

MINUTES OF THE METRO COUNCIL MEETING

Thursday, January 30, 2003
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Brian Newman, Carl Hosticka, Rod Monroe, Rod Park

Councilors Absent: Rex Burkholder (excused)

Council President Bragdon convened the Regular Council Meeting at 2:03 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSENT AGENDA

3.1 Consideration of minutes of the

- January 23, 2003 Regular Council Meetings.
- November 19, 2002 Community Planning Committee
- November 20, 2002 Community Planning Committee
- November 26, 2002 Community Planning Committee
- December 3, 2002 Community Planning Committee
- November 13, 2002 Budget and Finance Committee
- November 6, 2002 Solid Waste and Recycling Committee
- December 3, 2002 Governmental Affairs Committee
- December 4, 2002 Natural Resources Committee
- December 5, 2002 Transportation Committee

Motion:

Councilor Park moved to adopt the meeting minutes of the above mentioned Council and Council Committee meetings. Councilor Monroe seconded the motion.

Vote:

Councilors Park, Hosticka, McLain, Monroe, and Council President Bragdon voted in support of the motion. Councilor Newman abstained from the vote. The vote was 5 aye, with one abstention, the motion passed.

3.2 **Resolution No. 03-3270**, For the Purpose of Confirming the Reappointment of Herbert Plep and Leroy Patton to the Investment Advisory Board.

Motion:

Councilor Park moved to adopt Resolution No. 03-3270. Councilor Monroe seconded the motion.

Vote:

Councilors Park, Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the

motion passed.

4. PUBLIC HEARING - 2002 URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN COMPLIANCE REPORT

Brenda Bernards, Planning Department, said they had been before Council in November 2002 to present the 2002 Urban Growth Management Functional Plan Compliance Report. She noted a January 24, 2003 memo she had prepared to Council President Bragdon updated the compliance status (a copy which is found in the meeting record). As required by the Code, the report must be prepared every year and after receiving the report Metro Council was required to have a public hearing on the report. She explained further the process beyond this public hearing which would be to enter an order that determined which Functional Plan requirements had been complied with by which jurisdictions. They had sent the report to all jurisdictions that had requested the report. They also explained the process that would occur after the public hearing. Once the order was issued and if there was no successful appeal, the cities and counties were deemed in compliance. It was also noted that Metro Council doesn't have the jurisdiction to make a determination on a Council action that was taken to come into compliance that we didn't appeal at that time. She noted that the report covered compliance through November 30, 2002.

Since then several jurisdictions have completed compliance on specific titles. The City of Lake Oswego had adopted a Title 3 floodplain standard. Milwaukie had completed their Title 3 work and was now in compliance with all of the elements of Titles 1 through 6. The City of Sherwood provided Metro with the design type boundary map and they were also in compliance with all elements of Title 1 through 6. Multnomah County had adopted Title 3 requirements for the area that was outside of the Urban Growth Boundary (UGB) but inside our jurisdictional boundary. In addition they had come to an agreement with the City of Gresham over governance of the areas that were inside the UGB but unincorporated. Multnomah County was now in compliance with Titles 1 through 6. With those efforts, the region was now at 97% compliance. The City of Durham had outstanding items, since the report in November, they have moved forward and prepared an ordinance to adopt the Title 2 standards at the end of February 2003. They were still discussing with them the minimum density requirements and seeing if they could come to a satisfactory conclusion rather than going through the exception. Also since November 30, 2002, they had received submission for the Title 7 requirement, which included the cities of Durham and King City first reports. Wood Village and Gresham had submitted their second report. She said Gerry Uba would present the Title 7 information.

Councilor Newman said there were many jurisdictions who had not met their residential or job targets under Title 1 but we were considering them in compliance. He asked why this was the case? Had they not reached those targets because of market issues? Ms. Bernards responded that when those targets were set, it assumed no expansion to the Urban Growth Boundary (UGB). Metro actually expanded 4000 acres. When Metro looked at all of the capacity analysis completed by the jurisdictions and we added up the numbers plus those 4000 acres, as a region we exceeded the total that we had put in the original target both on housing and job capacity. Within that the cities that had different targets to set, there was a range of effort needed to meet those targets. Some cities adopted minimum densities and then met their target. Other cities up zoned in their station communities, regional centers, town centers or on corridors. They established minimum densities in neighborhoods that were developing at substantially less than the maximum density. Through all of those efforts they still weren't able to reach their targets. The capacity targets were a snap shot at a certain time and since that time there were jurisdictions. Milwaukie was an example of a jurisdiction who was working on their north industrial area where there was limited employment right now but by amending their zoning and comprehensive plan

regulations and updating their code, they will be able to create more opportunities for employment in that area, which was not captured in our targets right now. The work was continuing but as a region we met the targets that we set out to meet. Councilor Newman summarized, if the jurisdiction had made good faith efforts even though they haven't reached their target, Metro would deem them in compliance because they were doing what they can to meet the goal. Ms. Bernards said that was a correct summary.

Councilor McLain asked how we came to a reckoning with the fact that areas that could do more like a central city and we still have needs. How do we address the basic goal of the concept and still keep true to the compliance issues in the Functional Plan?

Dan Cooper, Metro Attorney, said what Ms. Bernards just explained in terms of using the example of Milwaukie where past decisions the Council made on how it wanted to treat substantial compliance with Title 1 Table 1 numbers, was an accurate description of the decision that the Council made as to how it was going to have those compliance issues addressed. What Councilor McLain was asking about was future compliance with other requirements, some of them on the books and some which weren't on the books yet. Over the past several years, the Council has revised the compliance sections of the Functional Plan putting out more detail as to what the Council's policies options were in enforcement. We have written them into the Code and there was a pathway now for the Council to have a conversation with a local government if it thinks that the jurisdiction was not in compliance. This was part of the reason for these compliance reports. It served as a mechanism to bring to the Council's attention those jurisdictions that may not be in compliance. There was a compliance process they could initiate where Metro went through a more formal process of letting that jurisdiction know that we had deemed them out of compliance and that we thought there were more effort they needed to make. Ultimately it led to a legal solution if one was necessary. There was now a pathway.

Councilor McLain said that was exactly what she wanted to know. She understood that what they were doing in looking at this report today was to say either Council was happy with reaching the overall total goal right now and we were ready to do some other things to deal with some of those future elements or compliance issues we may have. She didn't want to give the signal that because we gave an OK to the report today, that we were not still looking at the 2040 Growth Concept and the fact that we said we needed more jobs in our Central City to be able to meet the goals. She wanted to go on record today indicating that if they accept this report today that didn't mean that there wasn't still more work to do.

Andy Cotugno, Planning Director, said the spirit of what Councilor McLain had just talked about was exactly right especially in relation to the housing and employment targets. That was a fairly conservative computation especially in the centers because in the centers the capacity for jobs and housing was much more a function of redevelopment than it was vacant land. The minimum densities worked very well on vacant land but it was much more speculative about how much development was likely to happen through redevelopment in those centers. This was why, in the period review that Council just completed, the emphasis on centers was an important one because there was such a large range of possibilities for the centers. The more we do, the more we can take credit for it. If we were successful in those locations, the higher the retail we can assume into the future and take credit every five years as we went through the capacity analysis for the UGB. The targets themselves were only a measure. The success rate at redevelopment was probably a more important measure as it related to centers. Now that we have a limited ability to deal with vacant land densities in single family residential areas, which was a large part of where those target housing capacities was produced, the remaining ability to impact the capacities in centers

was much more a function of how you impacted the market than it was what minimum zoning you counted.

Council President Bragdon opened a public hearing.

Mary Kyle McCurdy, 1000 Friends of Oregon, 534 SW Third Avenue, Suite 300 Portland OR 97204 read her letter into the record (a copy of which is found in the meeting record). She noted that she had not received the January 24, 2003 update from Ms. Bernards so her remarks reflected compliance issues prior to that update. She spoke specifically to Title 1 and 7 compliances. She noted that Mr. Ross and she were in agreement on Title 7.

Kelly Ross, Home Builders Association, Portland, Oregon said they were surprised and somewhat outraged when they saw this report come to Metro Technical Advisory Committee (MTAC) with the low level of compliance with Title 7. If you looked at the requirements, they had set the bar pretty low on what local governments had to do. He said when he saw the report only 9 of the 27 jurisdictions had reported on Title 7. He spoke to the history of Title 7. A lot of people had spent a lot of time on affordable housing requirements. He felt it was unfair to the jurisdictions that had taken the time to work on Title 7 compliance. He spoke to City of Portland's accomplishments on Title 7. They had done the most in the region to address affordable housing problems in the region. He thought they were the only ones who had taken advantage of the statute that allowed tax abatement for low-income properties. They had a very detailed system. He felt it wasn't fair to them to allow the other jurisdictions to skate on this and force them to assume a higher burden than they should be. He felt that the region was being lulled in a sense of security on affordable housing because of the way interest rates have been in the last few years. That can easily change and turn into a very serious problem. Affordable housing requirements were seen as a corner stone of the 2040 Growth Concept. He hoped that the Council would take a strong stand on Title 7 and let jurisdictions know that these requirements were equally important as those for the other titles. It was key to making this concept work for the future.

Ms. Kyle McCurdy spoke to the Affordable Housing provisions and the litigation that followed. The local governments asked for voluntary compliance.

Council President Bragdon closed the public hearing.

Gerry Uba, Planning Department, presented Title 7 compliance. He spoke to the problems they had evaluating Title 7 compliance. They had 9 local governments, which had submitted their reports. He said they had presented the report to MTAC and shared with them the difficulty Metro was having evaluating Title 7 compliance. Some of those examples stem from the original affordable housing production goal. However, they also should be able to tell them whether they were going in the right direction. He noted a memo from Andy Cotugno to the Council President concerning Title 7 (a copy of which is found in the record) summarizing some of the concerns that Metro Policy Advisory Committee (MPAC) had brought up which he had reviewed with Council on December 10, 2002.

Mr. Cotugno reviewed the memo on Title 7 compliance reports: issues and compliance procedures. He suggested giving jurisdictions more feedback so they knew where the bar was so in their next reporting they could have a more clearly defined bar.

Councilor McLain asked about the last bullet under MTAC, which said "Metro staff could help by providing a model for reporting. They should also make available copies of each reporting

jurisdiction's work for others to see, if requested". She thought they had come up with a model for reporting. Did the reports that came in follow the specificity of what Metro said they wanted to know or were they all over the board too.

Mr. Uba said they were all over the board. Metro had not provided a model for reporting because of the lack of funding in the budget. They were giving local governments the opportunity to start implementing Title 7. If Metro staff saw problems they could come back to Council to request funding for a model.

Councilor Park weighed in by saying that there had been a lot of discussion in 1999 at MPAC about the word "consider". There was a promise that there would be consideration in some formal fashion by those jurisdictions that the problem was being examined. He spoke to the litigation and the settlement. There was a voluntary agreement made that they would do this report. This should at least be occurring. It was clear from the context of the discussion that jurisdictions would report. He wasn't sure what the mechanism would be to get those reports in.

Councilor Newman asked, by adopting this report, was Council declaring that these local jurisdictions were in compliance? Council President Bragdon asked if they were being asked to take action of this report today? Mr. Cooper said there was nothing to vote on today.

Dick Benner, Senior Assistant Counsel, explained the process for the enforcement code provision. It called for the Metro Council to have a hearing having received the report. Then it called upon the Council to enter an order. In the order the Council would accept the report, make changes to the report, but ultimately would come to a conclusion that would say these jurisdictions complied with these Functional Plan requirements. The order was not in front of Council today. Shortly after the hearing, the Council would get an order. The Council would enter that order and it would make the findings and conclusions. That order could be appealed to Land Use Board of Appeals (LUBA) should someone disagree with it. Council President Bragdon asked how they were to give him direction on preparation of the order? Mr. Benner responded Council was in a position to interpret what the jurisdictions had accomplished. That direction would come from the Council in the form of an order.

Council President Bragdon summarized that, through their discussion today, they would give Mr. Benner direction for preparation of the order. Mr. Benner said that was what they hoped.

Councilor Newman asked if you were to characterize the nature of why local jurisdictions did not respond for Title 7, what would that be? It was hard for him to evaluate the lack of response without having an idea what was going on at the local level. Mr. Uba responded that the ones that did not submit any report but called him for help indicated they needed more time but they didn't explain why they didn't complete their report by the deadline. He had no clue as to why those that didn't call had not completed the report. Mr. Uba said they had sent out reminder letters two months ago, which generated two additional reports.

Councilor Newman said when City of Milwaukie was doing their city council goal setting session with their planning staff, they were left with very little time to complete all of their planning with limited resources. For smaller jurisdictions, what was the workload that Metro mandated on them and what kind of flexibility did they have to seek Metro's help if they couldn't meet them because of other demands.

Councilor McLain commented that today's testimony was important. They had also had the same experience as Councilor McLain had. They lived through the first set of discussions on this.

There were a lot of people who had been involved in the process. She said yes, we have people with different staff and resource levels. She felt that this Council could give more specific direction on either the order or a letter, which would allow them to understand that we still do believe that affordable housing was important. They wanted to get beyond that statement and that commitment and get onto some tools that will help us with the problem they had identified. We needed to recognize that there was a difference between Title 1 and Title 7. Jurisdictions understood more what compliance meant for Title 1. Councilor McLain said they couldn't just accept the report in the shape it was in and explained further the details. Councilor McLain suggested that Council needed to have more discussion with the staff and legal staff to write a letter to the jurisdictions that will indicate those concerns and how and when we accepted the report.

Council President Bragdon said he was concerned that they couldn't accept this. He hoped these comments would be helpful in drafting an order. The testimony raised some concerns about Title 1 and Title 7. Even though the two witnesses came from different spectrums, they acknowledged that a deal was a deal and that there was agreement that we would all go forward together. Even the minimal reporting hadn't been done. He thought there was a step before preparation of the order. He suggested working with local governments as elected officials to make clear that this was important to the Council. He suggested that we make this a point of discussion at the next MPAC meeting. We took Title 7 seriously because we thought it was a serious problem. He suggested having some peer discussion there. For those who weren't members of MPAC, he suggested either a letter or calling the elected officials in each Councilor's district. He wasn't comfortable with an order indicating that everything was OK.

Councilor Park said, as he understood Title 1 Table 1 numbers, it was a best guess at that particular time. Some jurisdictions had varying levels of effort. In Task 2 they had changed the table into a known zone capacity table. The jurisdictions have now indicated what their land was zoned for. They have an actual number that they can go back and put in our ordinance to require them not to slip backward. We reached almost 100% on the housing and exceeded on jobs. He spoke to the mixed-use issue. It was more of an accounting issue and explained further. They were looking at performance measures as an overall number. As they moved forward he was hopeful that they would see a better refill rate.

Mr. Cotugno commented on mixed-use, it was partly what it was you were measuring. The target was intended to define a level of capacity. Capacity for vacant land was easy. In centers it was not as straight forward. There was a wide range of possible development levels within allowed zoning for those kinds of commercial, higher-density mixed use places. What happened could be within a wide range of possible densities. It was heavily through re-development. It was hard to say what the zoned capacity of a center was.

Councilor McLain said in the Growth Report, Portland had a zoning plan and a comp plan. The Council made decisions as to whether we were going to accept zoning or their comp plan. It seemed that in the reporting there could be at least a minimum which would be the zoning. You know that the zoning potential was there. The timing will drive when that infill and redevelopment will happen but the potential couldn't be denied. It seemed that in these reports there should be at least a minimum report that talked about the zoning of what could happen. She would feel much more comfortable with that minimum reporting.

Council President Bragdon asked about the ordinance they adopted last year concerning zone capacity, how did that effect the reading on this?

Mr. Cotugno said this was compliance reporting under the old Code, the new Code doesn't go into effect until March 5, 2003. That was subject to acknowledgement by Land Conservation and Development Commission (LCDC). This would be the last report under the old Code.

Council President Bragdon asked how compliance would look if the new Code was in effect?

Mr. Cotugno responded, if the new one was in effect, it would say that the zoned capacity in each jurisdiction had met the targets in each of those jurisdictions. The targets reflect the zoning they had adopted. Hopefully, future ones would report that there had been no backsliding.

Councilor Park said this was a success story, we have a very high compliance rate. It had gone from 80% when he first started on the Council to 97%. We had done well over this particular period of time.

Councilor McLain said it was a success story but these were compliance reports and she did buy into the public testimony that if they were not in compliance you give them an exception or tell them what degree they were in compliance. We needed to give direction to staff. We needed to do our job. It was our responsibility to carry this out. She hoped the compliance reports in the future would be better and the jurisdictions would have a better understanding of how and what to report.

Council President Bragdon asked Council to give him direction in terms of the content of remarks at MPAC next week. He suggested that they talk elected official to elected official about how we were going to fulfill our pledge to do that reporting.

Mr. Cotugno said he felt it was fair to say that Title 1 through 6 were a success story, we were at 97% compliance. They were at the beginning on Title 7, they were at the front end of that process and it was important to emphasize that we were following through on those commitments. Council President Bragdon said that was his message for MPAC. He would also talk about further tools they could use with our local partners.

Mr. Cotugno responded to Councilor Newman about small local government. They had heard a lot about how burdensome Metro's requirements were on local governments. They were short staffed. The environment for taking up the affordable housing issue was a lot different than the environment with they took up Titles 1 through 6. They bird-dogged those issues. They were out in the field working with local governments to do those center plans including providing grants to meet those requirements. That had not been the case for affordable housing. They had not sat next to their affordable housing people. The Planning Department had not been budgeted to provide that kind of technical support. Mr. Uba had been on the receiving end of reporting not on the bird-dogging end because he had not been budgeted at that level. He had been budgeted to emphasize performance measures not affordable housing. If we were going to be more proactive in leading the way on how to meet the affordable housing requirements, that took resources. Right now they were only budgeted at .1 of an FTE to assemble this report.

Council President Bragdon said it also required political will on our part with our fellow elected officials.

Councilor Monroe asked who chaired the Housing Task Force. Council President Bragdon responded that Commissioner Diane Linn chaired the task force. Councilor Monroe suggested soliciting some of those individuals on the task force to help remind local governments that they were behind in terms of compliance efforts. He suggested asking for that help so that it was not

just Metro requesting but also came from our fellow elected officials that played a leadership role in that process. Council President Bragdon said that was an excellent idea.

Councilor Newman thanked Mr. Cotugno for his comments. Those resource issues were important to bring up.

Councilor Hosticka asked Council President Bragdon about compliance procedures. Was the testimony from Ms. McCurdy considered exception to the compliance reports?

5. RESOLUTIONS

5.1 Resolution No. 03-3271, For the Purpose of Endorsing a Regional Position of Reauthorization of the Transportation Equity Act for the 21st Century (TEA-21).

Motion:	Councilor Park moved to adopt Resolution No. 03-3271.
Seconded:	Councilor Monroe seconded the motion

Councilor Park reviewed the resolution, which would be forward to our congressional delegation. This would help in terms of the region's priorities, the authorization of those funds and a list of priority projects found were in Exhibit C.

Mr. Cotugno said the legislation covered a lot of policy direction that sets national transportation policy, most of what can be funded. He explained Exhibit A, which were the major policy issues that were intended to be the ones that were really emphasized. Those covered things that impacted us the most, the level of funding, the major formula categories that resulted in monies through those formulas coming to the states, and to this metropolitan area. The three categories that produced the funding that we were involved in allocating were the State Transportation Program (STP), Congestion Mitigation Air Quality (CMAQ) funds, and the transit funds that go to TriMet. Those three produced money for this region. They were effectively saying if there was going to be increases, emphasize these for increases. The third major issue highlighted was the discretionary categories. The big issue there was the new start funding. We got significant dollars for light rail construction. They also suggested having a similar competitive rigorous process for the trade corridor category. The fourth major policy issue was that they expected there would be more attention to freight in general. We were more of a trade-oriented market place and therefore freight movement was a bigger deal to our economy than the average economy. He spoke to the CMAQ funds. The second major component was an encyclopedia of possible policy issues. The final list was the actual project requests. It was up to the congressional members from Oregon to make the request. This was Metro's input to them and what they would ask to be earmarked through the authorizing process.

Councilor Hosticka said in the spirit of always objecting to discretionary decisions made by governments higher than Metro, he had to say that he didn't find it useful for Metro to talk about formulas and percentage returns to our geographic areas when we were petitioning our federal government when at the same time county and local governments raise those same arguments with Metro. He would object to stating that we want to ensure that we get a return on dollars and varies dollars should be allocated based on geographic formulas. He noted this for the record.

Councilor Newman asked about the small starts, was that a brand new concept? Mr. Cotugno said yes. Councilor Newman asked if this was brand new money? Mr. Cotugno responded that it was unpredictable at this point in time. There were two different proposals and explained further those proposals. Councilor Newman asked about the Young amendment, which allowed us to use

flexible transportation dollars, he was under the impression that these funds might be restricted. Were these addressed in Metro's comments? Mr. Cotugno said he hadn't heard this. Councilor Newman said he had heard that the pressure from the administration was a very restricted interpretation of that rule. Mr. Cotugno said that was an administrative application of the law not the law itself. He would find out more about whether the law was threatened. They didn't want to lose the legal authority that the law provided. There was no question. This administration was being more restrictive in the application of the law. Councilor Newman asked about the 4-F rule, when evaluating transportation projects, you do what you could to protect historic resources. Was this addressed in the summary? Was that something that we needed to pay attention to? Mr. Cotugno said yes, that was something he would need to supplement.

Councilor Park said the positions that we had taken paralleled Oregon Transportation Commission. We were bolstering their positions. He thought the 95% return was their position. Mr. Cotugno said yes.

Council President Bragdon asked about adding the 4-F rule. Mr. Cotugno suggested that this resolution be adopted and that they do more investigation on the Transit Oriented Development (TOD) authority and the environmental regulations. If there were an appropriate position to take he would come back to the Council. Councilor Newman said he did not object to this action. Those two items might be added to our federal watch list.

Mr. Cotugno said this was the six-year authorizing bill. There will be another resolution coming up on the one-year appropriations bill.

Councilor Park urged support. This was an important transportation-funding piece.

Vote:

Councilors Park, Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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6. COUNCILOR COMMUNICATION

Councilor McLain reported on the Rate Review Committee. There were two Informals coming up in February 4th and 18th which will deal with bond covenant, rate setting, solid waste services and policies.

Councilor Newman updated the Council on the South Corridor Project. They had a positive public hearing last night. He reminded them that the final public hearing was next Tuesday, February 4th at 6:00 p.m. at the Multnomah County Commission Chamber.

7. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:30 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JANUARY 30, 2003

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
3.1	MINUTES	1/23/03	METRO COUNCIL MINUTES OF JANUARY 23, 2003 SUBMITTED FOR APPROVAL	013003C-01
4.0	MEMO	1/28/03	TO: COUNCIL PRESIDENT BRAGDON FROM: ANDY COTUGNO RE: TITLE 7	013003C-02
4.0	MEMO	1/24/03	TO: COUNCIL PRESIDENT BRAGDON FROM: BRENDA BERNARDS, PLANNING DEPT. RE: PUBLIC HEARING FOR 2002 URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN COMPLIANCE REPORT	013003C-03
4.0	LETTER	1/30/03	TO: METRO COUNCIL FROM: MARY KYLE MCCURDY, 1000 FRIENDS OF OREGON, RE: URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN ANNUAL COMPLIANCE REPORT	013003C-04
NOT ON AGENDA	MEMO	1/30/03	TO: COUNCIL PRESIDENT BRAGDON FROM: MARV FJORDBECK, SENIOR ATTORNEY RE: METRO CIVIL PENALTY ENFORCEMENT LEGISLATION	013003C-05