

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDER AND RESOLUTION OF INTENT)	ORDER
TO APPROVE A PETITION BY CORNER)	
TERRACE PARTNERSHIP FOR A)	AND
LOCATIONAL ADJUSTMENT TO THE)	
URBAN GROWTH BOUNDARY (UGB) UPON)	RESOLUTION NO. 83-428
COMPLIANCE WITH CONDITIONS)	

WHEREAS, The Corner Terrace Partnership has submitted a petition (Contested Case No. 81-9) for a locational adjustment to the Urban Growth Boundary (UGB) to add the area identified as the Corner Terrace property and to remove the area known as Malinowski property; and

WHEREAS, The request was originally heard before the Metro Hearings Officer on October 8, 1981; and

WHEREAS, The requested trade was heard before the Regional Development Committee on on November 8, 1982; and

WHEREAS, The Council heard argument on the petition on December 21, 1982 and voted to approve the petition; and

WHEREAS, The Ordinance which approved the petition was appealed to the Land Use Board of Appeals (LUBA), and the Ordinance was remanded to Metro for lack of appropriate findings; and

WHEREAS, The Regional Development Committee has submitted Findings, Conclusions and a Proposed Order; and

WHEREAS, The Council has reviewed and accepts the Findings of Fact, Conclusions and Proposed Order as submitted by the Regional Development Committee; and

WHEREAS, Section 14(d) of Ordinance No. 81-105 provides that "when the Council acts to approve...a petition affecting land

outside the District...such action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the District...."; and

WHEREAS, The area to be added is currently outside the Metro District boundary; now therefore,

BE IT RESOLVED,

1. That the Council hereby reapproves the petition and declares its intent to amend the UGB as indicated in Exhibits A and B. Such amendment shall be by ordinance as follows:


a. For the area to be removed, the Council declares its intent to adopt an ordinance of removal.

b. For the area proposed to be added, the Council declares its intent to add to the UGB those areas that annex to the Metro District.

2. That any UGB amendments adopted pursuant to Section 1 of this Resolution shall be by ordinance and that such ordinances shall be the Final Order in Contested Case No. 81-9 for the purposes of judicial review for the area added to the UGB by such ordinance.

3. That the Council adopts the Findings and Conclusions shown in Exhibit C in support of the resolution of intent on Contested Case No. 81-9.

ADOPTED by the Council of the Metropolitan Service District this 29th day of September, 1983.



Presiding Officer

MB/gl
9183B/353

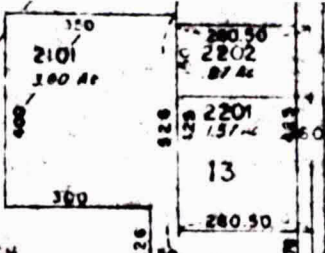
52-4!

LOT 4
17.52 AC.
2100
71.06 Ac

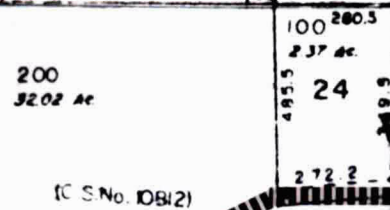
2000

EAST LINE S.A. HOLCOMB DLC 51

(C.S. No. 10812)



POWER



(C.S. No. 10812)

CANCELLED TAX L
902, 904, 900, 803,
805, 800, 905, 906,
1005, 1006, 903, 1004,
908,

RURAL

AREA TO BE ADDED

URBAN

SEE MAP
IN 19

52-47

LOT 3 24.72 AC.

51-57

LOT 2 10.12 AC.

1-33

E MAP
2-24 AC

ADMINISTRATION
SE COR S A
HOLCOMB DLCE 7

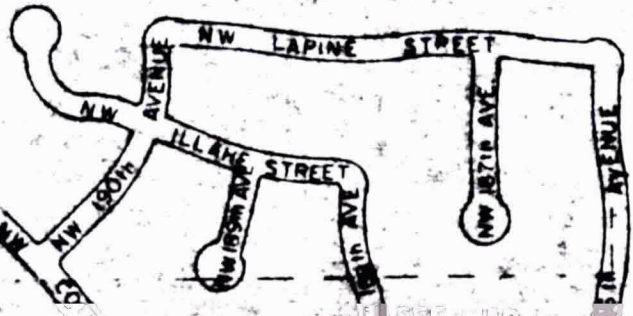
POND

ADMINISTRATION

1000
32.67 Ac

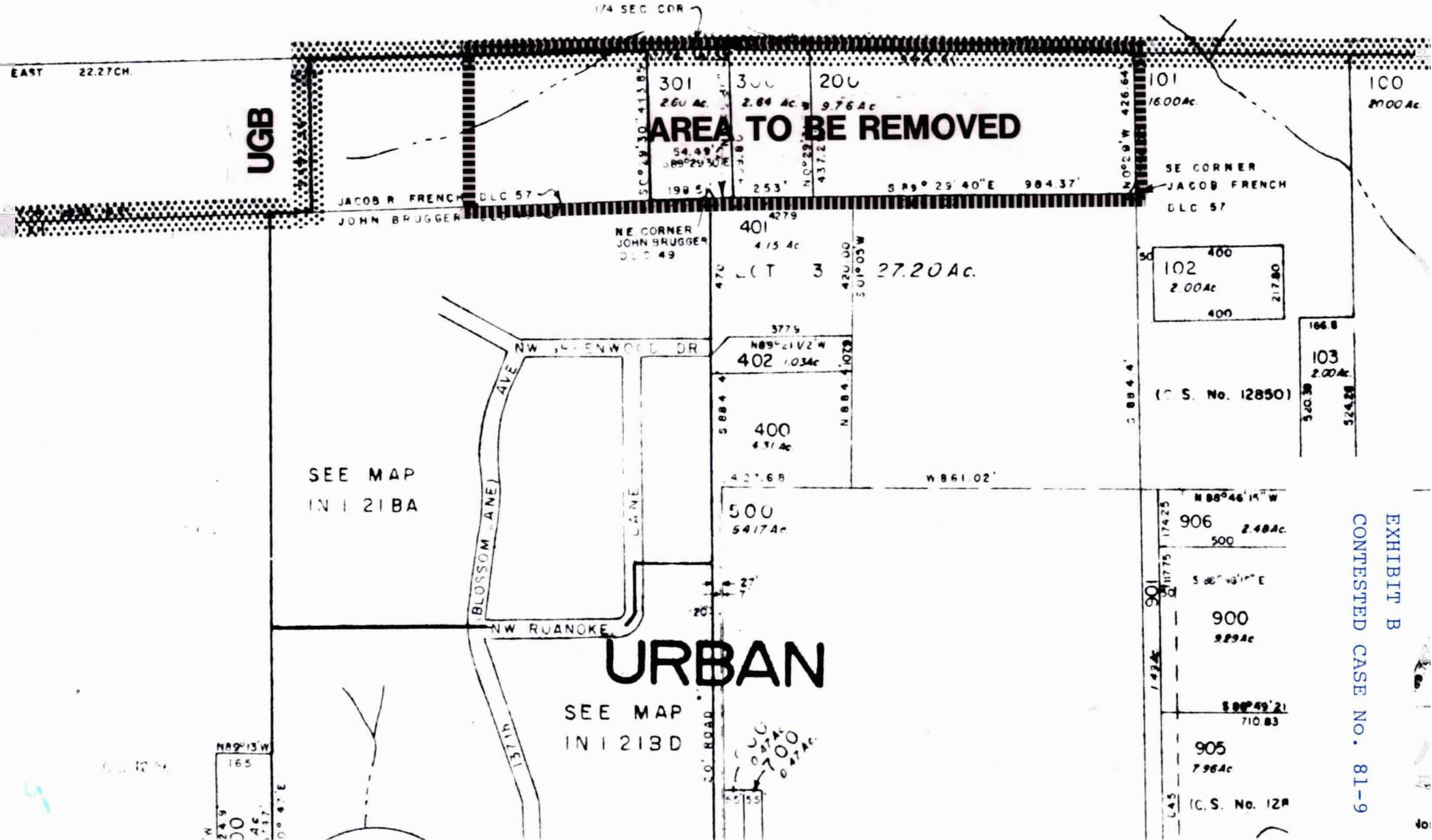
URBAN

901
18.37 Ac



SEE MAP

MULTNOMAH COUNTY RURAL



**Corner Terrace Partnership
Petition for Locational Adjustment
to the Metro Urban Growth Boundary
Contested Case No. 81-9**

Proposed Findings

Submitted by DeMar L. Batchelor
and Benkendorf & Associates for
Corner Terrace Partnership

- I. Relevant Facts Concerning the Petition to Include a Portion of the Corner Terrace Property Within the Metro U.G.B.**
- A. Petitioner: Corner Terrace, a partnership consisting of
James E. Berrey and Stephen M. Berrey
17765 S.W. Boones Ferry Road
Lake Oswego, Oregon 97034
- B. Request: Inclusion of 30.26 acres within the amended
Regional Urban Growth Boundary and the
removal of 20.26 acres of like property in
another location, resulting in a 10 net acre
addition to the Regional U.G.B.
- C. Existing Zoning: A combination of Agriculture and Forestry -
20 acre lot size (AF-20) and Exclusive Farm
Use (EFU). (Washington County zoning at
the time of the original petition was Forest
and Resource Conservation - 38 acre lot
size (FRC-38).)
- D. Comprehensive Plan Designation: Natural Resource on the adopted Rural Plan
for Washington County. Plan designation on

the Washington County Framework Plan at the time of the original petition was Natural Resource.

E. Property Owners:

Corner Terrace, a general partnership consisting of James E. and Stephen M. Berrey. Also included are Frank M. and Clara A. Jeffries, owners of the .65 acre parcel on the northwest corner of N.W. 185th Avenue and West Union Road.

F. Legal Description of Site:

Portions of Tax Lot 2100, T1N, R2W, Sec. 13 and Tax Lot 200, T1N, R2W, Sec. 24 totalling 30.26 acres. (Original petition requested inclusion of 38 acres.). The Jeffries' property, which was included in the addition by Council action, is described as Tax Lot 300, Section 24, T1M, R2W.

G. Site Location:

At the northwest portion of the intersection of N.W. 185th Avenue and N.W. West Union Road, bounded on the north and northwest by a natural ridgeline and on the west by a line bearing north-south. The site contained in the petition is bounded on the east by N.W. 185th Avenue and on the south by N.W. West Union Road, but does not include the .65 acre property located directly on the northwesterly corner of the intersection. The site is approximately one (1) mile north of the Sunset Highway (US 26) and one half (½) mile east of Portland Community College -Rock Creek Campus which is

located north
of N.W. Springville Road.

- H. Soils Classification: Aloha and Helvetia Silt Loams and Verboort Silty Clay Loam of Capability Classes II and III according to the Soil Conservation Service (SCS).
- I. Existing Land Use: Agriculture, with one resource related dwelling on the 30.26 acre site. The southeast corner of the site area at the northwest corner of the intersection of N.W. 185th Avenue and West Union Road, is an established neighborhood commercial area which provides a valuable service to the immediate vicinity.
- J. Surrounding Land Uses:
North - north of the natural ridgeline the use is agriculture, plus Rock Creek and associated floodplain.
West - Rock Creek and associated floodplain and the Bonneville Power Administration (B.P.A.) easement of 125 foot width.
South - Rural residential development, a 100 foot Bonneville Power Administration (B.P.A.) easement and a major platted suburban residential development (Rock Creek) south of the easement.
East - Agriculture with scattered resource oriented and rural residential dwellings.
- K. Surrounding Zoning: Exclusive Farm Use (EFU) to the north and west, Neighborhood Commercial (B-1) and

Medium High Density Residential (R16-24) to the east and Low Density Residential (RU-4) to the south.

II. Relevant Facts Concerning the Proposal to Remove the Malinowski Property from the Metro U.G.B.

- A. Property Owner: Andrew P. and Fern E. Malinowski
13130 N.W. Springville Road
Portland, Oregon 97229
- B. Request: Removal of 20.26 acres from the Regional Urban Growth Boundary and the inclusion of 30.26 acres of like property in another location within the U.G.B.
- C. Existing Zoning: Low Density Residential (R-5)
- D. Comprehensive Plan Designation: Urban Residential
- E. Legal Description of the Property: Tax Lots 100 and 102 of T1N, R1W, Section 21 BA, and Tax Lots 200, 300 and 301 of T1N, R1W, Section 21 totalling 20.26 acres.
- F. Site Location: South of N.W. Springville Road, approximately one half (½) mile west of N.W. Kaiser Road and one half (½) mile north of N.W. Laidlaw Road, adjacent to the partially developed Dogwood Park subdivision which is a large lot rural subdivision.

- G. Soils Classification: Helvetia and Saum Silt Loams of Capability Classes II and III according to the Soil Conservation Service (SCS).
- H. Existing Land Use: Agriculture and pasture. No dwellings exist on the 20.26 acre site.
- I. Surrounding Land Uses:
North: Agriculture and woodland area.
West: Agriculture and open space.
South: Agriculture and unserviced rural residential development.
East: Agriculture and open space.
- J. Surrounding Zoning: Exclusive Farm Use (EFU) to the north in Multnomah County and Low Density Residential (R-5) to the east, south and west in Washington County.

III. **Relevant Criteria, Relevant Facts, Application of Facts to Criteria, and Conclusions** -Section 8 of the METRO Ordinance No. 81-105 contains four (4) subsections (a, b, c and d), each with several individual but interrelated criteria to be addressed and considered for any Locational Adjustment to the Regional Urban Growth Boundary. Following the five criteria in subsection (a), the four conditions contained in subsection (b) must be met as directed in subsection (c). Subsection (c) applies to petitions for removal of land from the U.G.B. in one location and extending the U.G.B. in another location to take in lands not previously included within the U.G.B. Subsection (d), which is directly related to subsection (a), must also be addressed as part of the process of adding land to the U.G.B. No other criteria, conditions, guidelines or standards pertain to the Locational Adjustment process for the U.G.B. The Regional Urban Growth Boundary was acknowledged by LCDC on January 16, 1980. The Statewide Planning Goals do not apply because the Regional UGB has been acknowledged.

Metro Ordinance No. 81-105

1. Subsection (a)

As required by subsections (b) through (d) of this section, locational adjustments shall be consistent with the following factors:

a. **Criteria 1 - Orderly and Economic Provision of Public Facilities and Services.**

A Locational Adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining area within the UGB; any area to be added must be capable of being served in an orderly and economical fashion.

Facts:

- o Approximately one-half million gallons of water is available each day from the Wolf Creek Highway Water District at the corner of 185th Avenue and West Union Road. Water lines are in West Union Road and 185th Avenue. The line in West Union Road is 18 inch; the line in 185th Avenue north of West Union Road is 16 inch while the line in 185th Avenue south of West Union is 12 inch. All water lines are sized and designed to serve the area including the subject property. Wolf Creek Highway Water District purposely installed oversized lines in anticipation of servicing the subject site and other vacant undeveloped properties in the Bethany area.
- o Sanitary Sewer is 800' south of the site. The 24" Bethany Trunk is in place and available to this site. The Unified Sewerage Agency (U.S.A.) of Washington County has indicated that service can be provided to the site from existing in-place lines.
- o Storm drainage is available by a natural system of drainage - Rock Creek.
- o Transportation access is excellent with 1,800 feet of frontage on West Union Road and 1,250 feet of frontage on 185th. The intersection of 185th Avenue and West Union Road is 1 mile from the Sunset Highway Interchange.
- o West Union has been identified as an arterial, and 185th as an arterial from Sunset Highway (U.S. 26) to the intersection with West Union Road.
- o Fire Protection is provided by Washington County Fire District #1. A fire station is in place at 2955 N.W. 185th, less than one

mile south of the site.

- o Beaverton School District provides educational services. Rock Creek Elementary, Five Oaks Junior High School and Aloha High School serve the site.
- o Tri-Met serves the area with a route on 185th Avenue to Springville Road, terminating at the Portland Community College - Rock Creek Campus.
- o A public entity, Portland Community College, expended in excess of \$100,000 (1973 dollars) to finance construction of said water line under an agreement with the Water District by which PCC would be reimbursed by owners of property in the established service area when such properties connected to the water line. If the subject property does not develop, the full public monies previously expended for the water line will not be recovered.
- o When contacted for review and comment on the petition, no service provider objected to the proposed locational Adjustment, and both the fire district and water district **supported** the petition.
- o No factual evidence contrary to any of the above stated facts was presented by any individual agency or organization.

Application of Facts to Criteria:

Orderly and economic provision of public facilities and services must occur in order to approve the Locational Adjustment to the UGB. The in-place facilities and services can be more efficiently utilized if

such facilities and services serve property on both sides of the facility or service. This is especially appropriate to the three main public facilities and services - sanitary sewer, water and transportation. All service providers reviewed the petition, with none responding negatively and two responding in support of the petition. No evidence was presented which indicated that service provision to the site would be neither orderly nor efficient.

Conclusions:

The site can be served by the Unified Sewerage Agency (U.S.A.) and sewer lines have been designed to serve the area. There is a water line running along 185th Avenue which serves Portland Community College. At the corner of West Union and 185th Avenue, there is approximately ½ million gallons of water a day which could be available to the site. When the water line was built to serve Portland Community College, it was designed to serve the properties adjacent to the line, such as the subject site. Portland Community College has an agreement with the Water District whereby it will be reimbursed for a part of the cost of the line by those people who later connect to the line, such as the applicant. The site is also served by Tri-Met. West Union Road borders one side of the site and another side is bordered by 185th Avenue.

The Locational Adjustment will assure that a past expenditure of public funds for water and sewer service lines and transportation improvements will be maximized. The land area to the south is committed and developed to single family and multiple family purposes and preparation of this site for urban purposes is an orderly pattern of urbanization. Inclusion of the property within the UGB would insure that use of both available arterials would be maximized by adjacent land uses. In-place roads are presently a major portion of the orderly and economic provision of public facilities and services

and it is more orderly, economic, practical and reasonable to maximize the use of existing arterials than to construct new roads within the U.G.B. where other necessary facilities and services may be only partially available. To maximize the use and availability of **existing in-place** facilities and services is the best method of increasing the net efficiency of the facilities and services, as opposed to the continued construction of new facilities and broader provision of services to currently undeveloped areas where facilities and services do not exist.

Based on the available testimony and evidence supporting the petition, and the lack of conflicting testimony against the petition with regard to the orderly and economic provision of public facilities and services, the Metro Council believed that the petition was supported by the evidence and testimony.

b. **Criteria 2 -Maximum Efficiency of Land Uses.**

Consideration shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

Facts:

- o The land proposed for addition to the U.G.B. includes less than half of the tax lot in which it is located and less than 27% of the total land ownership of the petitioners in the Bethany-Rock Creek area. That portion of the subject property remaining outside the UGB, approximately 83%, acres will continue in agricultural use or in a natural setting.

- o It has been determined by Metro and LCDC that it is more efficient for the U.G.B. to utilize natural features, especially where the boundary encompasses drainage basins, as occurs on this site because services, especially sanitary sewer and water, can be sited to take advantage of natural topography to facilitate flow, thus reducing the need for costly pumping equipment and additional engineering. The ridge line, a portion of the proposed new U.G.B., is such boundary. The testimony of the witnesses clearly indicates that the ridge line provides a clear and effective boundary, and includes within it land which can efficiently use existing urban services, including sewer and water. The ridge provides a visual boundary for the area, and the topography slopes south which will facilitate flow for water and sanitary sewer service.
- o There is one single family residence and farm outbuildings on the site which do not inhibit potential future efficient urbanization.
- o Inclusion of the proposed site within the U.G.B. will provide the opportunity for development of all four quadrants of the existing intersection of N.W. 185th Avenue and N.W. West Union Road, both of which are designated arterials.
- o Within all of Washington County urban area, a review of the existing UGB indicates there are only that three or four major intersections of two arterials within the UGB.
- o The proposed site area is physically related and characteristically similar to adjacent land already within the boundary. The ridge line is also the definable boundary of an existing drainage basin in the general vicinity.
- o Testimony was presented indicating that the area residents believed a reduction in the size of the existing farm unit would

result in a termination of the entire farm operation and pressure on other surrounding farm units to convert to urban uses.

Application of Facts to Criteria:

The utilization of all four quadrants of an established intersection will provide the opportunity for more efficient planning and land use. The low existing development density of the site will promote the opportunity to plan and develop the area as a unit, simplifying service delivery. The majority of the existing property will remain designated **Natural Resource** and in agricultural use, promoting efficiency of land use in the areas not within the U.G.B. area. To include the site by extending the UGB along the ridge line will serve to include all of an existing drainage basin, of which the majority, excepting the Corner Terrace area, is currently within the U.G.B.

Conclusions:

To leave one quadrant vacant and unused at such an intersection is inefficient, results in poor urban form and creates conflicts between incompatible land use types. A review of the adopted Regional UGB within the Washington County urban area indicates that there are only three or four major intersections of two arterials within the U.G.B. Where two arterials intersect, all four quadrants should be developable in similar use types to insure maximum efficiency and the prevention of conflicts. This land would use existing urban services, and contribute to the support and maintenance of those services, and to this extent, it would facilitate the development of adjacent lands within the U.G.B. that are also dependent upon these services. Therefore, inclusion of the 30.26 acre site within the U.G.B. would provide the best opportunity to maximize the efficiency of land uses within the area.

c. **Criteria 3 - Environmental, Energy, Economic and Social Consequences.**

Any impact on regional transit corridor development must be positive, and any limitations imposed by the presence of hazards on resource lands must be addressed.

Facts:

- o Environmental - The Rock Creek Flood Plain is west of the site, but does not include any portion of the 30.26 acre Corner Terrace area proposed for addition to the U.G.B. The site is not an identified open space or wildlife habitat according to the Washington County Comprehensive Framework Plan Resource Documents. Inclusion within the U.G.B. will create no environmental consequences.
- o Energy - The site is in close proximity to existing transportation facilities and all urban services and public utilities and is on an established Tri-Met route serving the vicinity including the Sunset Regional Transit Corridor. The site is a south-facing slope with excellent potential for maximizing solar energy opportunities.
- o Economic - Inclusion of the site within the U.G.B. will permit development of the total intersection area where 185th Avenue meets West Union Road. Use of this site will not require additional expenditures by public agencies or utilities because services are already available to the site. Other areas will have to be serviced at additional expense to the landowner, buyer and the public including the service agencies and utilities. As part of creating a profitable route for Tri-Met, backhaul of passengers from the Portland Community College-Rock Creek area to the

Sunset Corridor is mandatory and can be accomplished only with development of vacant lands.

- o Opponent testimony suggested that the site area is, and historically has been, a productive agricultural operation regardless of ownership. Current wheat cropping is of moderate yield and in keeping with the character of much of the West Bethany area where several cattle and grain farms exist and continue to operate. Opponents argued that inclusion of a portion of the larger farm unit within the UGB would reduce or destroy the incentive to continue maintaining the existing agricultural operation, as well as having a major impact on the agricultural capabilities of the remaining 83½ acres and the surrounding farms to the northeast, north and west.

- o Social - With services already in place around the site, the land will be cheaper to develop than land where no services are currently available. Therefore, housing developed on this site will be less costly than housing developed in other areas when no services are currently available. Less costly housing will provide greater opportunity for home ownership for young couples and those with children.

Application of Facts to Criteria:

There have been no negative impacts identified which will result from the proposed Locational Adjustment. Existing Tri-Met service to the area and the designation of N.W. 185th Avenue as an arterial will integrate the site area with the Sunset Regional Transit Corridor.

No limitations imposed by the presence of hazards on resource lands have been identified, negating the existence of ESEE consequences.

Conclusions:

The impact of the development of the site on the Regional Transit Corridor would be positive because it will help strengthen, through the backhaul of passengers from north to south, the existing transit service which runs adjacent to the site. No negative impacts or adverse economic, energy, environmental or social consequences which will result from inclusion of the 30.26 acre site within the U.G.B. have been identified. Although the farm unit will be reduced from approximately 114 acres to 83½ acres, no evidence was provided which supports the claim that the remaining 83½ acres cannot and will not remain a viable farm unit. The remaining 83½ acre farm site is of a generally uniform character and is similar in size to several existing farms in the vicinity. Therefore, the "loss" of 30.26 acres will not adversely impact either the agricultural operation on the site or of surrounding farms to the northeast, north or west, and no negative economic consequence will result.

d. **Criteria 4 - Retention of Agricultural Lands.**

When a petition includes land with Class I through IV Soils that is not irrevocably committed to farm use, the petition shall not be approved unless the existing location of the U.G.B. is found to have severe negative impacts on service or land use efficiency in the adjacent urban area, and it is found to be impractical to ameliorate those negative impacts except by means of the particular adjustment requested.

Facts:

- o The site contains soils classified by the Soil Conservation Service (SCS) as being Capability Classes II & III.
- o The site has not been irrevocably committed to farm use because it was part of the planned service area for the Wolf Creek Highway Water District, can be considered serviceable by sanitary sewers from U.S.A. without extension of the trunk line or planned mains and laterals, and is located on a Tri-Met transit route. Additionally, the immediate northwest quadrant of the intersection of West Union Road and 185th Avenue is currently commercially developed, zoned and utilized and abuts the Corner Terrace site on two sides.
- o All available public facilities and services are sized for urban uses and were installed prior to the establishment of the Regional U.G.B. Service to all surrounding properties was assumed as a given when existing facilities and services were installed. Financing of the improvements was based on the future urban level use of surrounding lands.
- o Farmland cannot be added to the U.G.B. through a minor or locational amendment -- with or without a trade -- unless the farmland is needed to solve a severe service or land use deficiency.
- o Testimony has indicated that lack of full utilization of in-place facilities and services will result in loss of service efficiency and loss of public investment in these facilities and services intended to service the broader area.
- o Failure to provide the opportunity and ability for efficient

development of all four quadrants of the intersection of two arterials will result in severe impacts on the scope and scale of use and development of the remaining quadrants, as testified to and evidenced by Mr. Al Benkendorf, land use consultant and expert.

- o Due to the location of the subject site and the related arterial intersection away from other arterial intersections and developable areas, the particular site and intersection quadrant are the only areas which can be practically used to ameliorate the identified negative impacts on the immediate area in West Bethany. No other area or intersection in West Bethany possesses the same characteristics.

Application of Facts to Criteria:

Although the site contains agricultural soils and is not irrevocably committed to non-farm use, the failure to fully utilize existing public services and facilities to the site and permit the recovery and full use of the expenditure of public funds for such services can be considered a severe negative impact on land use in the adjacent urban area. Public facility and service providers assumed an area larger than the site as an ultimate service area in the immediate vicinity. The addition of the site to the U.G.B. is the most logical and practical means of ameliorating the negative impact of the artificially restricted use of the public facilities and services which were planned and engineered for larger service areas.

Conclusions:

The severe negative impact occurs and continues because the cost of services in the adjacent urban area is necessarily greater when

property in the established service area of such facilities, such as the subject property, is not developed and providing its share of the cost of such services. The site is not irrevocably committed to farm use based on the serviceability of the site, initial service plans of various agencies prior to the establishment of the U.G.B., and the existing and planned use of adjacent properties. If the site is not included in the U.G.B. and utilized for urban development, no other location can be included which will mitigate the severe negative impacts in the immediate vicinity in West Bethany or the northwest urban area of Washington County.

e. **Criteria 5 - Compatibility of Proposed Urban Uses with Nearby Agricultural Activities.**

When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (criteria) (1) and (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

Facts:

- o The north and northwest border of the property will be a ridge line which will provide a buffer between urban and agricultural uses. This same ridge line has been used as the U.G.B. for parcels of property east of the site.
- o The same urban-agriculture relationship exists in many places throughout the metropolitan area without adverse effects on either the continuing agricultural use outside the U.G.B. or the urban use within the U.G.B.
- o The remaining 83½ acre portion of the total property which will remain outside the U.G.B. will continue as a viable farming unit

and possesses many of the same physical and geographic characteristics as the surrounding farm areas to the northeast, north and west. Opponent testimony supports this fact.

- o The remaining 83½ acre portion cannot be as easily and efficiently served by existing facilities and services because the property is outside the drainage basin. The area cannot be served by existing or planned sanitary sewerage services without major changes and/or additions to planned facilities.

- o The METRO staff contends that the proposed addition would break up an existing farm parcel; would isolate a portion of the remaining farm parcel from other parcels, and would fail to provide any buffer between the new urban area and adjoining farm lands.

Application of Facts to Criteria:

The ridge which will be utilized as the new U.G.B. is an effective service as well as land use boundary, providing a degree of protection for the adjacent and surrounding agricultural land. The Rock Creek Flood Plain, just west of the site, will serve the same purpose. The remaining 83½ acre portion of the total property is currently in agricultural use and can easily continue as a viable farming unit, protected by the ridge and newly established U.G.B. because of the uniform site characteristics and the geographic relationship with agricultural operations and areas to the northeast, north and west.

Conclusions:

The proposed urban uses are not incompatible with agricultural uses when buffering such as fencing, landscaping with trees and shrubery, and use of specified setbacks is provided and services are not further

extended beyond the U.G.B. The proposed medium density residential development on the site will orient to the south and east, away from the existing agricultural areas, providing compatibility between the two use types. The impacts of the proposed urban use will be focused away from the agricultural operations, promoting a greater degree of compatibility.

2. Subsection (b)

Petitions to remove land from the UGB may be approved under the following conditions:

- a. **Criteria 1 - Consideration of the factors in subsection (a) of this section demonstrate that it is appropriate that the land be excluded from the UGB.**

Facts:

- o No urban facilities or services are directly or immediately available to the Malinowski site which has no frontage on a public roadway.
- o Zoning of adjacent properties permits and promotes large lot development.
- o The Malinowski site is part of an ongoing farming unit, most of which is within Multnomah County and zoned Exclusive Farm Use (EFU).
- o Current plan designations of the entire farm unit are split between Urban for the 20.26 acre subject site within the UGB and Natural Resource for the area outside the UGB.
- o Physically, the site is closely related to adjacent properties not currently within the UGB.
- o Environmental, energy, economic and social consequences of urban use and development will be significantly greater for the Malinowski site than for the Corner Terrace site.
- o The site contains viable agricultural soils as classified by the SCS. Soils are Classes II and III.

- o Because the UGB was originally placed according to a political boundary (Washington-Multnomah County line), no natural boundaries have been identified in the vicinity as part of the U.G.B.

Application of Facts to Criteria:

The Malinowski site, through the criteria in subsection (a), fulfills the requirements for land which would usually be excluded from the UGB rather than included within the UGB.

Conclusions:

The Malinoswki site was included within the UGB only because the UGB was placed on a political boundary without regard for any of the factors contained in subsection (a). The site is not currently serviced and is not part of future service plans by several providers including U.S.A., Wolf Creek Highway Water District and Tri-Met. This will result in poorly utilized urban land and potential environmental, energy and economic consequences. The historic use of the site for farm purposes, with the soils being classified as agricultural soils, indicate that a non-urban use of the land is more practical. As such, the site is better suited to rural and/or natural resource use and should be removed from the UGB.

- b. **Criteria 2 - The land is not needed to avoid short-term land shortages for the District or for the county in which the affected area is located and any long-term land shortage that may result can reasonably be expected to be alleviated through addition of land in an appropriate location elsewhere in the region.**

Facts:

- o No short term land shortages for Metro or Washington County have been identified by an agency, organization or jurisdiction.

- o No long term land shortages are anticipated based on the "25% market factor" built into the UGB as referred to in the Urban Growth Boundary Findings produced by Metropolitan Service District, November, 1979. (pg. v-vii).
- o The locational adjustment process for the Metro UGB will permit addition of small parcels of land to the UGB, alleviating any problem of shortages based on removal from the UGB of small parcels.

Application of Facts to Criteria:

The land has not been identified as being either needed or critical to any potential short term land shortages within the UGB. The addition of the Corner Terrace site will alleviate any shortage of land to which the removal of the Malinowski site may contribute.

Conclusion:

The Malinowski site can be removed from the UGB without jeopardizing the integrity of the UGB, or causing or contributing any short term or long term land shortages.

- c. **Criteria 3 - Removals should not be granted if existing or planned capacity of major facilities such as sewerage, water and arterial streets will thereby be significantly under-utilized.**

Facts:

- o No urban facilities or services are directly or immediately available to the site. At the present time, service to the Malinowski site is not planned by U.S.A., Wolf Creek Highway Water District, Tri-Met or any other agency currently providing service in the general area.

- o Most urban facilities and services, including sanitary sewer, water and mass transit, are not planned to serve the site.

Application of Facts to Criteria:

Without most existing or planned urban facilities or services, no under-utilization can occur as a result of the removal of the site from the UGB.

Conclusions:

The removal of the Malinowski site from the UGB will not impact either existing facilities or services or planning for future use and capacities of urban facilities or services. The removal will comply with this criteria.

- d. **Criteria 4 - No petition shall remove more than 50 acres of land.**

Facts:

The proposed removal of the Malinowski site from the UGB involves 20.26 acres.

Application of Facts to Criteria:

The proposed removal is within the 50 acre limit.

Conclusion:

Removal of the Malinoswki site complies with this criteria.

3. Subsection (c)

A petition to remove land from the UGB in one location and add land to the UGB in

another location (a trade) may be approved if it meets the following criteria:

- a. **Criteria 1 - Petitions proposing to add any Class I to IV soils not irrevocably committed to nonfarm use shall not be approved unless:**
- (1) The addition is needed to remedy severe service provision or land use efficiency problems in the adjacent urban area; and**
 - (2) There are no practical alternatives to the proposed boundary change to solve such problems.**

Facts:

- o The Corner Terrace site proposed for addition to the UGB contains soils classified by the SCS as Capability Classes II and III.
- o The Malinowski site proposed for removal from the UGB contains soils classified by the SCS as Capability Classes II and III.
- o Both sites are currently in farm use and both are parts of larger farm units.
- o The Corner Terrace site has all critical, essential and desirable urban facilities and services either adjacent to the site or in serviceable proximity, including sanitary sewer, water, major traffic arterials, elementary school, fire protection and mass transit routes.
- o The Malinowski site has no facilities or services directly or immediately available to the site, or planned to serve the area. The elementary school is 6½ miles from the site, fire protection is provided by a volunteer fire department and there is no water district serving the site.
- o Comparison of Services and Facilities and Site Characteristics (Table 1) demonstrates that the Corner Terrace site provides more advantages or is a greater asset to the UGB than the Malinowski site (R102-104).

- o A review by the Washington County Planning Department of the proposed trade indicates that the Corner Terrace site is superior in all respects to the Malinowski site. Therefore, the Planning Department would not oppose such a trade taking place. See letter of 9-20-82 from Richard A. Daniels, Planning Director to DeMar Batchelor and Al Benkendorf.
- o Without the Corner Terrace site within the UGB, only three quadrants of an intersection of the two major arterials in the vicinity may be utilized.
- o In 1973 Portland Community College expended in excess of \$100,000 to finance construction of a water line to serve the Portland Community College-Rock Creek Campus and the surrounding vicinity. Under the agreement between Portland Community College and the Wolf Creek Highway Water District, Portland Community College would be reimbursed by property owners of land within the established service area when such properties connected to the water line. Without development of properties within the established service area, Portland Community College, a public taxpayer supported entity, will not be permitted to recover the public funds previously expended.
- o The Corner Terrace site is within a service area established in the early 1970's by the Wolf Creek Highway Water District to justify construction of, and expenditure of public funds for a 16 inch water line to serve the Rock Creek Campus of Portland Community College and the surrounding vicinity. The Malinowski site is not within the established service area of the Wolf Creek Highway Water District.
- o Facilities and services (sanitary sewer, water, roads, schools, fire and police protection, and mass transit) were planned and installed in the area prior to the establishment of the Metro UGB.
- o The Metro Hearings Officer found that the Corner Terrace site was in the service area and the existing services and facilities would be more fully

utilized if the property were developed (R71-72).

- o Opponents of the petition state that the site "is open undeveloped farmland, and the applicable law does not permit farmland to be added to the UGB except in extraordinary circumstances" (R143).
- o Opponents of the petition state "farmland cannot be added to the UGB through a minor amendment -- with or without a trade -- unless the farmland is needed to solve a severe service or land use inefficiency" (R144).
- o No practical alternatives to the proposed trade have been proposed, except by the Corner Terrace partnership, which reduced the petition from a 39 acre gross addition to a 10 acre net addition by trade.

Application of Facts to Criteria:

The Corner Terrace site was included in the plans by all agencies and utilities as a part of their service areas. Sizings and capacities reflected the anticipated service area, as did the financing of service provision and facility improvements. Absent reasonable use of the sizing and capacities, public and/or private investment is unused or under-utilized. Other lands, often superior in agricultural capabilities, were included within the UGB for service provision and land use efficiency reasons. Based on the SCS Soil Capability Classification, the properties proposed for trade, by addition and removal, are equal.

After review of all relevant facts as they relate to the criteria, the Metro Council believed that the two sites are equal in terms of agricultural capabilities but the Corner Terrace site is clearly superior in terms of orderly and economic provision of public facilities and services, efficiency of land uses, potential environment, energy, economic and social consequences, and compatibility of the proposed urban uses with nearby agricultural activities.

Other than the argument regarding agricultural capabilities and activities of each site, no substantive evidence was presented which proved that the Malinowski site was equal to or better than the Corner Terrace site for inclusion in the U.G.B. and future urban development.

Conclusions:

- o Without inclusion in the UGB of the Corner Terrace site, which was identified as being within the serviceable area when services and facilities were planned and installed, the investment in services and facilities cannot be fully amortized or repaid, creating a hardship for those properties remaining to absorb the costs.
 - o Development and utilization of only three of four quadrants of an intersection of two arterials will create a severe land use inefficiency by reducing the utility and attractiveness of the remaining quadrants which can be developed.
 - o Because both the Corner Terrace and Malinowski properties contain SCS Class II and III soils, both are equally capable in terms of agricultural potential. This creates a situation where no difference occurs if one or the other is within the UGB. The deciding factors then become serviceability and land use efficiency (subsections 8 (a) (1) and (2).
- b. **Criteria 2 - The net amount of vacant land proposed to be added may not exceed 10 acres; nor may the net amount of vacant land removed exceed 50 acres.**

Facts:

- o The Corner Terrace site proposed for addition to the UGB is 30.26 acres.
- o The Malinowski site proposed for removal from the UGB is 20.26 acres.

- o Both sites are comprised of vacant land.

Application of Facts to Criteria:

The net amount of vacant land proposed to be added to the Metro UGB is exactly 10 acres.

Conclusions:

Addition of the Corner Terrace site to and removal of the Malinowski site from the Metro UGB will comply with this criteria.

- c. **Criteria 3 - The land proposed to be added is more suitable for urbanization than the land to be removed, based on a consideration each of factors (1), (2), (3) and (5) of Section (8) (a).**

Facts:

- o Under Section 8(a)(1), of Ordinance 81-105, evidence was provided of serviceability to the Corner Terrace site and the lack of serviceability of the Malinowski property. See Table 1 (R102 & 103).
- o Evidence of the ridge line to be used as the demarcation boundary as being a suitable limit to urbanization was presented and testimony was heard supporting the use of the ridge line. Use of a political boundary which bisects the Malinowski site could not be adequately supported.
- o For 8(a)(3), environmental, energy, economic and social consequences were considered in light of evidence relating to inclusion of the Corner Terrace site in the UGB and the removal of the Malinowski site from the UGB.
- o Evidence was presented on the potentials of the proposed ridge line for

the Corner Terrace site and the existing political boundary for the Malinowski site for maintaining compatibility between proposed urban uses and nearby agricultural activities in compliance with 8(a)(5).

Application of Facts to Criteria:

In subsections 8(a)(1), (2), (3), and (5), and subsection 8(b), evidence was provided concerning the addition of the Corner Terrace site to the UGB and the removal of the Malinowski site from the UGB. Conclusions in both subsections result in a balancing in favor of the Corner Terrace site as more suitable for urbanization than the Malinowski site.

Conclusions:

In view of all evidence presented regarding the suitability for urbanization, the balance favors adding the Corner Terrace site to the UGB and removing the Malinowski site from the UGB. The Metro Council reviewed the testimony and evidence and believed that the Corner Terrace site was districtly more suited to be included within the UGB than the Malinowski property.

4. Subsection (d)

Petitions to add land to the UGB may be approved under the following conditions:

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

Facts:

- o The petition proposes to add 10 net acres of vacant land to the UGB.
- o The petition is consistent with all of the factors in subsection 8(a), based on the evidence provided.
- o The petition for Locational Adjustment of the UGB will not include all contiguous lots, and will divide an existing lot.

Application of Facts to Criteria:

The addition of 10 net vacant acres will exceed the criteria for approval without consideration of other conditions in subsection (d) if the adjustment will add two acres or less.

Conclusion:

The criteria cannot be applied to this petition.

- b. **Criteria 2 - For all other additions, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).**

Facts:

- o Evidence in terms of in-place facilities and overall capacities from service providers such as U.S.A., Wolf Creek Highway Water District, Tri-Met and Fire District No. 1. presented regarding both the Corner Terrace and Malinowski sites under subsection 8(a) indicate that the Corner Terrace site is superior in terms of service capabilities. In addition,

greater land use efficiency will occur from the development of all four quadrants of a major intersection, both sites contain similar soil class types, both sites are in agricultural production as parts of larger farm units, and natural boundaries provide superior and more identifiable demarcation limits than political boundaries.

- o Opponent testimony stated that the existing U.G.B. is superior to the proposed U.G.B., based on a comparison of agricultural operations and capabilities of the two sites. Opponent testimony did not address Criteria 1, 2, and 3 of subsection (a).
- o Not all similarly situated contiguous land is included in this petition as a result of the 10 net vacant acre limitation on additions as set forth in subsection 8(d)(3).
- o The Metro Council, by its own motion and with the consent of the property owners, added the .65 acre Jeffries property at the northwest corner of West Union Road and 185th Avenue to avoid the creation of an isolated island with the U.G.B.

Application of Facts to Criteria:

The petition to include the Corner Terrace site within the UGB may comply with part, but not all of this criteria. The proposed trade demonstrates that the proposed U.G.B., which includes the Corner Terrace site, is superior to the existing U.G.B., which includes the Malinowski site, as compared under factors in subsection (a). Due to the 10 acre limitation for addition of net vacant acres as contained in subsection (c), Criteria 2, not all of the appropriate site area can be included.

Conclusions:

On balance and in consideration of all factors including service provision and

capabilities, relationship to existing or planned urban uses, agricultural soil ratings and capabilities, and appropriateness of the U.G.B. as established on political or physical/geographic boundaries, the Metro Council believed that the Corner Terrace site and the proposed new UGB is superior to the existing UGB and the retention of the Malinowski site within the urban area. However, due to the 10 net vacant acre limitation on additions to the UGB, not all similarly situated contiguous land has been included. To include such land would result in addition of approximately 18 net vacant acres. The Metro Council added more than was requested by the applicant by including the developed Jeffries property at the northwest corner of the intersection of West Union Road and 185th Avenue. Therefore, the final addition was 10.65 total acres.

- c. **Criteria 3 - Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. Except as provided in subsection (4) of this subsection, the larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section.**

Facts:

- o The petition does not propose to add more than 50 acres of land to the UGB (30.26 acres for the Corner Terrace site) and proposes an addition of exactly 10 net vacant acres to the urban area with the removal of the Malinowski property.
- o Table 1 of the record indicates that the addition of the Corner Terrace site is superior to the continued inclusion of the Malinowski property within the UGB.

Application of Facts to Criteria:

With regard to the net vacant acre addition to the UGB, the proposed addition should not exceed the stated maximum of 10 acres.

Conclusions:

The proposed addition is in compliance with this criteria with regard to the 10 net vacant acre standard. Based on the available evidence, the suitability of the proposed UGB with the addition of the Corner Terrace site is far superior to the existing UGB and the retention of the Malinowski property within the urban area.

- d. **Criteria 4 - If an addition is requested in order to remedy an alleged mistake made at the time the UGB for the area affected was adopted, the addition may be approved if all of the following conditions are met.**
- A. There is clear evidence in the record of specific legislative intent to place the UGB in the particular location requested.**
 - B. The petition for an addition to remedy an alleged mistake is filed by June 1, 1982 or within two years from the time the UGB for the area affected was adopted, whichever is later.**
 - C. The addition is superior to the existing UGB, based on consideration of the factors in subsection (a) of this section and does not add more than 50 acres of land.**

Facts:

As part of the petition, no verifiable mistake is claimed to have been made in the original siting of the UGB.

Application of Facts to Criteria:

Because no mistake in the UGB is claimed, the facts do not apply to the criteria.

Conclusion:

This criteria does not apply to the petition for inclusion of the Corner Terrace site and the removal of the Malinowski property from the UGB.

STAFF REPORT

Agenda Item No. 8.1

Meeting Date September 29, 1983

CONSIDERATION OF THE CORNER TERRACE URBAN
GROWTH BOUNDARY (UGB) AMENDMENT CONTESTED
CASE NO. 81-9

Date: September 14, 1983

Presented by: Mark Brown

FACTUAL BACKGROUND AND ANALYSIS

Corner Terrace Partnership has submitted an application to remove 20.26 acres on N. W. Springville Road, and add 30.26 vacant acres at N.W. 185th Avenue and West Union Road to the UGB in Washington County. On December 21, 1983, the Metro Council adopted Ordinance No. 82-148 approving this trade. Metro's decision was subsequently appealed to LUBA. Metro subsequently requested that the case be returned to Metro to correct procedural problems with the Findings of Fact and Conclusions of Law.

The new findings have been prepared. Staff finds that the applicable standards of Metro Ordinance Nos. 81-105 and 82-133 have been satisfied and recommend approval of this locational adjustment.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval.

COMMITTEE CONSIDERATION AND RECOMMENDATION

On September 12, 1983, the Regional Development Committee received testimony in consideration of Resolution No. 83-428, and was split on a vote recommending approval of this Resolution. Subsequently, the Committee unanimously voted to forward the Resolution to Council without a recommendation.

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