section 3.01.035(c)(1)

19
20 2. The subject property can be served in an orderly and economic manner by public
21 facilities and services, including water, sanitary sewers, roads, storm drainage, transit and
22 emergency services, based on the comments in the record from the service providers.

23
24 3. Metro rules do not define how to calculate net efficiency of urban services. In
25 the absence of such rules, the Council must construe the words in practice. It does so
26 consistent with the manner in which it has construed those words in past locational
27 adjustments. In this case, the Council concludes the locational adjustment results in a net
28 improvement in the efficiency of public services sufficient to comply with Metro Code
29 section 3.01.035(c)(1), based on the following findings:

30
31 a. The subject property is developed with an urban use, a mobile home
32 park. It has urban services connected to and indistinguishable from services inside the
33 UGB, with the exception of sanitary sewers. In the past, where a petition before the
34 Council proposed including developed land with urban services in-place, the Council has
35 imposed a lower burden of proof than where a petition involved undeveloped land without
36 in-place services. For instance, contrast the relevant findings in Council Orders regarding

1 UGB 91-04 (PCC Rock Creek), UGB 91-01 (Dammach), UGB 88-03 (St. Francis) and
2 UGB 95-01 (Harvey) with corresponding findings in Council Orders regarding UGB 94-
3 01 (Starr/Richards), UGB 90-01 (Wagner) and UGB 88-02 (Mt. Tahoma).

4
5 b. The inclusion of the subject property in the UGB allows those
6 properties to continue to be used for urban purposes. Therefore, at a minimum, it
7 sustains the existing efficiency of urban services to the site and adjoining land
8 already in the UGB.

9
10 c. In addition, including the subject property in the UGB increases the net
11 efficiency of sewer service, because it enables the petitioners to extend sanitary sewers
12 through the site to serve abutting commercially zoned properties, located within the existing
13 UGB. The lack of sewer service prevents efficient development of these properties.

14
15 d. Including the subject property in the UGB is necessary to allow
16 extension of public sewers to serve the subject property and eliminate the existing public
17 health hazard caused by failing septic systems.

18
19 *Maximum efficiency of land uses. The amendment shall facilitate*
20 *needed development on adjacent existing urban land. Needed development,*
21 *for the purposes of this section, shall mean consistent with the local*
22 *comprehensive plan and/or applicable regional plans.*

23 Metro Code section 3.01.035(c)(2)

24
25 4. Including the subject property in the UGB facilitates development on adjacent
26 existing urban land consistent with the local comprehensive plan, because it allows
27 development of the adjacent commercially zoned properties south of the site, within the
28 existing UGB, using public sewers and gravity flow.

29
30 *Environmental, energy, social & economic consequences. Any*
31 *impact on regional transit corridor development must be positive and any*
32 *limitations imposed by the presence of hazard or resource lands must be*
33 *addressed. Metro Code section 3.01.035(c)(3)*

1 5. The Council has considered economic, energy, social and environmental
2 impacts of including the subject property in the UGB, and concludes that it will not have
3 adverse economic, energy, social or environmental impact, because:

4
5 a. Including the land in the UGB results in a positive economic impact by
6 allowing the historic residential use of the property to continue, benefiting the property
7 owners, the existing residents and the business community serving the residents of the
8 subject property. In addition, extension of sewer service to the subject property would be
9 significantly less expensive than alternative methods of eliminating the existing public
10 health hazard. It may also result in significant cost savings for the property owners,
11 residents and public agencies through eliminating of site cleanup and treatment costs due to
12 failure of the on-site septic systems.

13
14 b. Including the land in the UGB results in positive energy impacts,
15 because the land is served by public transit and is developed with existing infrastructure.

16
17 c. Including the land in the UGB results in positive social impacts, because
18 it allows retention and possible expansion of existing low income housing.

19
20 d. Including the land in the UGB results in positive environmental impacts,
21 because it makes it feasible to remedy the existing public health hazard posed by the failing
22 septic systems on the subject property. It also prevents potential future hazards from
23 failing septic systems.

24
25 e. Because the subject property is already developed, approval of the
26 petition will have no impact on regional transit corridor development.

27
28 ***Retention of agricultural land. When a petitioner includes land with***
29 ***Agricultural Class I-IV soils designated in the applicable comprehensive***
30 ***plan for farm or forest use, the petition shall not be approved unless it is***
31 ***factually demonstrated that:***

32
33 ***(A) Retention of any agricultural land would preclude urbanization of an***
34 ***adjacent area already inside the UGB, or***

1 *(B) Retention of the agricultural land would make the provision of urban*
2 *services to an adjacent area inside the UGB impracticable. Metro Code*
3 *section 3.03.035(c)(4)*

4
5 6. The subject property contains Class II, III and IV soils. However the subject
6 property and surrounding properties are zoned AF-5 by Washington County. This is not
7 considered an exclusive farm or forest use designation. Therefore Council finds this
8 criterion does not apply.

9
10 *Compatibility of proposed urban uses with nearby agricultural*
11 *activities. When a proposed adjustment would allow an urban use in*
12 *proximity to existing agricultural activities, the justification in terms of this*
13 *subsection must clearly outweigh the adverse impact of any incompatibility.*
14 *Metro Code section 3.01.035(c)(5)*

15
16 7. There are limited agricultural activities on adjacent lands to the north and east of
17 the subject property. However the subject property has been used as a mobile home park
18 for several years without any significant conflicts with agricultural activities. The Council
19 finds, based on the historic lack of conflict between the existing urban development and the
20 existing agricultural uses, that urban development on the subject property will not have a
21 significant adverse impact on existing agricultural activities.

22
23 *Superiority. [T]he proposed UGB must be superior to the UGB as*
24 *presently located based on a consideration of the factors in subsection (c) of*
25 *this section. Metro Code section 3.01.035(f)(2)*

26
27 8. Council finds that the proposed UGB would be superior to the UGB as
28 presently located, because:

29
30 a. Public sanitary sewer could be provided to the subject site and land
31 already within the UGB, allowing development of land within the existing UGB and
32 eliminating an existing public health hazard.

33
34 b. The amended UGB would better reflect the historic urban use of the
35 subject property as a mobile home park.

1 6. The locational adjustment will result in a superior UGB, because it results in the
2 service efficiencies noted herein and makes it possible to eliminate an existing public health
3 hazard.

4

5 7. The petition includes all similarly situated contiguous land outside the UGB.

6

7

IV. DECISION

8

9 Based on the findings and conclusions adopted herein and on the public record in
10 this matter, the Metro Council hereby approves the petition in Contested Case 98-05.

11

12 DATED: _____

13

14

By Order of the Metro Council

15

16

By

17

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 98-05 :
EXHIBITS

Exhibit No. Subject matter

- 1.....Petition for locational adjustment and cover letter dated March 12, 1998
- 2.....Comment from John Greiner, City of Cornelius dated February 26, 1998
- 3.....Letter from Ray Valone to John Greiner dated March 2, 1998
- 4.....Washington County Planning Commission staff report dated March 10, 1998
- 5.....Notice of incomplete application dated March 25, 1998
- 6.....Letter from Brent Curtis, Washington County dated March 25, 1998
- 7.....Fax from Ryan O'Brien, LDC, dated March 26, 1998
- 8.....Notice of complete application dated March 27, 1998
- 9.....DLCD Notice of Proposed Amendment dated May 14, 1998
- 10.....Washington County staff report re Exception dated June 17, 1998
- 11.....Metro Staff Report dated June 19, 1998 with attachments
- 12.....Letter from Ralph Brown, Cornelius Mayor, dated June 17, 1998
- 13.....Letter from Ryan O'Brien, LDC, dated June 24, 1998
- 14.....Flood plain delineation dated June 1, 1998
- 15.....Letter from Ryan O'Brien, LDC, dated June 29, 1998
- 16.....Valley View Mobile Court Sewer Line Extension Plans
- 17.....Aerial photograph

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 98-774 APPROVING URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT CASE 98-5: VALLEY VIEW, AND ADOPTING HEARING OFFICER'S REPORT INCLUDING FINDINGS AND CONCLUSIONS

Date: September 24, 1998

Presented by: Larry Epstein, Hearings Officer
Prepared by: Ray Valone, Growth Management

PROPOSED ACTION

Adoption of Ordinance 98-774, approving *Case 98-5: Valley View*, a locational adjustment to the urban growth boundary (UGB).

BACKGROUND AND ANALYSIS

On March 27, 1998, Valley View Mobile Court, Inc. completed filing a petition for a 19.18-acre locational adjustment to the UGB for the purpose of allowing the existing mobile home park to connect to public sanitary sewer service. The petitioner subsequently revised the original petition to exclude land within the 100-year floodplain, reducing the request to 15.27 acres.

Proposal Description:

The proposal is to adjust the UGB to include 15.27 acres of land, located north of Tualatin Valley Highway and immediately east of the City of Cornelius (Attachment 1). The site is exception land and zoned Washington County AF-5 (Agricultural & Forest, 5 acre minimum lot size). It is currently developed as a 63-unit mobile home park.

The petitioner proposes to adjust the UGB for the purpose of allowing the existing mobile home park to connect to public sanitary sewer service. The onsite septic system is failing and it has been determined to be a public health hazard by the Washington County Department of Health and Human Services.

The Hearing Officer

Hearings Officer Recommendation and Proposed Findings

The Hearing Officer, Larry Epstein, conducted a public hearing at the Cornelius City Hall on June 29, 1998. He submitted a report and recommendation to Metro on July 29, 1998, recommending approval of the revised petition (Attachment 2).

The Hearing Officer finds that the criteria for a locational adjustment to the UGB as contained in Metro Code 3.01.035 are met by the petitioner. These criteria include: 1) Locational adjustments shall not exceed 20 net acres; 2) The site can be served with public facilities and services in an orderly and economic manner, and the adjustment would result in a net improvement in their efficiency; 3) The amendment would facilitate needed development on adjacent existing urban land; 4) The environmental, energy, economic and social consequences of amending the UGB have been considered; 5) The proposed use would be compatible with nearby agricultural activities; 6) The proposed UGB location would be superior

to the existing UGB location; and 7) The proposed adjustment must include all similarly situated contiguous land which could also be appropriately included within the UGB.

FINDINGS

The Hearing Officer recommends adoption of Ordinance 98-xxx based upon the findings and conclusions in his report that:

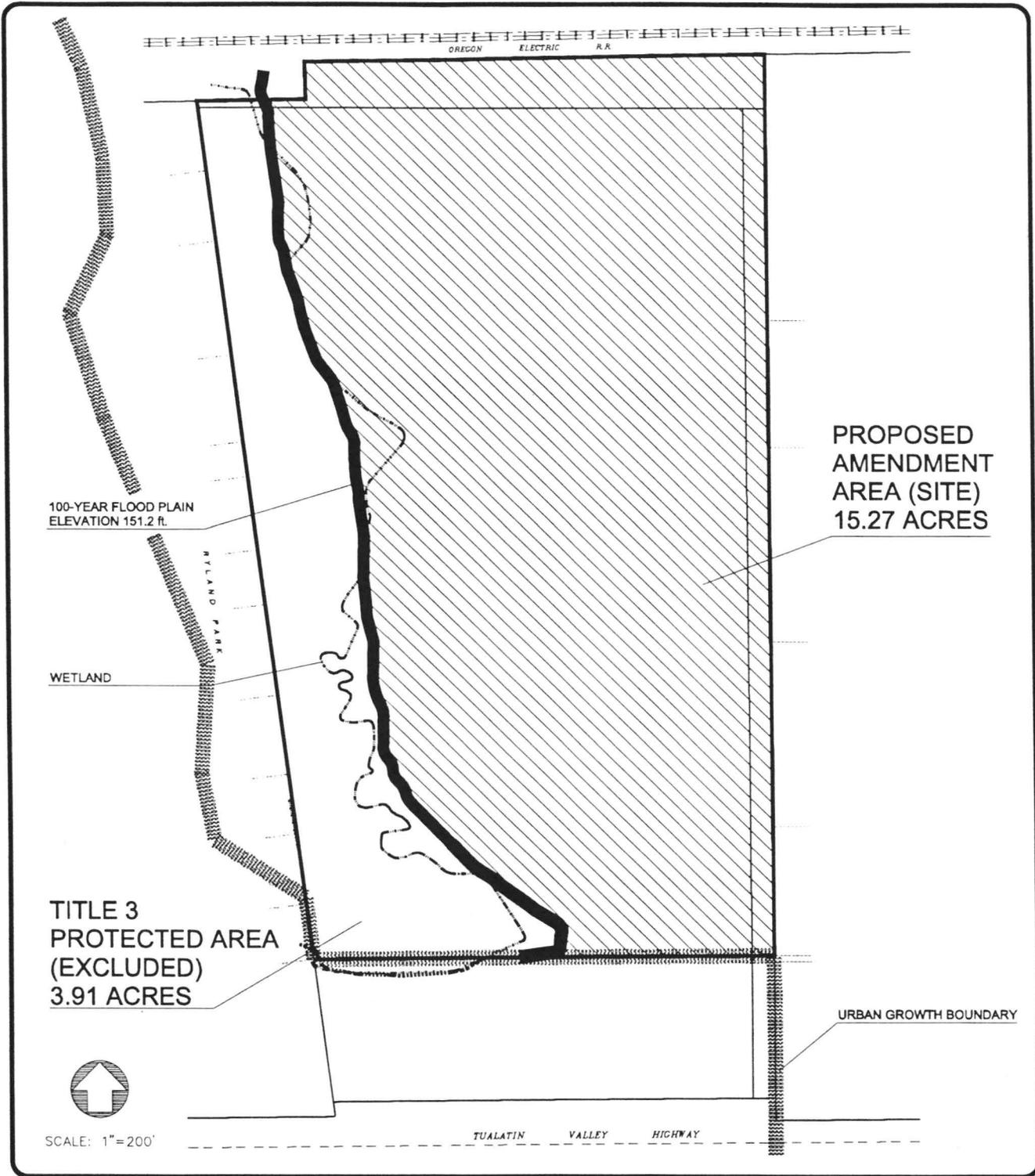
- All application and noticing requirements are met.
- A public hearing was conducted according the requirements and rules of Metro Code 3.01.050 and 3.01.055.
- The criteria for a locational adjustment to the UGB contained in Metro Code 3.01.035 are met by the petitioner.

The case record contains the petitioner submittals, Metro staff report, notification lists, relevant correspondence and the Hearing Officer's report. The complete list is included as part of the Hearing Officer's report.

BUDGET IMPACT

There is no budget impact from adopting this ordinance.

I:\GM\UGBadmt.98\98-5,ValleyView\MCstaffrpt



SCALE: 1"=200'

PREPARED FOR
Jerry Davis
 34265 S.W. T.V. Highway
 Hillsboro, Oregon 97123
 ph: (503) 648-7826

CONSULTING ENGINEERS
 LAND USE PLANNERS
 LAND SURVEYORS

 LDC DESIGN GROUP
 233 S.E. WASHINGTON ST.
 HILLSBORO, OREGON 97123
 PH: (503) 648-4061
 FAX: 503 - 681-7546
 EMAIL: info@ldc-llp.com

DRAWING TITLE:
**Valley View Mobile Court
 100-Year Floodplain Map
 Tax Map 1N3-35C
 Washington County, Oregon**
 CADD File: 2223flood, plotted 6/29/98 by CEB

JOB NO.:
2223
 DRAWING NO.:
 1
 of 1

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Valley View Mobile Court) HEARINGS OFFICER'S
4 Inc. for a Locational Adjustment to the Urban Growth) REPORT AND
5 Boundary at 34265 SW Tualatin Valley Hwy. east of the) RECOMMENDATION
6 City of Cornelius in unincorporated Washington County) **Contested Case No. 98-05**
7

I. INTRODUCTION

8
9
10 This report contains a summary of the findings the hearings officer recommends to
11 the Metro Council regarding a petition for a locational adjustment to the Urban Growth
12 Boundary ("UGB"). The petition raises the following major issues:
13

- 14 • Whether the petitioners bore the burden of proof that including the proposed
15 developable area in the UGB increases the efficiency of service to land already in the UGB;
16
17 • Whether the petition includes all similarly situated lands;
18
19 • Whether granting the petition results in a superior UGB; and
20
21 • Whether petitioners bore the burden of proof that granting the petition will not
22 result in adverse environmental, energy, economic or social consequences.
23

II. SUMMARY OF BASIC FACTS

24
25
26 1. On April 23, 1998, Valley View Mobile Court ("petitioners") completed filing a
27 petition for a locational adjustment to the UGB. The amended petition proposes to add to
28 the UGB a 15.27-acre parcel identified as portions of tax lots 500, 590 and 600 (the
29 "subject property"). It is now situated in unincorporated Washington County. If included
30 in the UGB, the subject property could be annexed to the City of Cornelius or remain in
31 unincorporated Washington County.
32

33 a. The subject property is north of the Tualatin Valley Highway, east of the
34 City of Cornelius and south of the Oregon Electric Railroad right of way. Land already in
35 the UGB (in Cornelius) abuts the south boundary of the property and a small portion of the
36 west boundary.

1 b. The Washington County Comprehensive Plan designation for the subject
2 property is Rural/Natural Resource. It is zoned AF-5 (Agriculture/Forest, 5-acre minimum
3 lot size). The subject property is in an exception area to Statewide Goals 3 and 4. Adjoin-
4 ing land to the south in the City of Cornelius is designated and zoned for commercial use.
5 Land to the west, also in the City of Cornelius, is designated and zoned for residential use.

6
7 c. The subject property is currently developed with a 63-unit mobile home
8 park. The mobile home park is currently served by on-site septic systems that have failed.
9 Failure of the existing drainfields is creating a public health hazard.

10
11 d. The majority of the subject property is relatively flat with areas of steeper
12 slopes along the west and southwest edges where it slopes down towards the Job Creek
13 floodplain. In addition, a drainage swale extends into the site from the west just north of
14 the middle of the site.

15
16 d. With the exception of public sewers, all urban services are currently
17 provided to the subject property. The petition was accompanied by comments from
18 relevant service providers, each of whom certified they can provide urban services in an
19 orderly and timely manner. The City of Hillsboro Water Department, the Cornelius Rural
20 Fire Department, the Oregon Department of Transportation and Tri Met took a neutral
21 position regarding the application. The City of Cornelius and the Cornelius Police
22 Department opposed the application due to concerns about negative net tax consequences.

23
24 e. Petitioners propose to maintain and possibly expand the existing mobile
25 home park. They propose to extend public sewers to the subject property to replace the
26 failing septic systems and to eliminate the existing public health hazard.

27
28 2. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed
29 public hearing on June 29, 1998 to receive testimony and evidence in the matter of the
30 petition. Three witnesses testified in person, including a staff member from Metro, the
31 petitioner's representative, and a neighbor.

1 III. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS

2
3 1. A locational adjustment to add land to the UGB must comply with the relevant
4 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). Compliance with two of
5 these standards was not disputed (MC §§ 3.01.035(c)(4) and (c)(5)). The following
6 findings highlight the principal policy issues disputed in the case.

7
8 2. MC § 3.01.035(c)(1) requires the petitioner to show that public facilities can
9 serve the area to be added and that the adjustment results in a net improvement in the
10 efficiency of public facilities and services for land already in the UGB. Petitioners showed
11 that the subject property can be served by the relevant public facilities.

12
13 3. Metro rules do not define how to calculate net efficiency of urban services. The
14 hearings officer concluded the Council has used a two-tiered burden of proof regarding
15 public service efficiencies. When a petition involves property already developed for urban
16 uses and served by public facilities, the Council has required a lesser showing of service
17 efficiencies, presumably because the locational adjustment has relatively little impact.
18 When a petition involves undeveloped property, Council has required a greater showing of
19 service efficiencies, because the locational adjustment would allow a more significant land
20 use change.

21
22 a. In this case, the subject property is developed for urban residential uses
23 (and has been for more than 30 years) and is served by all urban facilities, except sanitary
24 sewers. Therefore the hearings officer applied the lower burden of proof.

25
26 b. The hearings officer found that the locational adjustment marginally
27 increases the efficiency of sewer service, because it allows extension of gravity flow
28 sewers through the site to serve adjacent properties within the UGB. It also facilitates
29 elimination of the existing public health hazard caused by failing septic systems on the
30 subject property.

31
32 4. MC § 3.01.035(c)(2) requires the amendment to facilitate permitted development
33 of adjacent land already in the UGB. The hearings officer found the petition complied with
34 this standard, because including the subject property in the UGB facilitates sewer service to
35 two commercially zoned properties south of the site necessary for permitted development of
36 those parcels.

1 5. MC 3.01.035(c)(3) requires consideration of environmental, energy, social and
2 economic consequences of the petition. It requires that any impact on regional transit
3 corridor development must be positive. It also requires hazards to be addressed.

4
5 a. The hearings officer found that the petition will result in positive
6 environmental impacts by eliminating the existing public health hazard on the subject
7 property and the potential contamination of wetlands and water bodies on and near the site.

8
9 b. The hearings officer found that there are no significant adverse
10 environmental, energy, social or economic consequences of the locational adjustment.

11
12 c. The hearings officer found that, because the subject property is already
13 developed, approval of the petition will have no impact on a regional transit corridor.

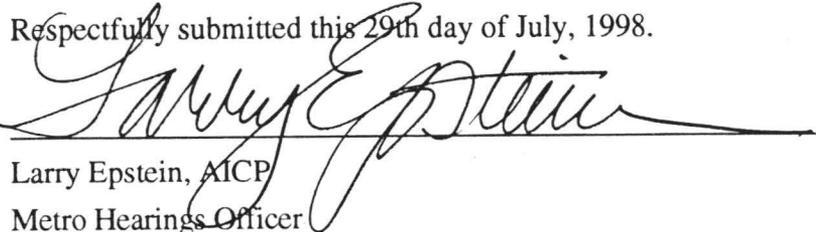
14
15 6. MC § 3.01.035(f)(3) requires a proposed location adjustment to include all
16 similarly situated lands. The hearings officer found that the proposed adjustment includes
17 all similarly situated lands. The subject property is developed with a mobile home park.
18 Adjacent lands are vacant or developed with low density rural residential uses.

19
20 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
21 UGB. The hearings officer found the proposed UGB is superior, because it allows
22 extension of public services to otherwise undevelopable properties within the UGB,
23 recognizes existing urban development and eliminates an existing public health hazard.

24
25 IV. ULTIMATE CONCLUSION AND RECOMMENDATION

26
27 For the foregoing reasons, the hearings officer concludes the petition complies with the
28 relevant approval standards for a locational adjustment adding land to the UGB. Therefore
29 the hearings officer recommends the Metro Council grant the petition, based on this Report
30 and Recommendation and the Findings, Conclusions and Final Order attached hereto.

31
32 Respectfully submitted this 29th day of July, 1998.

33
34 
35 Larry Epstein, AICP
36 Metro Hearings Officer

1 drainage swale extends into the site from the west just north of the middle of the site. See
2 Exhibit 16.

3
4 d. The subject property is currently developed with a 63-unit mobile home
5 park. The mobile home park is currently served by on-site septic systems. Failure of the
6 existing drainfields is creating a public health hazard. The petitioner proposes to extend
7 public sewers to the subject property to replace the existing septic system.

8
9 e. The petition was accompanied by comments from affected jurisdictions
10 and service providers. See Exhibits 1, 2 and 5.

11
12 i. The City of Cornelius opposed the petition, arguing that the cost
13 of extending services to the subject property would exceed any tax benefit received. See
14 Exhibit 2.

15
16 ii. The Washington County Board of Commissioners adopted an
17 order in which it made no recommendation on the merits of the petition. See Exhibit 6.

18
19 iii. The City of Hillsboro Water Department, the Cornelius Rural
20 Fire Department, the Oregon Department of Transportation and Tri Met commented that
21 they currently provide services to the subject property and will continue to do so. Approval
22 of the petition would not improve efficiency of service delivery in the UGB. They took a
23 neutral position in regard to the petition. See Exhibit 15 to the petition, Exhibit 1.

24
25 iv. The Hillsboro School District testified that it was unable to
26 respond to the potential impacts of the petition without further information about potential
27 zoning changes on the subject property. See Exhibit 15 to the petition, Exhibit 1.

28
29 v. The Unified Sewerage Agency of Washington County (“USA”)
30 testified that the subject property is not located within the Agency’s service area, but is
31 located within the drainage basin. It appears the subject property can be served by gravity
32 sewers from an existing sewer line located 700 feet south of the subject property. USA
33 was unable to formulate an opinion regarding the relative efficiency or economic impact of
34 providing services to the subject property. See Exhibit 15 to the petition, Exhibit 1.

1 vi. The Washington County Sheriff's Office commented that it
2 could serve the subject property, and that approval of the petition would improve efficiency
3 of service delivery in the UGB. The Sheriff's Office expressed support for the petition.
4

5 vii. The Cornelius Police Department opposed the petition, citing
6 the City's opposition to annexation.
7

8 2. Metro staff mailed notices of a hearing to consider the petition by certified mail
9 to the owners of property within 500 feet of the subject property, to the petitioner, to
10 Washington County, to the City of Cornelius and to the Department of Land Conservation
11 and Development ("DLCD"). A notice of the hearing also was published in *The Oregonian*
12 at least 10 days before the hearing.
13

14 3. On June 29, 1998, Metro hearings officer Larry Epstein (the "hearings officer")
15 held a public hearing at the Cornelius City Hall to consider the petition. All exhibits and
16 records of testimony have been filed with the Growth Management Services Division of
17 Metro. The hearings officer announced at the beginning of the hearing the rights of
18 persons with an interest in the matter, including the right to request that the hearings officer
19 continue the hearing or hold open the public record, the duty of those persons to testify and
20 to raise all issues to preserve appeal rights, the manner in which the hearing will be
21 conducted, and the applicable approval standards. The hearings officer disclaimed any *ex*
22 *parte* contacts, bias or conflicts of interest. Three witnesses testified in person.
23

24 a. Metro planner Ray Valone verified the contents of the record and
25 summarized the staff report (Exhibit 11), including basic facts about the subject property,
26 the UGB and urban services, and comments from the service providers. He noted the
27 petitioner amended the petition to exclude land in the 100-year floodplain. The western
28 boundary of the subject property follows the upland boundary of the 100-year floodplain
29 and includes 15.27 acres. He testified that the petitioner showed that the proposed
30 locational adjustment, as revised, complies with all of the applicable approval criteria.
31

32 i. He argued that the initial petition to add 19.18 acres to the UGB
33 did not include similarly situated land and therefore did not comply with all of the approval
34 criteria. The subject property as originally proposed included portions of the 100-year
35 floodplain. The floodplain continued offsite to the north and south. These similarly
36 situated contiguous lands should have been included in the petition. The revised the

1 petition excluded all of the 100-year floodplain. Therefore the revised petition does not
2 violate the similarly situated contiguous lands standard.

3
4 b. Attorney Greg Hathaway testified on behalf of the petitioner.

5
6 i. He argued that the petition is consistent with the purpose of the
7 minor amendment process. Adding the subject property to the UGB would allow the
8 property to be rezoned consistent with its existing urban use, allowing the owners to
9 upgrade and improve the existing facilities. The mobile home park is a nonconforming use
10 under the current rural zoning. This limits the scope of improvements which can be made.

11
12 ii. He testified that approval of this petition is necessary to allow
13 development of properties within the existing UGB. The property abutting the south
14 boundary of the site and further south, across the TV Highway, are situated in the existing
15 UGB and zoned for commercial development. Sewer service must be extended through the
16 subject property to serve these properties. He introduced plans showing how gravity
17 sewer service can be extended to serve the site and the properties to the south, Exhibit 16.

18
19 iii. He testified that all necessary public services are or can be
20 provided to the subject property.

21
22 c. Dennis Fogarty, the owner of the property north of the site, across the
23 railroad right of way, questioned the location of the sewer line extension.

24
25 4. On June 29, 1998, the hearings officer filed with the Council a report,
26 recommendation, and draft final order granting the petition for the reasons provided
27 therein. Copies of the report and recommendation were timely mailed to parties of record
28 together with an explanation of rights to file exceptions thereto and notice of the Council
29 hearing to consider the matter.

30
31 5. The Council held a duly noticed public hearing to consider testimony and timely
32 exceptions to the report and recommendation. After considering the testimony and
33 discussion, the Council voted to grant the petition for Contested Case No. 98-05 (Valley
34 View Mobile Court), based on the findings in this final order, the report and
35 recommendation of the hearings officer in this matter, and the public record in this matter.

1 The record includes an audio tape of the public hearing on June 29, 1998 and the Exhibits
2 on the list attached to the final order.

3
4 **II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS**

5
6 1. Metro Code section 3.01.035(c) contains approval criteria for all locational
7 adjustments. Metro Code section 3.01.035(f) contains additional approval criteria for
8 locational adjustments to add land to the UGB. The relevant criteria from those sections are
9 reprinted below in italic font. Following each criterion are findings explaining how the
10 petition does or does not comply with that criterion.

11
12 *Orderly and economic provisions of public facilities and*
13 *services. A locational adjustment shall result in a net improvement in the*
14 *efficiency of public facilities and services, including but not limited to,*
15 *water, sewerage, storm drainage, transportation, parks and open space in*
16 *the adjoining areas within the UGB; and any area to be added must be*
17 *capable of being served in an orderly and economical fashion.*

18 Metro Code section 3.01.035(c)(1)

19
20 2. The subject property can be served in an orderly and economic manner by public
21 facilities and services, including water, sanitary sewers, roads, storm drainage, transit and
22 emergency services, based on the comments in the record from the service providers.

23
24 3. Metro rules do not define how to calculate net efficiency of urban services. In
25 the absence of such rules, the Council must construe the words in practice. It does so
26 consistent with the manner in which it has construed those words in past locational
27 adjustments. In this case, the Council concludes the locational adjustment results in a net
28 improvement in the efficiency of public services sufficient to comply with Metro Code
29 section 3.01.035(c)(1), based on the following findings:

30
31 a. The subject property is developed with an urban use, a mobile home
32 park. It has urban services connected to and indistinguishable from services inside the
33 UGB, with the exception of sanitary sewers. In the past, where a petition before the
34 Council proposed including developed land with urban services in-place, the Council has
35 imposed a lower burden of proof than where a petition involved undeveloped land without
36 in-place services. For instance, contrast the relevant findings in Council Orders regarding

1 UGB 91-04 (PCC Rock Creek), UGB 91-01 (Dammach), UGB 88-03 (St. Francis) and
2 UGB 95-01 (Harvey) with corresponding findings in Council Orders regarding UGB 94-
3 01 (Starr/Richards), UGB 90-01 (Wagner) and UGB 88-02 (Mt. Tahoma).

4
5 b. The inclusion of the subject property in the UGB allows those
6 properties to continue to be used for urban purposes. Therefore, at a minimum, it
7 sustains the existing efficiency of urban services to the site and adjoining land
8 already in the UGB.

9
10 c. In addition, including the subject property in the UGB increases the net
11 efficiency of sewer service, because it enables the petitioners to extend sanitary sewers
12 through the site to serve abutting commercially zoned properties, located within the existing
13 UGB. The lack of sewer service prevents efficient development of these properties.

14
15 d. Including the subject property in the UGB is necessary to allow
16 extension of public sewers to serve the subject property and eliminate the existing public
17 health hazard caused by failing septic systems.

18
19 *Maximum efficiency of land uses. The amendment shall facilitate*
20 *needed development on adjacent existing urban land. Needed development,*
21 *for the purposes of this section, shall mean consistent with the local*
22 *comprehensive plan and/or applicable regional plans.*

23 Metro Code section 3.01.035(c)(2)

24
25 4. Including the subject property in the UGB facilitates development on adjacent
26 existing urban land consistent with the local comprehensive plan, because it allows
27 development of the adjacent commercially zoned properties south of the site, within the
28 existing UGB, using public sewers and gravity flow.

29
30 *Environmental, energy, social & economic consequences. Any*
31 *impact on regional transit corridor development must be positive and any*
32 *limitations imposed by the presence of hazard or resource lands must be*
33 *addressed. Metro Code section 3.01.035(c)(3)*

1 5. The Council has considered economic, energy, social and environmental
2 impacts of including the subject property in the UGB, and concludes that it will not have
3 adverse economic, energy, social or environmental impact, because:

4
5 a. Including the land in the UGB results in a positive economic impact by
6 allowing the historic residential use of the property to continue, benefiting the property
7 owners, the existing residents and the business community serving the residents of the
8 subject property. In addition, extension of sewer service to the subject property would be
9 significantly less expensive than alternative methods of eliminating the existing public
10 health hazard. It may also result in significant cost savings for the property owners,
11 residents and public agencies through eliminating of site cleanup and treatment costs due to
12 failure of the on-site septic systems.

13
14 b. Including the land in the UGB results in positive energy impacts,
15 because the land is served by public transit and is developed with existing infrastructure.

16
17 c. Including the land in the UGB results in positive social impacts, because
18 it allows retention and possible expansion of existing low income housing.

19
20 d. Including the land in the UGB results in positive environmental impacts,
21 because it makes it feasible to remedy the existing public health hazard posed by the failing
22 septic systems on the subject property. It also prevents potential future hazards from
23 failing septic systems.

24
25 e. Because the subject property is already developed, approval of the
26 petition will have no impact on regional transit corridor development.

27
28 ***Retention of agricultural land.*** *When a petitioner includes land with*
29 *Agricultural Class I-IV soils designated in the applicable comprehensive*
30 *plan for farm or forest use, the petition shall not be approved unless it is*
31 *factually demonstrated that:*

32
33 (A) *Retention of any agricultural land would preclude urbanization of an*
34 *adjacent area already inside the UGB, or*

1 (B) *Retention of the agricultural land would make the provision of urban*
2 *services to an adjacent area inside the UGB impracticable. Metro Code*
3 *section 3.03.035(c)(4)*
4

5 6. The subject property contains Class II, III and IV soils. However the subject
6 property and surrounding properties are zoned AF-5 by Washington County. This is not
7 considered an exclusive farm or forest use designation. Therefore Council finds this
8 criterion does not apply.

9
10 ***Compatibility of proposed urban uses with nearby agricultural***
11 ***activities. When a proposed adjustment would allow an urban use in***
12 ***proximity to existing agricultural activities, the justification in terms of this***
13 ***subsection must clearly outweigh the adverse impact of any incompatibility.***
14 Metro Code section 3.01.035(c)(5)
15

16 7. There are limited agricultural activities on adjacent lands to the north and east of
17 the subject property. However the subject property has been used as a mobile home park
18 for several years without any significant conflicts with agricultural activities. The Council
19 finds, based on the historic lack of conflict between the existing urban development and the
20 existing agricultural uses, that urban development on the subject property will not have a
21 significant adverse impact on existing agricultural activities.

22
23 ***Superiority. [T]he proposed UGB must be superior to the UGB as***
24 ***presently located based on a consideration of the factors in subsection (c) of***
25 ***this section. Metro Code section 3.01.035(f)(2)***
26

27 8. Council finds that the proposed UGB would be superior to the UGB as
28 presently located, because:

29
30 a. Public sanitary sewer could be provided to the subject site and land
31 already within the UGB, allowing development of land within the existing UGB and
32 eliminating an existing public health hazard.

33
34 b. The amended UGB would better reflect the historic urban use of the
35 subject property as a mobile home park.
36

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6. The locational adjustment will result in a superior UGB, because it results in the service efficiencies noted herein and makes it possible to eliminate an existing public health hazard.

7. The petition includes all similarly situated contiguous land outside the UGB.

IV. DECISION

Based on the findings and conclusions adopted herein and on the public record in this matter, the Metro Council hereby approves the petition in Contested Case 98-05.

DATED: _____

By Order of the Metro Council

By _____

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 98-05 :
EXHIBITS

Exhibit No. Subject matter

- 1.....Petition for locational adjustment and cover letter dated March 12, 1998
- 2.....Comment from John Greiner, City of Cornelius dated February 26, 1998
- 3.....Letter from Ray Valone to John Greiner dated March 2, 1998
- 4.....Washington County Planning Commission staff report dated March 10, 1998
- 5.....Notice of incomplete application dated March 25, 1998
- 6.....Letter from Brent Curtis, Washington County dated March 25, 1998
- 7.....Fax from Ryan O'Brien, LDC, dated March 26, 1998
- 8.....Notice of complete application dated March 27, 1998
- 9.....DLCD Notice of Proposed Amendment dated May 14, 1998
- 10.....Washington County staff report re Exception dated June 17, 1998
- 11.....Metro Staff Report dated June 19, 1998 with attachments
- 12.....Letter from Ralph Brown, Cornelius Mayor, dated June 17, 1998
- 13.....Letter from Ryan O'Brien, LDC, dated June 24, 1998
- 14.....Flood plain delineation dated June 1, 1998
- 15.....Letter from Ryan O'Brien, LDC, dated June 29, 1998
- 16.....Valley View Mobile Court Sewer Line Extension Plans
- 17.....Aerial photograph

METRO CODE 3.01.035
LOCATIONAL ADJUSTMENT CRITERIA

1. All locational adjustment additions and administrative adjustments for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres. Natural area adjustments shall not be included in the annual total of 100 acres, and shall not be limited to 20 acres, except as specified in 3.01.035(g) below [3.01.035(b)]
2. All petitions for locational adjustments except natural area petitions shall meet the following criteria: [3.01.035(c)]
 - (1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion.
 - (2) Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.

(3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.

(4) Retention of agricultural land. When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable.

(5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any incompatibility.

3. Petitions for locational adjustments to add land to the UGB may be approved under the following conditions: [3.01.035(f)]

(1) An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (c) of this section, and the adjustment includes all contiguous lots divided by the existing UGB.

(2) For all other additions, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section.

(3) The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above.

**EXAMPLES OF UGB AMENDMENT CASES WHERE THE COUNCIL HAS APPLIED
DIFFERENT BURDENS OF PROOF TO DEVELOPED AND UNDEVELOPED SITES**

092498c-02

SUBJECT	👍	👎	AREA	ZONING	EXISTING LAND USES ON SITE	EXISTING LAND USES ON SURROUNDING PROPERTIES	PUBLIC SERVICES HIGHLIGHTS
---------	---	---	------	--------	----------------------------	--	----------------------------

Examples of UGB amendments involving developed properties:

UGB 95-01 (Harvey)	■		5.47	Unk.	Roadway, 2 retail businesses, commercial storage warehouse	Commercial uses inside UGB; agriculture outside UGB; granting petition reinforces historic use	Public services already provided so little if any efficiencies realized; plans envisioned urban use of site
UGB 91-04 (PCC Rock Creek) (major amendmt)	■		160 acres	AF-5 (nonfarm)	390,000 square feet of buildings plus many accessory uses	Single family homes inside UGB; agriculture and rural homes outside UGB	Public services already provided; no efficiencies to land already inside UGB except generally; complies with statewide goals (applied directly)
UGB 91-01 (Dammasch) (major amendmt)	■		184 acres	EFU	475,000 square feet of buildings plus many accessory uses	Single family homes inside UGB; farms and rural homes outside UGB	Public services already provided except sewer; no efficiencies to land already inside UGB; complies with statewide goals (applied directly)
UGB 88-03 (St. Francis Church)	■		4 acres	GAD (nonfarm)	Church, school & parking; no remaining developable land	Agriculture and I-5 outside UGB; Charbonneau inside UGB	Already served by public sewer Public water will be across street

Examples of UGB amendments involving undeveloped properties:

UGB 95-02 (Knox Ridge)		■	27 acres	EFU	Vacant	Single family homes inside UGB; farm uses & open space outside UGB	<i>De minimis</i> efficiencies to roads, storm drainage, sewer and water services would occur but were not enough to meet burden of proof
UGB 94-01 (Starr/Richards)	■		1.3 acres	RRFF-5 (nonfarm)	Vacant	Open space, St. Francis church and Charbonneau inside UGB; I-5 and rural/farm uses outside UGB	Inclusion allowed gravity flow sewer rather than sewer with pump station; required as condition of approval
UGB 90-01 (Wagner)	■		6.35 acres	GAD	2 dwelling units; otherwise orchard	Single family homes inside UGB; rural homes and farms outside UGB	Only improved efficiency was a road; Urban services will be in the road.
UGB 88-02 (Mt. Tahoma)		■	10 acres	AF-5 (nonfarm)	1 dwelling unit; otherwise vacant site	Industrial/trucking uses inside UGB; rural homes and farms outside UGB	No public services served site; Nearest sewer was 4000 feet away; Potential water loop benefits minor



METRO

092498c-03

To: Jon Kvistad, Presiding Officer

From: Daniel B. Cooper, General Counsel 

Date: September 18, 1998

Re: Contested Case 98-5 (Valley View UGB Amendment)

This matter is a quasi-judicial contested case proceeding subject to the provisions of Metro Code and Oregon Law. This memo addresses the procedural issues that the Council needs to address as it makes its decision in this case.

The petitioner, the Valley View Mobile Home Court, is requesting that the Metro Council approve an approximately 15-acre locational adjustment amendment to increase the area within the Urban Growth Boundary.

The procedure and criteria for approval of locational adjustments are established by Section 3.01.035 of the Metro Code. As discussed below, in quasi-judicial proceedings such as this, the Council does not act with unfettered discretion. It must decide this matter by considering the evidence that is in the record and the criteria established by the Metro Code to determine whether or not the application should be approved. If the evidence in the record establishes that the applicant has satisfied the burden of proof set forth in the Code, then the Council should approve the application. On the other hand, if the Council finds that the evidence does not justify finding that the criteria has been met, then the Council must deny the application. The Hearings Officer's Report and recommendation refers to the adopted criteria and addresses them.

Further, since this is a quasi-judicial proceeding, the Council must confine itself to considering only the evidence that has been placed in the record in front of the hearings officer, and should not make its decision based on other evidence that it might be aware of. In order to safeguard the process in a quasi-judicial proceeding such as this, the parties to the matter are prohibited from having any ex-parte contacts with the decision-making body. Therefore, if any councilor has had any contact with either the applicant, or the other parties to this matter, that contact should be disclosed on the record at the beginning of the proceeding in order to make sure that all of the parties are aware of the nature of the contact and have an opportunity to address and rebut any discussion that the councilor may have had with the party.

In this case, the Hearings Officer has recommended approval. No one has filed an exception to the Hearings Officer's report and recommendation.

This matter is in front of the Council on first reading of an ordinance. If the Council determines that it desires to approve the application, the matter should be forwarded to a future Council agenda for a final vote on the adoption of the ordinance and acceptance of the hearings officer's report and recommendation. If the Council determines that it is the desire of the Council to reject the petition and deny the request, then the Council should direct either the hearings officer or the Office of General Counsel to prepare written findings that would support the rejection of the request, and have those written findings presented to the Council at some time in the future. If Council makes a Motion to reject the report and recommendation, the Motion should reflect the factual assumptions and criteria that are the basis for the action.

cc: Council Members
Ray Valone

DBC:jep
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METRO

COMMITTEE FOR CITIZEN INVOLVEMENT

Mission: TO ASSIST IN DEVELOPMENT, IMPLEMENTATION AND EVALUATION OF CITIZEN INVOLVEMENT ACTIVITIES AT METRO

DATE: September 24, 1998
 TO: Metro Council
 FROM: Karen M. Withrow, MCCI Administrative Assistant
 RE: Subcommittee Projects List

The following is a list of the projects chosen by each of MCCI's subcommittees for which a Project Public Involvement Plans will be created according to the recently adopted Public Involvement Planning Guide. The projects, if there is more than one, are listed in order of priority.

Parks/Zoo/Administration Subcommittee -	Natural Area System Planning Process Blue Lake Master Planning Process
Transportation/REM Subcommittee -	<u>Transportation Projects</u> I-5 North Highway 217 Corridor Study MILT <u>REM Projects</u> Project(s) yet to be decided
Growth Management Subcommittee -	Housing Goal 5
Council/Budget Subcommittee -	Submission of FY 99-00 MCCI Budget Establishing a general understanding of Metro Budget

**METRO****COMMITTEE FOR CITIZEN INVOLVEMENT***Mission:* TO ASSIST IN DEVELOPMENT, IMPLEMENTATION AND EVALUATION OF CITIZEN INVOLVEMENT ACTIVITIES AT METRO

DATE: September 23, 1998
TO: Metro Council
FROM: Bob Bothman, MCCI Parks/Zoo/Administration Subcommittee Chair
RE: Subcommittee Status Report

The MCCI Parks/Zoo/Administration Subcommittee has decided to focus on the Parks Department for this fiscal year. They have received a Program/Division Overview and a completed Project Public Involvement Plan Form from Ron Klein, Senior Regional Planner and MCCI Department Liaison. The initial meetings of the subcommittee have been devoted to introduction of the subcommittee to department programs.

The subcommittee and Ron have agreed that the subcommittee's efforts this year will be focused on advising staff on the development of Project Public Involvement Plans for the Natural Area System Planning Process and for the Blue Lake Master Planning Process. With limited time, the subcommittee has determined that this will be the best use of their time.

FY 99-00 Budget

The budget for the subcommittee should be included in the budget for staff and administration of MCCI. Department support should be budgeted by the Parks & Greenspaces Department to develop Project Public Involvement Plans for the projects noted above or other projects in their work plan that should have citizen involvement.