.MINUTES OF THE METRO COUNCIL MEETING

February 7, 2002

Metro Council Chamber

Councilors Present: Carl Hosticka (Presiding Officer), Susan McLain, Rod Park, Bill Atherton, David Bragdon, Rod Monroe, Rex Burkholder

Councilors Absent:

Presiding Officer Hosticka convened the Regular Council Meeting at 2:05 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. PRESENTATION OF DISTINQUISHED BUDGET AWARD

Presiding Officer Hosticka introduced Wayne Lowery, Finance Director of Washington County and a local GFOA member.

Mr. Lowery presented Metro with a distinguished budget award. He explained the criteria of the award. Metro met all four criteria and had met those criteria for the past six years. He recognized Kathy Rutkowski, Budget Coordinator.

Ms. Rutkowski recognized the Financial Planning staff and thanked the Creative Services Department, the Print Shop, all of the departments for their help in preparing the budget as well as Councilor McLain for her good work as Budget Chair last year.

Councilor McLain acknowledged her pleasure in working with the staff in preparation of the budget. She felt that it had gone very smoothly.

4. FRIENDS OF TREES PRESENTATION

Jane Foreman, Executive Director of Friends of Trees (FOT) gave a presentation on Friends of Trees organization. She spoke to the history, the mission, educating the public, the challenges, the goals and the future of Friends of Trees (a copy of her slide presentation is included in the meeting record). She said that over the past several years there had been 23,000 volunteers helping plant trees in this five county area.

Presiding Officer Hosticka noted that John Donovan was an active participant in the organization and had gotten others involved on the Metro Council.

Ms. Foreman overviewed the benefits of trees that included air quality, landscaping, environmental controls, wildlife habitat, wood products, energy conservation, and recreation. She then talked about their "Seed the Future" project and other FOT programs. She suggested

partnerships, opportunities and parallels with Metro. She invited the Council and citizens to participate in two special plantings on February 9th and 24th.

Councilor Burkholder said that Metro had been partners with Friends of Trees through their Enhancement Grant program.

Ms. Foreman said they had also been awarded restoration grants.

Councilor McLain said the FOT was planting throughout the region in concert with other partners such as SOLV.

Councilor Monroe asked Ms. Foreman whether Friends of Trees was involved in the planting throughout Springwater Trail.

Ms. Foreman said they were actively involved in planting along the trail.

Councilor Monroe said they were also involved in stream restoration.

Councilor Park asked about the long-term tree care program.

Ms. Foreman spoke to their on-going care and monitoring program.

Councilor Park asked about the survival statistics.

Ms. Foreman said it was 93% in the neighborhoods and about 90% in the natural areas.

5. CONSENT AGENDA

5.1 Consideration of minutes of the January 31, 2002 Regular Council Meeting.

Motion: **Councilor Bragdon** moved to adopt the meeting minutes of the January 31, 2002, Regular Council meeting.

Councilor Atherton noted a correction on page 2 concerning SDC's. Councilor Burkholder noted a spelling error.

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

6. RESOLUTIONS

6.1 **Resolution No. 02-3153,** For the Purpose of Expressing Council Intent to Amend the Urban Growth Boundary for Locational Adjustment Case 01-1; Christian Life Center Church.

Presiding Officer Hosticka asked Legal Counsel to overview the procedure for the quasi-judicial proceeding.

Dan Cooper, General Counsel, spoke to the process for the quasi-judicial hearing and the three-step process the Council must go through to get to the final land use decision. Mr. Cooper talked about the record and the findings.

Presiding Officer Hosticka asked if the decision on the resolution had to be made today?

Mr. Cooper said no and continued with his overview of the process. He explained ex-parte contact and the need for council to disclose any ex-parte contact.

Presiding Officer Hosticka said he and other members of the council had received letters from Mr. William Cox and Washington County concerning this issue. What status did these communications have?

Mr. Cooper said they were now officially part of the public record and explained the issue of evidence.

Presiding Officer Hosticka asked about the staff report.

Mr. Cooper said the staff report was part of the record. It was the opinion of the Metro staff.

Presiding Officer Hosticka asked councilors if they had other questions of Mr. Cooper?

Councilor McLain noted that the Council had amended the locational adjustment process. This case came in under the previous rules?

Mr. Cooper said it was subject to the old Code criteria. It was not subject to the new criteria.

Councilor McLain said she wanted to make sure council understood the criteria for this case, such as, similarly situated. She emphasized that it was the old criteria.

Presiding Officer Hosticka spoke to the hearings officer's report and asked about frequent mention of previous Council decisions as precedents. What was the legal status of Council decisions as precedents for subsequent judgements?

Mr. Cooper responded that the hearings officer that Council employed looked at previous decisions that the Council had made to glean how they thought the Council had been interpreting the Code and applying facts. Each case was factually unique. Every time the Council considered a case such as this, it had to base its decision on the facts and criteria. Those precedents were not binding on the Council. The requirement was that each time the Council rendered a decision that was based on the substantial evidence in the record that the Council found that they wanted to rely on and the Council's interpretation of the language the Code, that the Council could explain and justify how the Council interpreted the Code in that fashion. So the hearings officer had to go back and point out previous cases that looked similar. He noted that every time one of these was done there was a different mix of councilors. This Council got to decide this case based on the current Council.

Presiding Officer Hosticka asked if any Councilors needed to divulge any ex-parte contact?

Councilor Atherton said he had not had any ex-parte contacts.

Tim O'Brien, Planning Department, gave an overview of the locational adjustment to the Urban Growth Boundary and where it was located. The Christian Life Center Church had requested a locational adjustment and explained why. He noted what was included in the record and the process they had gone through to date. He introduced Larry Epstein, Hearings Officer.

Mr. Larry Epstein said this would be his last locational adjustment in 14 years, he expressed his appreciation to the Council and Metro staff for the attention they had shown him over the past fourteen years. He provided some basic facts, history, zoning, planned map designation AF10, approval criteria and findings of the locational adjustment (a copy of which is found in the meeting record). He overviewed the site location. He noted existing development on the property, a 38,000 square foot church and school. Lands to the north and west were designated and zone agricultural farm. Lands to the south were zoned rural residential. The lands to the east were zoned R5, 5 dwelling units per acre. Further south was designated R15, 15 units per acre, and a much more densely zoned undeveloped area.

He said the petitioner had received an exception to allow public sewer and water service so public sewer and water served the property even though they were outside the UGB. The applicant operated a legally approved church. They also operated a private school, providing school services to about 200 students. This was illegal; it was done without county approval, despite county denial. The denial was issued in 1998, the school had continued to operate not withstanding that denial. Washington County began undertaking enforcement process. When the applicant filed the petition they suspended that process until the Council decided whether it wanted to allow the property to be included within the urban area. If it were included within the urban area, then before the school could be legal, the applicant would have to go to Washington County and get an urban plan map designation and an institutional zone for the property. Washington County would have the opportunity to undertake reviews of those applications and attach conditions to approval of those applications if they were approved. The fact that the school was illegal was a substantial fact that influenced the hearings officer during this process and almost led to a recommendation for denial. In this case, the hearings officer had recommended approval but he was still very close to staff's review of this applicant and still very far from the applicant. He did recommend approval.

He gave background about service providers and other effected local governments. Washington County's Board of Commissioners did not comment on the application. They had gotten a comment from the county counsel but not the commissioners. Metro's Urban Growth Planner Manager waived the requirement. There was no comment from the Hillsboro School District; their comment was neutral. The site was in the Hillsboro School District. There was no comment from the Tualatin Valley Water District, the Fire and Rescue District, Tri-Met, Tualatin Valley Parks and Recreation District and Clean Water Services. They got a comment from Department of Land Conservation and Development recommending denial. They got a comment from the Beaverton School District recommending approval. The School District believed this resulted in increased efficiency with which they could use their facilities.

Councilor McLain asked about the Beaverton School District comments. She asked if the property was on the Beaverton School District line?

Mr. Epstein explained what area would be served by the Beaverton School District.

Councilor Monroe asked about the district line.

Mr. Epstein explained where the line was.

Presiding Officer Hosticka asked about the Washington County Counsel's letter?

Mr. Epstein said it was in the original record. He overviewed the history of the process, the filing, and the two public hearings.

Councilor Bragdon asked about the standing of the comment from Washington County Counsel as opposed to the land use decision governing body, the Washington County Commission.

Mr. Epstein responded that the legal counsel did not represent that they represented the Washington County Commission in this matter. In his opinion they did not represent the Board of Commissioners, it was simply an opinion from Washington County's Legal Counsel that they thought the petition would facilitate resolution of the violation.

Councilor Atherton asked about conclusion #10, the petition included all similarly situated contiguous land outside the UGB. Was the land to the north, south and west exception land?

Mr. Epstein said it was all exceptions land but it was the only property in the vicinity that was serviced by public water and sewer. The standard required that the land be similarly situated with regard to the same factors including the availability of public services. It was principally the availability of public services that distinguished this site from the surrounding land otherwise they were similar in the sense that they were within the AF zones as well as the extent of development on the property that distinguished it as well. No place else was there an institution on surrounding properties as large as this facility.

Councilor Atherton asked about the sewer and water facilities, were they in the public right-of-way?

Mr. Epstein said this was his belief.

Councilor Atherton asked if the services were connected.

Mr. Epstein said the property was served, the other properties were currently not served.

Councilor Atherton said in terms of the land in similarly situated, all someone would have to do was dig a trench to make the connection.

Mr. Epstein said physically, yes. He continued with the approval criteria and responsive findings. He highlighted that the adjustment complied with the acreage requirement of less than 20 acres, the property was served by public services and facilities as well as there was a net improvement in efficiency of public facilities and services. This was the crux of the application. The burden of proof of efficiency of services had been something the council had struggled with in every case.

Presiding Officer Hosticka asked about public services and noted that education had not been listed before. He asked if it was unusual to consider education?

Mr. Epstein said that he believed education was a public service but this was the first case where it had been considered. He continued with his findings. The Council had recognized in the past that land that was already developed with an urban use should be subject to a lesser burden of proof in meeting this criterion on net increase in efficiency. The Council had also decided that there was a sliding scale of burden of proof. The bigger the property the more the burden. In one case involving less than five acres, the Council said any improvement in efficiency was good enough. When you get beyond five acres you had increased the burden of proof.

Councilor Park asked if the acreage included the ball fields? He asked what would be the urbanized area of the parcel excluding the play fields.

Mr. Epstein said yes the acreage included the fields, he thought there was about seven acres of urbanized area excluding the play fields.

Councilor Park asked where the western boundary of the property was?

Mr. Epstein pointed out where the boundary was?

Councilor Park asked if they had the latitude to deny or accept the total acreage or could they vary that acreage.

Mr. Cooper said he thought it was most appropriate to hear from all parties and then the Council could make the decision as to refinements and options.

Mr. Epstein continued that the applicant had argued that there should be a low burden of proof applied because the site was already developed as an urban use. The trouble with the argument was that it was not an urban use, it was a rural use. Washington County approved it as a rural use. The school was an illegal use, it didn't count. That was his opinion. He had expressed this vociferously to the applicant during the first hearing.

Councilor Monroe asked when the school was built?

Mr. Epstein said after 1998. Washington County bared some responsibility for this. They should have been monitoring this construction.

Councilors Monroe asked if there was a building permit?

Mr. Epstein responded that there must have been a building permit, it must have been represented as something other than a school. The building permit was not in the record.

Mr. Cooper recommended that they get all the way through the presentation and then asked the questions.

Presiding Officer Hosticka said Washington County determined that the school was not a permitted use in a case in 1998.

Mr. Epstein said he believed that the decision was in 1998, it was in the record.

Presiding Officer Hosticka suggested the Mr. Cox address this when he made his remarks.

Mr. Epstein said he did not considered the property to be developed with an urban use. This did not enter into his evaluation and he didn't give it a lesser burden of proof because of that. There had to be more than just any increase in efficiency of urban services. The increase in efficiency of urban services had to be to land already within the Urban Growth Boundary. The increased efficiency had to be on land to the east of 209th Street. He noted that one argument the petitioner made was that there was an increased efficiency in park and recreation uses if the property was included because of the open space. There were sports fields developed on the western portion of the property. However, these facilities were private. They were often available for public use and there was ample evidence in the record that the applicant had made them available for public use.

The Tualatin Hills Park and Recreation District had done a study of this area and found that the area was park deficient. There was need for more facilities like this in the area. If this land was available for public use for parks and recreation purposes that might be an increase in efficiency. It was not, because it was private property, the applicant did not propose a condition that these lands be made available for public purpose. The applicant could exclude the public at any time. Therefore, including the property in the UGB did not result in a net increase in efficiency of public open space parks and recreation services. He considered whether it would be appropriate to impose a condition to require the applicant to make these lands available and decided that it wasn't appropriate. The applicant hadn't offered it; it would be a problematic condition to enforce, it could be alleged to infringe upon the exercise of religious freedom to the extent that their religious freedom extends onto the sports fields. He felt this wasn't a factor that warranted approval of the application, it didn't warrant denial but didn't help them.

The only thing that was left was schools. The Metro staff consistently advocated to the petitioner that they get a comment from Hillsboro and Beaverton School Districts. Until the very last day that the record was open there was no comment. The applicant had attempted to get a comment from Hillsboro School District; they had declined to comment. Beaverton responded that, by including this property, it would reduce their need to build new schools. The applicant provided evidence about where their students come from, less than one-half come from a three-mile range. Most of the current students would probably attend Beaverton schools.

Presiding Officer Hosticka asked about the letter from the Beaverton School District submitted by the Executive Administrator. He asked the hearings officer if he thought this was the official position of the Beaverton School District?

Mr. Epstein said yes, he thought that the Executive Administrator was qualified to submit an opinion for the district on this proceeding.

Councilor Monroe commented that 45% of the students fell within the three mile arched area. He thought that approximately 50 students would have attended the Beaverton School District.

Mr. Epstein said Councilor Monroe could draw his own conclusions from the evidence. The applicant had said that about half of the student population was within the Beaverton School District. The applicant had proposed a condition that would require them to continue to conduct general school services on their property if the property was included in the UGB. This was the only increase in efficiencies that would result from including this property in the UGB. The next criterion required including property in the UGB that would facilitate needed development on adjacent existing urban land. He said this raised a question about what adjacent meant. The land immediately across from 209th Street would be the closest land within the UGB. It was already developed whatever demand they created for school service was already being met. Providing another school across the street could result in some of those children getting out of public school and going to the private school. It might free up some public school facilities. That was speculative. He couldn't base his decision on speculation. He noted the R15 zoned property, having a near by school could facilitate development of that property. It could make people want to live there. He noted the definition of adjacent. To this extent including this land in the UGB facilitated development of that piece of property. He said there was no energy, environment, social or economic issues to warrant the amendment. There was no impact to agricultural land or on compatibility with nearby agricultural land. The last issue had to do with whether the UGB would be superior if the amendment was allowed. There was a sliding scale dependent upon the size of the area to be included. Relying on his finding about net increase in efficiency of school services, he said it would be superior to include the land in the UGB.

Councilor McLain asked about the superior element. She asked where the UGB was currently and about exception lands in that area.

Mr. Epstein said there was discussion of that in the record, zoning and use. He explained further that the land to the north and to the west was agricultural farm zoning. He noted open space and pastureland on the map. Land to the north was primarily single family homes.

Councilor Atherton asked about efficiency of land inside the UGB. He thought this was new twist on that concept.

Mr. Epstein said that usually the facilities they had dealt with were utilities.

Councilor Atherton said here the argument was being made that reducing the use of facilities that were inside the UGB created efficiency.

Mr. Epstein said in a sense yes, the difference was that this facility would provide a service that was more than just next door. So it was hard to figure out what was adjacent in terms of school services. What it did was reduced the demand for existing school facilities and makes them available for other individuals who now lived within the UGB.

Presiding Officer Hosticka returned to the issue of public facilities and services. He said the ones that were listed were all public facilities that were tided to land use directly. He asked if there was a qualitative difference between the facilities listed and such things as social services, education, public broadcasting?

Mr. Epstein said his decision had to speak for itself. He had concluded that a school service was a public facility that could be included in this list but it was the Council's call. If the Council didn't think it was appropriate they could disagree with his decision. If the Council made that call, he could draft findings that would be defensible.

Councilor Park asked about Washington County's protest, was it the operation of the school not the church?

Mr. Epstein said yes, the Church was fully authorized and permits had been filed. A separate permit authorized the open space and recreational facilities by Washington County.

Councilor Park asked where the school and church sites were.

Mr. Epstein clarified.

William Cox, 0244 SW California Street, Portland, OR 97219, introduced Warner Rienas, senior pastor for the church and noted that a planner and the pastor for educational ministries were in the audience to answer questions. He thought that Mr. Epstein had done a fair and honest report. He said, as Mr. Epstein said, this area was exception land. This property had already received exceptions to Goal 3 and 4 that were resource goals. Goals 11 and 14 were two other goals which had exceptions taken. He noted that the sewer line was on the west side of the 209th Street right-of-way. He thought it was an unfair designation to say that the school was done despite denial. One of the basic premises that the Council must understand was that it was a matter of religious belief versus designation made by a public entity and that was whether this was a school or an educational ministry. It was his client's belief that this was an educational ministry, it was part of

their beliefs to have an educational purpose. There was no illegal building of the building. It was all one building approved in 1993. Construction was finished in 1995. Included on those building permits and the architectural drawings were indications that there were classrooms in that building. It was a church. He took exception to what Mr. Epstein said about the school being approved as a rural use and the church was approved as a rural use. In order to be a rural use the County said the total number of students that occupied this school had to be 65% to 75% from rural areas. There were only 9 students from rural areas. It was a not a rural use. The County alleged it was a urban use. They agreed. The church was approved to be a church with contained classrooms. They were using these classrooms. His client did not accept the fact that what they were doing was in violation of any laws. He also took exception to what Mr. Epstein said about the school district letter from Beaverton. He said the letter talked about opening up other options to the students in the Beaverton district so they didn't have to build as many classrooms. It was also interesting to note that the staff report indicated that the Hillsboro School District didn't respond. They couldn't force the district respond; they had repeatedly asked them to respond.

Presiding Officer Hosticka said the Hillsboro School District may be in discussion with Metro staff but they had never appeared before the Metro Council with a request.

Councilor McLain clarified that Hillsboro School District was asking for permission to build a school inside the Urban Growth Boundary. It was not outside the UGB.

Mr. Cox said he stood corrected. He felt their request for a new school played a role in their reluctance to comment on this site.

Presiding Officer Hosticka said he thought it was better left that the School District didn't comment and they shouldn't draw any conclusions one way or another.

Mr. Cox said he would assume that would be the position to take but that was not what the staff took and that was why he had brought it up. He then addressed one of Councilor Atherton's comments about digging a ditch. He explained the process they would have to go through for hook up. He said Mr. Epstein had said they hadn't come forth with proposed language, they weren't sure if he was going to put that condition on it. They knew that he had expressed an interest in whether they would be willing to add a condition during the hearings and they had said yes. He had continually been in touch with Washington County and Mr. Cooper about how they might write that condition. This was why he was surprised at the staff report. The idea that the amendment facilitated needed development on adjacent existing urban land. It said the needed development for purposes of this section shall mean consistent with the local comprehensive plan or applicable regional plans. He didn't believe that you could exclude from that existing structures, existing residential buildings. This would facilitate existing rather than just future. These were all in compliance with the comprehensive plan. Mr. Epstein put the emphasis on future, Mr. Cox believed it had future implications but it also talked about what was there now. He noted that Councilor Hosticka had asked whether or not the school was a facility much the same as the listed facility. Mr. Cox didn't believe it was a facility he thought it was a service. He thought schools were services not facilities.

Presiding Officer Hosticka asked if an educational ministry was a public service?

Mr. Cox said yes and invited Pastor Rienas to explain.

Warner Rienas, Pastor of Christian Life Center, 20863 SW Vicky Lane, Beaverton OR 97007 said they had a distinct mandate from their headquarters to conduct religious education as a

ministry. They had their approval by the US Government as a religious organization to conduct education. It was in everything they did as a church organization across the nation. Many of their churches had schools. He spoke to their approval process. Washington County approved the construction of that entire building with noted classroom space. The building was not in two parts; it was one building for religious, educational and athletic purposes. He clarified that Washington County had approved this building in its entirety and they had used that building for those purposes from the very beginning. They had both children and adult educational classes.

Councilor Bragdon said Pastor Rienas had clarified some things but made other parts murkier. He prefaced his comments; government needed to be very careful in terms of interaction with religious freedom. He respected this. He asked about the wording in the Metro Code with regard to efficiency of public services, it mentioned particular facilities and services, it didn't mention schools. He noted that Mr. Epstein had construed schools as a public service. Councilor Bragdon agreed with this comment. He noted the letter from the Beaverton School District. Yet, now they had just heard that for purposes of the building permit, this was not a school. In fact the Beaverton School District did not operate educational ministries, the School District operated schools. He asked Mr. Cox if this semantic distinction played into this case? Were they synonymous for this case but not in the building permit?

Mr. Cox said the semantics difference was at the heart of this discussion. If it were a public facility they would call it a school. Was it a church, it was both. The school was all part of the church. The school was K through 12, the children got the same diplomas as a private school but they had included a religious element. That religious element was the semantic. It had been the basis for their entire problem with Washington County. Washington County had told the church they had to apply for a school. The church was saying they were not a school so Washington County issued a citation. They then applied to LUBA. LUBA supported the county's own interpretation of what scaled to the needs of the rural community meant, which was that 65% to 75% of the students had to come from rural areas. So, after this ruling, they then made an agreement with Washington County that the best way to solve this, if they believed it was an urban use, was to go to Metro and get a locational adjustment. Washington County supported this.

Councilor Bragdon said his question didn't imply skullduggery on his part, he was simply trying to adhere to the words in the Code in the quasi-judicial proceeding. What he had concluded from the remarks was that this entity operated and functioned as a school. He accepted this on face value. This issues between the applicant and Washington County may not play into this case.

Mr. Rienas said part of why they were here was in discussion with Washington County, they tried to eliminate those semantics. Washington County's best solution was to address the locational adjustment issue, with Washington County approval and advice; they had proceeded with the request for a locational adjustment.

Mr. Cox added that there was a question whether Washington County's Legal Counsel represented the Board. It didn't represent the board but it represented the entire Department of Land Use and Transportation. He was their attorney and that department was whom they had had to deal with.

Councilor Park asked how LUBA and Court of Appeals had ruled?

Mr. Epstein spoke to the Washington County permit application and how the church had gotten to LUBA. The 1998 special use permit application for the school and the 1996 application for open space and recreation development, the county talked about what their standard was for

whether the church or school was allowed. The applicant had to meet this standard. The language in the standard, in part, created the dilemma. The language said, schools outside an urban growth boundary shall be scaled to the rural population. The county made an interpretation of that language. The county said it was scaled to serve the rural population if most of the students came from the rural area. In this case 90% of the students came from the urban area. It wasn't even a close call of the county. This was appealed to LUBA. LUBA affirmed the county's interpretation of its Code. The Court affirmed Washington County's denial of this application.

Mr. Cox added that the issue of school was never debated. They also had a major constitutional question involved in the case. The Court of Appeals denied review.

Councilor Park asked about the two-mile rule?

Mr. Cooper responded he didn't know.

Councilor McLain said her understanding was that the Council was here to look at an application that was in Metro process and Code. They were either going to agree to do this or deny it. She suggested that they were getting far afield of the issue at hand.

Presiding Officer Hosticka said he thought it was a relevant question because the sole reason why the hearings officer had recommended that the Council approve this was because it improved the efficiency of public facilities and services with the Beaverton Schools. If it was a school, he would say yes. He didn't know if you could be a school for one reason and not a school for another reason. He thought the discussion was relevant at this point.

Councilor Atherton asked Mr. Cox if the client had ever discussed with Washington County, the possibility of a conditional use permit for this property.

Mr. Cox said they had tried everything. This was why they were before Council.

Councilor Atherton asked about similarly situated contiguous land. He noted subdivisions to the north and south of the property.

Mr. Rienas explained where the housing areas were to the north and south. There were homes in process of being developed.

Councilor Atherton asked why those homes weren't urban use as well and why they were not similarly situated?

Mr. Epstein said the uses themselves were permitted, the lot sizes on which they were situated were substandard to the extent they were not conforming but single dwellings were permitted use in the rural residential and the ag farm zones. Neither a school nor a church was permitted uses; they had to get a conditional use permit to be approved. That distinguished them from surrounding single family homes. It was the denial of the special use permit that brought the applicant to Metro. The county denied the application for a school. The county considered it a school, if they considered it a church, they would not be before Metro today. It’s the county's interpretation of it zoning regulations that made it a school.

Councilor Atherton asked if it was reasonable to assume that the classrooms were for Sunday school classes.

Mr. Epstein said there was no conditional use permit for a school. The applicant's approach to this was that it was all part of a church.

Presiding Officer Hosticka said he didn't know that they had to resolve that dilemma in order to resolve the resolution in front of the Council.

Councilor McLain commented on why they were here today, it was to look at an application to make sure that it met the criteria that the Metro had laid out for an application to be successful. They had heard from the hearings officer that there was one item that he believed would allow the Council to approve this with conditions, which would be that, it offered more efficiency for the Beaverton School District. The hearings officer had found some level of efficiency for the property. It had to help what was inside the Urban Growth Boundary because it allowed another school opportunity. They were dealing with the fact that the county said it was a school, the hearings officer said there was one piece of evidence that said there would be some efficiency increase for the land that was already inside the UGB. She hoped that this was what the Council could concentrate on. This was the only thing they had in this finding to hang their hat on.

Councilor Park asked for clarification on HB 3045. Since this parcel was sited within the Hillsboro School District. They had a letter from the Beaverton School District indicating improved efficiency. He was at a loss since they didn't have anything from Hillsboro School District yet the school was within that district.

Mr. Cooper said the process that Councilor Park was referring to spoke to demonstrating the need for land for high growth school districts that had adopted conceptual school plans that had become part of the local comprehensive plans. It spoke to the question of whether there was available land for building new schools inside urban growth boundaries or whether it was appropriate to request, consistent with all applicable law, amendments to the UGB for school needs. This case and the evidence that Beaverton had put in the record was not set up as a school land need case. That would be a major amendment case. This was a locational adjustment case. The question before Council was, was it appropriate to interpret Metro Code language on efficiency of urban services for adjacent property in the manner that Mr. Epstein had recommended to the Council was possible given some evidence from Beaverton that the existence of the school did increase efficiency of service delivery by the Beaverton School District.

Councilor Park said he assumed that when they got to discussions with Beaverton and Hillsboro School Districts that the numbers would then be subtracted from the counts.

Mr. Cooper said the record that Councilor Park was referring to had not even started yet.

Presiding Officer Hosticka said if they were talking about increasing the efficiency of urban services in the adjoining areas within the UGB, did it make a difference where the students came from and did it make a difference whether any student within that area could avail themselves of this service or whether there would be limitations on who could attend?

Mr. Cooper responded, as Mr. Epstein had indicated to the Council, this would be the first case in which the Council would be interpreting Metro Code language on service efficiency to be applicable to schools in schools service efficiency. So the Council was interpreting vague language in the Metro Code, the Council could interpret it any way they wanted to.

Councilor Monroe asked if there was anything in the record to indicate whether Beaverton School District was planning to build a school in that area?

Mr. Epstein said no.

Councilor Monroe asked about conditional use within the UGB on residential land when a church wanted to build a facility, they had to get a conditional use permit, was that correct?

Mr. Epstein said yes, it was what Washington County called a special use permit.

Councilor Monroe explained that he was a head deacon of a church who was applying for a conditional use to build a new sanctuary. He noted how his church defined a school. He overviewed that the church had applied for a conditional use permit to build a church but did not apply to also have a school as a part of their church. Was that correct?

Mr. Epstein said they applied for a church in 1993, then for an open space in 1996 and then for a school in 1998.

Councilor Monroe asked if they had already been operating a school prior to the 1998 application.

Mr. Epstein responded yes, based on the testimony of the pastor.

Councilor Monroe said it seemed to him that even if they voted to bring this in to the UGB the applicant would still have to get a permit to operate the school.

Mr. Epstein explained that he tried to address this in the condition that he had fashioned. The question under Metro's standard was whether this would increase the efficiency of public facilities and services. To achieve that result in the condition, he said that the applicant had to record a covenant and the covenant had to commit them to providing school services. He then defined what school services meant. School services meant a comprehensive educational program similar to that offered in public schools with a capacity for 200 students. While the church may operate this educational activity as part of its ministry, it must offer the same sorts of educational opportunities as a public school would. It had to be able to graduate students the same as a public school would. That was what the covenant was intended to achieve. Regardless of whether it was a church or a school, it would provide educational services if you attached the covenant similar to services that would be provided by a public school.

Councilor Monroe said it seemed to him that even if the Council voted to bring this in to the UGB they still needed to get approval by the county to have a school.

Mr. Epstein said yes they would, but then they would be in the urban area and they wouldn't have to meet the standard that impeded them last time, the rural use standard. If they didn't have to meet the rural use standard the county would grant them the permit.

Presiding Officer Hosticka asked if the conditions of admission were similar in that anyone who lived within that geographic area could come for free?

Mr. Epstein said no, they were not.

Presiding Officer Hosticka asked if the hearings officer had considered this and rejected it?

Mr. Epstein said he did not consider it.

Councilor Park asked about the open space application. That application didn't have the same restrictions as the use of the school.

Mr. Epstein said the only restrictive use was the school.

Councilor Atherton asked about the purpose of the similarly situated contiguous land.

Mr. Cooper said that was one of the criteria that were in the Code. It was not part of the new Code. Over the years the Council had issued different interpretations of that. In general, there were several concerns. Locational adjustments used to be limited to 50 acres, now they were limited to 20 acres. One of the purposes of similarly situated was to not be cutting up parcels or areas and justifying some of it coming today as less than 20 acres and then the following year, the next 20 acres comes in. The Council had tried to avoid allowing that to happen. The Council had taken different interpretations of similarly situated. He felt that Mr. Epstein had provided rationale for why this was one parcel which was not similarly situated to any other parcels next to it based on the sewer connections and the fact that it already had approvals for those connections. It could be interpreted differently.

Councilor Atherton said if they were to apply under the new Code then this similarly situated would not be an issue.

Mr. Cooper said the new Code was irrelevant in this case.

Mr. Cox clarified Councilor Park's question about the two miles issue; it was never an issue in this case. He agreed with Presiding Officer Hosticka's comment about the two school districts and who was servicing the area. In reference to the semantics between school and educational ministry, they were here based on Washington County's declaration that this was a school. They were not accepting this for purposes of protecting the church's right under the constitution but for the purposes of being here today, the school issue was before the Metro Council because it was put there by Washington County.

Councilor Monroe said whether the Council approved this or not, they would still have to get county approval and the county was still going to consider it a school. He didn't think they were helping themselves any by calling it a religious educational institution rather than a church school.

Mr. Cox said he appreciated Councilor Monroe's comments. When they went back to Washington County they would be talking about a school. This did not change the basic belief of his client.

Councilor McLain said she was hopeful this was the last locational adjustment she had to consider. She spoke to the changes in the Code. This particular process and criteria was very difficult to meet. She was strict on what the criteria said. She stayed firmly within the record she had before her. In this issue, they had a hearings officer and staff that had given two different recommendations, one was to permit approval with condition while the other was to deny. One, she believed that the hearings officer was correct that you could make a case for a slight met efficiency approval in the area of public services for schools. Beaverton was strapped for schools. She would limit herself to the record in front of her, she agreed with the hearings officer. She also

felt there was an issue that needed to be on very clear on the record. They were not trying to help the applicant with their dilemma in Washington County that was for the applicant to deal with. She acknowledged the applicant's frustration with the process but Metro Council had to stick to the criteria. She was also not worried about setting a precedent. These criteria would never be in place again. She would be voting yes based on the record.

Councilor Monroe said, on the legal aspect of this, they could go either way. He thought part of his oath of office was to do the public good. He asked himself, how would it serve the public best? He believed in the school system both public and private. He felt denial of the school would not serve the public good. He would be supporting the resolution.

Councilor Burkholder recognized what Councilor McLain said. He thought they could make arguments either way. The reality was they did have a school in this location and the reality was that they were not going to set a precedent. Given the current condition, he would be supporting the resolution.

Presiding Officer Hosticka noted that before the Council started declaring their vote, he suggested having a motion on the floor. He asked Mr. Cooper about the appropriate motion.

Mr. Cooper responded that the hearings officer's recommendation included a condition. There had been no discussion about alternative conditions. The hearings officer's condition could be amended. He noted that if the Council said yes today, they would have to then say yes to an annexation before the Council could adopt an ordinance. Changes in condition could happen later.

Motion: **Councilor McLain** moved to adopt Resolution No. 02-3153.

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

Councilor Park asked if there was a reason why at this time that the open recreation area needed to be included inside the UGB. He would not want to presuppose that the Council's legislative decision being made later on in the year would tie into this. He thought that the request being made of the Metro Council was to take care of that particular part which was causing them the problem. It also retained the Council's ability to say we will take care of this part of the problem within our ability however we didn't have to extend it beyond that at this time. He thought that this was the fairest solution to take care of it at a minimal amount.

Presiding Officer Hosticka asked if they could amend the resolution to apply to a portion of the parcel?

Mr. Cooper responded that the Council could do this but they might want to give the applicant an opportunity to speak to that because if the Council didn't include the entire parcel, the applicant would have the right to appeal because the Council in effect had denied.

Presiding Officer Hosticka said if we brought this entire parcel within the UGB, could there be other kinds of urban developments in the undeveloped portion of this parcel?

Mr. Cox said the county had indicated that its intention was to put an institution zone on this property. In which case most of the concerns that he understood that Mr. Epstein had regarding putting this condition on in the first place were not capable of being put into that zone. He also would like to address the fact that he did not know that you could cut a piece of property in two,

this was all one parcel. Their application was for one parcel. The condition said 200 or more students; they may have to expand some buildings to meet that. He would think the amendment would not be prudent.

Motion to Amend: **Councilor Park** moved to amend the motion to separate the parcel.

Seconded: **Councilor Burkholder** seconded the amendment.

Councilor Park said he thought they had addressed the issues. By taking care of the portion that the Council had been asked to address, he thought this got them to where the applicant needed to be and where Metro needed to be. He was a little surprised that it was brought forth that there may be additional buildings suggested after it was brought inside the UGB.

Councilor McLain said that in at least one other locational adjustment they had brought open space in to protect it under Title 3 as well as open space protection. She suggested one of the reasons why they might not want to vote for the amendment was that this would be treated as an agricultural or rural area and their particular protection for green space was voluntary. If the Council brought the entire parcel in, it would be within Metro's jurisdiction and they would have an opportunity to put strength into the protection. She would be voting no for the amendment because voting against this would allow more protection for the open space and park areas.

Councilor Monroe said he thought the amendment muddied the water. It made Washington County's decision even more difficult in terms of how they zoned the property. It was one piece of property; the play fields were appropriate if you had a school.

Presiding Officer Hosticka said he would support this motion and if it failed he would see if there was support for a condition that the entire parcel be used only for the purposes for which it was currently being used. He thought this was a muddied process already. He thought they needed clarity about what the future would be.

Councilor Park spoke to Councilor McLain's concern, he didn't think 10-10 would apply. He understood there was a concern about splitting the parcel. On the other hand he thought they were given a very muddy situation now and he didn't want to punish or reward them for their situation. He thought this was one way of carrying that forth. If the Council was correct and this parcel was brought inside the UGB next year then the condition would not exist and they wouldn't have a problem. It was self-correcting. If it did not happen, it was still self-correcting. The parcel was not required to be within the UGB to continue the open recreation use.

Vote to Amend: The vote was 3 aye/ 4 nay/ 0 abstain. The motion failed with Councilors Monroe, McLain, Atherton, and Bragdon voted no.

Motion to Amend: **Presiding Officer Hosticka** moved to amend the resolution to include that an additional condition be put on that the entire parcel be used for its current uses.

Seconded: **Councilor Atherton** seconded the amendment.

Councilor Park asked about the length of time and if they had the ability to place that type of condition once it was brought into the UGB?

Mr. Cooper said he understood Councilor Hosticka's motion to be in effect in addition of the condition that was suggested in the letter from Washington County Land Use and Transportation Department as an additional condition to the condition that was recommended by Mr. Epstein. Both of those conditions would expire if and when the surrounding exception land was added to the UGB. He didn't view the motion as anything other than doubling up the conditions that had both been suggested.

Councilor Park asked if they had this within their power to do?

Mr. Cooper said yes.

Mr. Epstein said the condition as written provided that the covenant expired when the land in the UGB surrounded the land. He suggested folding the amendment into the existing condition, in addition to providing school services, the portion of the property that was used for recreational and open space purposes shall remain as such.

Presiding Officer Hosticka said it was not so much that it remained as such for recreational as that it remained as such for church and school purposes, not residential or industrial purposes.

Mr. Epstein suggested that they say that it couldn't be used for commercial, industrial, residential or other purposes other than that for which it was now being used so as not to preclude, if they needed to amend their buildings that they were able to do that as long as they continued to use it for the same purpose.

Mr. Cooper said given the posture of this case where there was an applicant and no other parties and it needed to come back to Council, he suggested adopting today's resolution if that was Council's intent. When they came back to Council with the ordinance to amend the UGB that finished the process, they could have the revised condition prepared for the Council to move into the report and recommendation at that time.

Presiding Officer Hosticka withdrew his motion.

Mr. Cox said he believed that the proposal that Mr. Epstein had before Council served that very purpose. It said that the covenant would define school services as a comprehensive educational program similar offered to that in preschool, grade, middle and high schools with a capacity of 200 or more students. The covenant said it shall be used for the purposes it was currently being used.

Presiding Officer Hosticka said they were only expressing an intent today, was this correct?

Mr. Cooper said yes and the recipients of your intent were yourselves? You would get to interpret you own intent.

Presiding Officer Hosticka said according to the motion we intend to expand the urban growth boundary to include this area with conditions.

Vote: The vote was 5 aye/ 1 nay/ 0 abstain, the motion passed with Presiding Officer Hosticka voting no and Councilor Bragdon absent from the vote.

Mr. Cooper explained the future processes for this parcel.

7. COUNCILOR COMMUNICATION

Presiding Officer Hosticka said he had been asked about additional costs to Metro if they add measures to the ballot. Mr. Casey Short spoke with the election's office, there will be no additional cost if they add measures to the ballot because costs were apportioned based upon the number of jurisdictions that have any measures on the ballot.

Councilor Atherton shared information about Natural Resources Committee discussion on carrying capacity. He noted Mr. Larry Derr's testimony. He would continue to work on the ordinances.

8. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 4:52 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 7, 2002

TOPIC	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER
MINUTES	1/31/02	MINUTES OF THE 1/31/02 METRO COUNCIL MEETING	020702C-01
FRIENDS OF TREES PRESENTATION	NONE LISTED	FRIENDS OF TREES INFORMATION PROVIDED TO METRO COUNCIL	020702C-02
LETTER CONCERNING CASE 01-1 CHRISTIAN LIFE CHURCH	7/5/01	LETTER TO LARRY EPSTEIN, HEARINGS OFFICER FROM ALAN RAPPLEYEA, OFFICE OF COUNTY COUNSEL, WASHINGTON COUNTY	020702C-03