

MINUTES OF THE METRO COUNCIL MEETING

March 7, 2002

Metro Council Chamber

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

Councilors Absent: Rex Burkholder, Rod Monroe

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

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Aleksey Kasyan, 17045 SW Johnson Street, Beaverton, OR 97006, raised questions concerning limited cab service in Beaverton. They were not allowed to pick up people in Portland. They felt as they were being discriminated against. They would like to have the same rights as other drivers in the region.

Councilor Bragdon said they had received letters from cab drivers in Beaverton, Mayor Rob Drake, and other elected officials from the area concerning this issue. What was being proposed was good for business and customers.

Councilor Park asked Councilor Bragdon to describe the background of the issue.

Councilor Bragdon said this was similar to a contractor business license program at Metro for contractors in the region. What was being proposed by the cab drivers in Beaverton was something similar, a more efficient system.

Presiding Officer Hosticka said they had asked the Transportation Committee to consider this issue. He thanked the cab drivers for coming and testifying.

3. TRANSITION ADVISORY TASK FORCE REPORT AND RECOMMENDATIONS - MOVED TO THE 3/21/02 COUNCIL MEETING

4. EXECUTIVE OFFICER COMMUNICATIONS

Mike Burton, Executive Officer, asked Marv Fjordbeck to present information on the ballot title.

Mr. Fjordeck, Senior Assistant Counsel, said that the judge had ordered changes in the ballot title (a copy of this is included in the record). This was the final word and no further appeals were possible.

Dan Cooper, General Counsel, explained the process for challenging the ballot title. He noted that the judge had changed the title not the person who had challenged the title.

Councilor Atherton remarked that the re-written title spoke to Metro's intent.

Mr. Burton noted an article in today's Oregonian that Lake Oswego Council supported parks funding. He then presented the proposed FY 02-03 Budget (a copy of the power point presentation is included in the record). The presentation included a historical perspective, the critical funding needs, proposed initiatives, deficits, significant goals and conclusions. He acknowledged all of those who had put the budget together.

Councilor Bragdon applauded Mr. Burton's leadership on initiating a Transportation Investment Task Force to address regional transportation funding issues.

5. CONSENT AGENDA

5.1 Consideration of minutes of the February 28, 2002 Regular Council Meeting.

Motion: **Councilor Atherton** moved to adopt the meeting minutes of the January 17, 2002, Regular Council meeting.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain, and the motion passed with Councilors Burkholder and Monroe absent from the vote.

6. ORDINANCES – FIRST READING - PUBLIC HEARING

6.1 **Ordinance No 02-940**, For the purpose of Adopting the Annual Budget for Fiscal Year 2002-03, Making Appropriations, and Levying Ad Valorem Taxes, and Declaring an Emergency.

Presiding Officer Hosticka assigned Ordinance No. 02-940 to the Budget and Finance Committee. He then opened a public hearing. No one came forward. Presiding Officer Hosticka closed the public hearing.

7. RESOLUTIONS

7.1 **Resolution No. 02-3171A**, For the purpose of Directing the Executive Officer to Submit a Petition to the Land Conservation and Development Commission for a Declaration Ruling Under ORS 183.410 on the Application of Goal 14 and ORS 197-298 to the Expansion by Metro of the Urban Growth Boundary.

Motion: **Councilor Park** moved to adopt Resolution No. 02-3171A.

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

Councilor Park said they were submitting a declaratory petition to LCDC. He explained why this resolution was necessary. They were seeking approval that this strategy met with state law. He noted the questions in Exhibit A, which asked the Commission if Metro was on the right track. The questions were open-ended; the answers would allow Metro to proceed. He spoke to what the resolution was and what it was not. They were seeking equitability for the citizens of the region.

Presiding Officer Hosticka opened a public hearing on Resolution No. 02-3171A.

Matthew Udziela, Associate Planner with Cogan, Owens, Cogan, 813 SW Alder St., Suite 320, Portland OR 97205 spoke to the resolution (a copy of his presentation points were included in the meeting record). He suggested several amendments concerning Goal 14 and ORS 197.298. He thought the council's general approach was very good.

Councilor McLain asked about the higher versus lower priority land issue? They already knew the answer to that question as far as State law now. She wondered if this was an issue of higher priority land in one part of the region and lower priority land in another part of the region.

Mr. Udziela said it was within the sub-region not regionally. For example, if the higher priority land, the exception land was not productive because of slope, parcelization, serviceability, etc., then could you go to lower priority land within that sub-region?

Councilor McLain asked if Mr. Udziela was using the State definition of higher priority and lower priority land?

Mr. Udziela responded yes.

Councilor Park spoke to Question 5 indicating that the question had been asked it in a broader fashion. It applied the statutory priorities for inclusion of land with the Urban Growth Boundary on a sub-regional basis.

Councilor Bragdon said some of the suggestions were pretty common sense in terms of enumerating what the regional centers were. Would language integrating the witness's suggestions change the intent?

Councilor Park said they were seeking guidance as to not only which ones but how many, how small could you go, how large could you go. As noted in the staff report, DLCDC had been working on some preliminary language that would re-write Goal 14. The preliminary language suggested that the sub-region had to be a fairly large area with a contiguous border of approximately 30 miles. Metro was trying to get verification since it was a draft of the rule and the rule was never finished or adopted because of the Ballot Measure 7 question. They were not trying to tie the Commission's hands; they were asking in an open-fashion, which would allow DLCDC to give Metro some feedback. The Commission may suggest doing it on 38 centers or that Metro could not do it at all. It was the methodology of the question. Without constraining the Commission to just the ones mentioned in the Framework Plan, they were leaving the questions open-ended.

Councilor Bragdon said the more open-ended the more time it might take. In terms of the Commission coming back with a declaratory ruling, given the list of questions, would the questions be responded to all at once?

Mr. Cooper said they didn't have to answer any of the questions, they could choose to answer some or all of them. The amount of time wasn't within Metro's control. They wanted to get the process started by asking the questions.

Councilor Atherton asked Mr. Udziela his reasoning behind striking region and adding 'within the urban growth boundary'.

Mr. Udziela responded that it would clarify what region they were talking about because Clark County was within the region too. Clark County was studied as a regional center also but was not within the UGB expansion decision.

Councilor Atherton said he hadn't thought about Clark County, but these were some of the questions they were trying to get at. Were new lands that were added a part of a sub-region?

Councilor McLain asked if Mr. Udziela was speaking for Cogan, Owens, Cogan or for clients.

Mr. Udziela said they had been working with clients but they had also been involved in planning issues for a long time so they were interested in these issues as a firm. The issue of the Urban Growth Boundary expansion was a key decision that would be made that would effect many factors in the region. The firm had a general interest in these issues.

Councilor McLain said, as she looked at Mr. Udziela's questions, she noticed that he had set up a dichotomy in the two different types of questions being asked. One, he was focusing on the centers and what they were within the UGB, specifically the 38 as he described them. Second, he talked about individual communities such as Wilsonville, Cornelius and Forest Grove. In that question, he had set out an example community. Did he think that caused more confusion? Was he getting the specificity he wanted if they decided to add those questions where he had given them two different kernels?

Mr. Udziela responded that in referring to question #4 he understood it in two different ways, without the individual communities, e.g. language, what you had was only two jurisdictional sub-regions. Then you look at the map of the UGB; of course, Wilsonville, Forest Grove and Cornelius were the two smaller pieces of the three-piece region. If you left the language out then that was what the intent of it was. If you put the individuals communities e.g. in then what it showed that the intent was, could you do sub-regions by jurisdictions? Those were two examples. You could list all of the jurisdictions in the region but it showed what the intent was because those were two different intents.

Presiding Officer Hosticka said they did need to clarify the intent. As it was explained to him, the reason why Wilsonville and Forest Grove/Cornelius were specifically identified was because they were islands that were not contiguous to the rest of the Urban Growth Boundary. If they weren't part of the region they would have their own urban growth boundaries. He suggested having Councilor Park address the intent of that question so it clarified what they were getting to.

Councilors Park said those two particular areas were unique within the region. Sherwood was a peninsula; it did not have a cherry stem. It was contiguous with the Urban Growth Boundary. The question about utilizing individual communities as sub-region had been addressed already in the courts. He deferred to Mr. Cooper on this issue. He commented to Councilor Bragdon that Mr. Benner had prepared 55 questions that were then paired down to eleven questions.

Presiding Officer Hosticka asked Mr. Cooper to address the intent of question #4.

Mr. Cooper responded the intent expressed by Councilor Park was the one they had discussed on a staff level. It was not a question whether or not every individual city in the region could be considered a sub-region. It was the specific example of the Forest Grove/Cornelius UGB island that was separated from the rest of the UGB. Wilsonville was the other example of that. He said it was their intention in preparing the declaratory ruling that that would be the factual justification question that they were asking. He did not think they needed a motion to amend the question to

express that unless the Council wanted them to ask a more detailed question that got to all of the other 21 cities. The question they understood from this was the two islands that sat outside the large UGB were the examples they were asking about.

Councilor McLain said in light of what they had heard from the State on the issue of separation of community not being a valid issue, she wanted Mr. Cooper to explain further what he had just said.

Mr. Cooper explained the history of the separation of communities not being a valid issue. In the urban reserve case, the Council did not include exception land that had been studied within the urban reserves on the ground that a Regional Framework Plan, regional urban growth goals and objective policy called for separations of communities. When the urban reserve decision was appealed, one of the grounds for remanding it back and ultimately having the Council decide it was not going forward any further with urban reserves was that, that single policy alone that was in the Regional Framework Plan was not a sufficient reason to override the State priority of land for including lands in the urban reserves or in the Urban Growth Boundary. The question that they were asking now was, not withstanding that one single factor alone as an isolated policy that they knew was not a sufficient reason for overriding the priority statute, they had a collection of policies in the Regional Framework Plan that translated into a wide policy basis. They had the capability of analyzing the region through the tools they had as to future impacts based on town centers, regional centers, central cities, centers that added up the 32 sub-components. Using those tools, if they came up with, not just one single objective but, a whole balanced objective that could show that the region as a whole and each of these sub-regional part sub-centers performed as good or better if they were going over the priority land statute and bringing in farmland before they exhausted the entire supply of exception land around the map, was that a valid policy? There was language in a different court case in the Rosemont case where LUBA and the Court of Appeals suggested that a coherent policy basis for sub-regional approach would be a valid reason to only look at a portion of the boundary and not the entire boundary. That was the general question. To the extent that Forest Grove/Cornelius could be considered a sub-region because it contained a town center and was in a geographical separated area, that was the question. The fact that there was also a separation of community's issue between Cornelius and Hillsboro where there was a gap in the UGB was just one small component of it. It was because they thought that if they looked at the entire gamut, all the planning policies they had, as they would interface with the sub-regional issue, the suggestion was that was a valid way. They wanted that confirmed. One single plan, policy alone was the question in the urban reserve decision and they knew one single one was not enough. The question was how many were enough?

Councilor McLain said her concern was that she wanted to make sure that they understood that Metro was asking that comprehensive question, that Metro was not simply asking what she thought was a very simplistic question and that was the separation issue which she thought they already had an answer to.

Mr. Cooper said the statements he made were a summary of the policy paper that was attached which was the methodology.

Councilor McLain said if it was not there, they should have on record here that that was Metro's intent and the intent of the Council if the resolution was passed.

Mr. Cooper said they would make sure they would get that flavor into the legal petition.

Presiding Officer Hosticka closed the public hearing.

Councilor Park asked Meg Fernekes, from DLCD staff, to speak to the resolution.

Ms. Fernekes, DLCD Field Representative for the Portland Field Office, said they had been following these discussions intensively with both legal and planning staff. They welcomed such a petition. As it was mentioned, there was a fair amount of discretion as to how they handled the request but were interested in making this a win/win situation for both the State, State Land Use Planning program and Metro's Regional Framework Plan.

Councilor McLain said she appreciated Ms. Fernekes comment. She planned on voting yes. She thought what Ms. Fernekes had just said was very important because choosing not to rule or choosing not to have further conversation or choosing not to continue to have more direction or specificity on what the State believed was reasonable and good work in Metro's periodic review would not be helpful. She thought they were saying that they were being supportive of each other continuing this dialogue. She found it a good place to start. Having had the experience of speaking in Forest Grove, Cornelius and Hillsboro this week, the questions that they were asking her was what if they didn't choose to do a ruling or what if they choose not to give Metro helpful answers. This was where she needed some guidance. If this process was not the right process or this request was not the right request then she needed some guidance on how they could follow up with a second request. She hoped that the timing issue was such that they could get an answer that will provide Metro with the needed information or an opportunity to ask that question.

Ms. Fernekes said they, as staff, were committed to providing an answer as expeditiously as possible. She thought their new director would be briefing the Commission at the March meeting and with a recommended action item at the April meeting. They wanted to make sure that it was the right policy framework for Metro to work from.

Councilor Bragdon asked if there would be an action item on the April agenda?

Ms. Fernekes said she couldn't say that but there would be an agenda item at the April meeting. They would then go into a lot of policy brainstorming so Metro got what they needed and DLCD got what they needed. She thought a decision in April would be premature.

Presiding Officer Hosticka said the major intent expressed in the resolution was to get clarity on what the rules were as far as what Metro could do, couldn't do and how they might go about doing it. Anyone who tried to read intent as to what Metro was likely to do once they got that guidance shouldn't do that in this resolution. They still reserved, for further discussion, what the actual policy directions that the Council might pursue once they got answers from DLCD on these questions. They were discussing how they got clarity so that they knew what their options were and what paths they may or may not pursue.

Councilor Park closed by saying that this was a good piece of work. He noted that one of the things imbedded in this was that if they did find a way to define sub-regions and if they did find that there were inequities that potential could be corrected through a variety of actions, it may be expansion or changes in policies within those sub-regions. One of the things he was hoping was that the Commission would put in place was some type of governor that once a condition of the sub-region that was out of balance was identified that that became the nominator that you were trying to adjust up to. He hoped the guidelines put in place would help this issue. He hoped that if this resolution passed, they would get clarification from the Commission that would allow Metro to continue their work towards their Urban Growth Boundary decision. He urged an aye vote.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain, and the motion passed with Councilors Burkholder and Monroe absent from the vote.

8. COUNCILOR COMMUNICATION

Councilor McLain reported to the Council her attendance at the Regional Water Consortium. She spoke to the issues that they had discussed particularly how conservation fit into the plan.

Councilor Park spoke to the Growth Conference at the Convention Center on March 15th and 16th in the region. He encouraged the citizens of the region to participate.

9. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 3:14 p.m.

Prepared by

Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 7,
2002**

TOPIC	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER
MINUTES	2/28/02	MINUTES OF THE METRO COUNCIL MEETING OF 2/28/02 PRESENTED TO COUNCIL FOR APPROVAL	030702c-01
POWER POINT PRESENTATION	3/7/02	FY 2002-03 BUDGET POWER POINT PRESENTATION MADE BY MIKE BURTON TO METRO COUNCIL	030702c-02
BALLOT TITLE	3/7/02	BALLOT TITLE CHANGE AMENDING CHARTER FROM LEGAL STAFF TO METRO COUNCIL	030702c-03
RESOLUTION NO. 02-3171A	3/7/02	TO METRO COUNCIL FROM PLANNING DEPT/LEGAL COUNSEL	030702c-04
PRESENTATION POINTS ON RESOLUTION NO. 02-3171A	3/7/02	TALKING POINTS OF MATTHEW UDZIELA, COGAN, OWENS, COGAN TO METRO COUNCIL CONCERNING RESOLUTION No. 02-3171A	030702c-05