

MINUTES OF THE METRO COUNCIL MEETING

Thursday, September 6, 2007
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Robert Liberty, Rex Burkholder, Carl Hosticka, Rod Park, Brian Newman

Councilors Absent:

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

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Eric Squires, CPO 6 Chair, PO Box 5607 Aloha OR 97006 said he had been asked by citizens to talk to the Metro Council about dog parks. He felt there was a need for such parks. He urged consideration by the Metro Council.

Erin Janssens, 43000 SE Trout Creek Rd Corbett OR 97019 urged Metro acquire 186 acres currently known Roslyn Lake Park. She noted its assets such as old growth trees. She also commented that it was a historically significant property. She believed this purchase should occur.

Sharon Nasset, Economic Transportation Alliance, 1113 N Baldwin St Portland OR 97212 spoke about the Columbia River Crossing. She had been asking questions about the crossing but has not received answers. She suggested that the crossing conversation needed to include the Ports of Portland and Vancouver.

3. OREGON HEALTH SCIENCES UNIVERSITY (OHSU) CAMPUS CHANGES

Mark Williams, OHSU, provided a power point presentation on the campus changes and it's planning for the Schnitzer South Waterfront development. He spoke to need for the 19-acre interdisciplinary health care facility. He shared the mission of OHSU and its workforce needs. He provided statistics on the number of health care professions that were retiring and the future gaps in the workforce. He talked about the Schnitzer campus and its role for the future. He reviewed the south waterfront plan, which was part of an urban renewal area. He talked about the six design options for the Schnitzer campus and the vision for the future. They focused on two alternatives. He talked about the 100-foot setback greenway on the river. They were building a whole new part of the city. He spoke to the pros and cons of the two alternatives. They were looking at open spaces, habitat areas, eco roofs, bike and pedestrian pathways. He also noted transportation opportunities. Councilors asked questions about the campus design, vitality of the region, housing and transportation issues. Mr. Williams responded to their questions.

4. CONSENT AGENDA

4.1 Consideration of minutes of the August 16, 2007 Regular Council Meeting.

Motion:

Councilor Liberty moved to adopt the meeting minutes of the August 16, 2007 Regular Metro Council.
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Vote:

Councilors Burkholder, Harrington, Liberty, Park, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Hosticka abstaining from the vote

5. RESOLUTIONS

5.1 **Resolution No. 07-3862**, Adopting the Hearings Officer's Proposed Order Regarding Metro Notice of Violation 162-06 Issued to USA General Contractors, LLC and Authorizing the Chief Operating Officer to Issue a Final Order.

Marv Fjordbeck, Senior Metro Attorney explained the procedures for the hearing.

Robert Harris, Hearings Officer for Metro, explained his credentials. He provided an overview of the issue and the proposed order. He talked about the respondent's business as a contractor and explained the process as to why the hearing occurred. He said approximately 300 loads were disposed of at a non-license facility without paying taxes and fees. He talked about the penalty that was imposed because of this behavior. He addressed the objections by both parties. He felt his findings were well founded and reasonable.

Councilor Newman asked about the fine per ton. Mr. Harris responded that he recommended a \$250 fine per ton for the violation.

Councilor Liberty asked about the Metro Code sections and was this available in the packet. Mr. Fjordbeck responded that he could provide this to the Councilor but it was not included in the packet.

David Hall, attorney for the respondent in this case, responded to Councilor Newman's question about the fine. He pointed out that USA General Contractor LLC should be the entity that the fines were levied against. He reviewed the exceptions that he had raised (a copy of which is included in the record) having to do with exhibits and findings. He said the hearings officer's decision was based upon speculation and hearsay, not evidence. He said the hearings officer's findings were not based on the evidence. He conceded that his client had delivered six loads to an improper location and suggested not fining his client based on speculative evidence. He urged Council not to base their decision on anything but the evidence. Since these incidents had occurred there had been no further violation. He urged no consideration of Exhibit 15, speculative inferences of the hearings officer.

Paul Garrahan, Metro Assistant Attorney, said he was here representing the staff's recommendations. He pointed out the issue of burden of proof. He felt Mr. Hall was trying to narrow down evidence to eye witness testimony. He noted that the hearings officer reviewed the evidence standards. He spoke to exceptions from the respondent. He noted Code requirements and guidance that the Code provided to the Council. He further explained how the penalties and fines were assessed.

Mr. Hall talked about evidentiary conclusions. He said that inferences were based on speculation. He urged that each level was based on speculation and inference not evidence. He said the order

was not entered within 30 days, so there should be no order. It was invalid. He said there was only evidence for six loads.

Council President Bragdon clarified the procedures. Mr. Fjordbeck concurred with his summary. Councilor Park asked about business records that were going to be produced. Mr. Harris said the respondent never produced the information about the number of loads that went to the non-system license facility. Councilor Park said the records would help to valid loads produced.

Councilor Newman asked Mr. Hall about Mr. Revis comments about not making enough money if he paid the taxes and fees. Councilor Newman said it sounded as if his behavior was a conscious decision. Mr. Hall said he was conceding that his client had six violations. He felt that Metro did not produce any additional evidence except for the six violations.

Councilor Liberty said the burden of proof seemed clear. He asked if the detectives were available at the hearing? Mr. Hall said they were present. Councilor Liberty talked about additional findings. Mr. Hall said the burden was on Metro to prove evidence that additional loads were taken to Riverbend Landfill. He wondered how you could have a specific decision without evidence. He asked Mr. Garrahan to read the section of the Code about the 30 days requirement for the order. Mr. Hall noted that the word "shall" meant "must."

Motion:	Councilor Newman moved to adopt Resolution No. 07-3862.
Seconded:	Councilor Park seconded the motion.

Councilor Newman said this resolution allowed for the hearings officer's recommended order. There was an issue of delay having to do with the order. It was clear that General USA avoided paying taxes and fees. The question revolved around the number of violations. He was comfortable with the process that was undertaken by the hearings officer and the Metro staff. He was concerned about the delay in submitting the order. He wouldn't support voiding the order. He supposed the resolution as drafted. Councilor Park asked about incomplete information that was supposed to be provided. Mr. Garrahan said the references to records being produced by the respondent were in the detectives' report. The respondent had told the detectives he would provide this information. The respondent did not produce the records. Councilor Park asked about the 30-day order requirement. Mr. Garrahan said when a deadline was provided for making a decision by the government, it was generally considered guidance. There were no sanctions. Councilor Liberty asked about the standard of review and the evidentiary standard. Mr. Garrahan said a final order issued by Metro was a writ of review. Mr. Fjordbeck said the standards of review of the writ of review would be whether the order was supported by substantial evidence in the record. Councilor Liberty said he would agree with Councilor Newman about the findings of fact. He felt it was a business strategy and there were a large number of loads. He wasn't happy about the 30 days issuance. He said, this gets at how we do business. He felt this was a problem.

Councilor Harrington asked about interest on fines. Mr. Garrahan said the only interest that would apply would be on the excise tax due. It was a relatively low interest rate so there was no interest levied. Councilor Harrington said this business owner had willingly avoiding paying taxes and fines. She was comfortable with the recommendation but troubled with the delay. Council President Bragdon said he was not comfortable with the resolution as written. He suggested that 30 days was a fundamental requirement. If the Code said that something was to be done in 30 days, we should do it. He felt this was unfortunate.

Councilor Liberty said we have a contract with a hearings officer. Performance had to be based on that work. He talked about the fine and suggested waiving the fines, which would leave payment on excise tax, interest and 25% penalty as a compromise. Councilor Hosticka asked for clarification on how to proceed. Mr. Fjordbeck said Council's review was a completely new review and Council had discretion to change the order. Council could set its own fines. He also talked about the deadline, which was the direction of the Council to the hearings officer back to Council. There was no sanction but Council was free to adopt one.

Councilor Liberty said the problem was it was not our staff's fault but the hearings officer's fault. There was a benefit in having a deadline. He asked Mr. Fjordbeck if we were on top of getting the hearings officer's report. Mr. Garrahan said they had made several requests of the hearings officer to get the proposed order. Councilor Liberty said it looked as if the amount of fine was totally discretionary.

Motion to amend:	Councilor Liberty moved to amend Resolution No. 07-3862 by cutting the fine in half.
Seconded:	Councilor Newman seconded the motion to amend and accepted this as a friendly amendment

Councilor Hosticka explained that he would object to the amendment because the delay was to the benefit of the person paying the penalty. Councilor Park concurred with Councilor Hosticka's comments. Council President Bragdon supported the motion to amend.

Vote to amend:

Councilors Park, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed with Councilors Burkholder and Hosticka voting no.
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Councilor Park asked if this came back to them again, what was their process? Mr. Fjordbeck responded to their question.

Vote:

Councilors Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Park voting no.
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Mr. Hall was happy with the decision. He reiterated the 30-day requirement on the validity of the order.

5.2 **Resolution No. 07-3833**, Approving the Natural Areas Acquisition Refinement Plan for the Forest Park Connections Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3833.
Seconded:	Councilor Liberty seconded the motion

Councilor Hosticka said, they were in the final stages of the process by which we implement the natural areas acquisition measure from November 2006. That was on a general conceptual level. Today we were voting on the specific refinement. They had been refining the specifics. We would now see land coming into the public domain.

Council President Bragdon opened a public hearing.

Carol Chesarek, Forest Park Neighborhood, 13300 NW Germantown Rd Portland OR 97231 thanked the Council for the chance to speak. She was in Councilor Burkholder's district. She thanked the Regional Parks and Greenspaces staff. She had one issue, in Exhibit A, Resolution No. 07-3833, in the objectives, the Tier 2 objectives, acquired habitat links. She felt that should be moved to a Tier 1 objective. She had learned a lot from the Goal 5 process about the habitat and animals there. She had prepared a map with areas where people had sighted elk. She cited the impacts of other development and the conflict between the park, the habitat, and the housing. She thought they deserved to be raised to a Tier 1 objective.

Jim Emerson, President Forest Park Neighborhood Association, 13900 NW Old Germantown Rd Portland OR 97231 realized there would be a lot of work. He thanked the Council and staff for all their hard work. It was important for the future. He showed his elk, cougar, and bear map, collected over the last year. Each dot represented a sighting. Each area was a gift of time.

Deborah Lev, Senior Planner, Portland Parks and Recreation, 1120 SW Portland, Portland OR 97210, complimented Metro staff on the refinement process. Portland has allocated the majority of its local share to acquisitions. She appreciated Metro's work on setting priorities. They would now use the adopted refinement plans to use their local share, to build on Metro's work. The City had also participated as stakeholders. The Portland City Council had directed Parks staff to focus on long-term management. Let the broad-scale acquisitions begin.

Council President Bragdon closed the public hearing.

Councilor Burkholder said the testifiers represented hundreds of citizens who had helped with Metro in both the 1995 and 2006 bond measures. He talked about Tier 1 and Tier 2 and gave Council's thinking on it in terms of the Forest Park. One limitation was that the bond measure had said that areas funded under the previous bond measure, no more than 25% would be spent from the new bond measure in those areas. Forest Park had already received quite a bit last time. Tier 2 was still a high protection value, it would be more opportunity-based, a chance for citizens to bring opportunities to Metro or their local jurisdiction. We were facing a situation of limited resources with choices to be made. We recognized the importance of that area, and the value of the un-fragmented area. He thanked the testifiers for their advocacy.

Council President Bragdon supported the explanation of the tier system. He had met with Friends of Forest Park recently. They were grateful for the passage of the bond. The last time, they had acquired 600 acres. They also appreciated the refinement process. They recognized choices had to be made.

Councilor Harrington raised that Metro staff and the Council interacted with over 500 people at the eight regional open houses, as well as getting over 6,000 visits with 3,400 unique visits to the virtual online open house on the Metro web site. The staff had worked with the public, Council had engaged with the public, to solicit additional scientific data as well as citizen input to arrive at the refinement plans. She thought they had done great work.

Councilor Hosticka closed by urging an aye vote.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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5.3 **Resolution No. 07-3834**, Approving the Natural Areas Acquisition Refinement Plan for the Rock Creek Headwaters and Greenway Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3834.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.4 **Resolution No. 07-3835**, Approving the Natural Areas Acquisition Refinement Plan for the Westside Trail Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3835.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.5 **Resolution No. 07-3836**, Approving the Natural Areas Acquisition Refinement Plan for the Cooper Mountain Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3836.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.6 **Resolution No. 07-3837**, Approving the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3837.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.7 **Resolution No. 07-3838**, Approving the Natural Areas Acquisition Refinement Plan for the Tryon Creek Linkages Target Area

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3838.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.8 **Resolution No. 07-3840**, Approving the Natural Areas Acquisition Refinement Plan for the Columbia Slough Target Area

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3840.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.9 **Resolution No. 07-3841**, Approving the Natural Areas Acquisition Refinement Plan for the Springwater Corridor Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3841.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.10 **Resolution No. 07-3842**, Approving the Natural Areas Acquisition Refinement Plan for the Sandy River Gorge Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3842.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.11 **Resolution No. 07-3843**, Approving the Natural Areas Acquisition Refinement Plan for the Clear Creek Target Area

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3843.
Seconded:	Councilor Liberty seconded the motion

Vote: Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

5.12 **Resolution No. 07-3858**, Approving the Natural Areas Acquisition Refinement Plan for the Willamette Narrows and Canemah Bluffs Target Area.

Motion:	Councilor Hosticka moved to adopt Resolution No. 07-3858.
Seconded:	Councilor Liberty seconded the motion

Vote:

Councilors Park, Hosticka, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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6. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, was not present.

7. COUNCILOR COMMUNICATION

Councilor Harrington said she would be absent next week on a jury summons from the Beaverton Municipal Court.

Councilor Liberty reported on his attendance on the Sellwood Moreland bridge issue, almost three hours. There was a high level of interest there on the bridge project. He had asked the Council President to schedule some time during the month to present a status report and the range of alternatives.

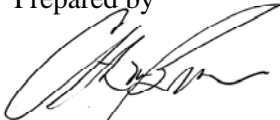
Councilor Burkholder said, based on the request at work session, the Regional Transportation Plan update would be presented at Tuesday's work session, to present a small piece to be digested.

Councilor Harrington followed up reporting on the Joint Policy Advisory joint Metro Policy Advisory Committee meeting on October 10.

8. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:34 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
SEPTEMBER 6, 2007**

Item	Topic	Doc. Date	Document Description	Doc. Number
2.0	Columbia River Crossing	October 2005	To: Metro Council From: Sharon Nasset Re: Columbia River Crossing "Get Involved" draft statement of purpose and need and attachments	090607c-01
3.0	OHSU's Schnitzer Campus	9/6/07	To: Metro Council From: Mark Williams, Associate Vice President OHSU Campus Planning, Development and Real Estate	090607c-02