

MINUTES OF THE METRO COUNCIL MEETING

Thursday, February 13, 2003
Metro Council Chamber

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

Councilors Absent: Rod Park (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 February 6, 2003 Regular Council Meetings.

Motion:	Councilor Newman moved to adopt the meeting minutes of the February 6, 2003, Regular Metro Council meeting.
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Vote:	Councilors Hosticka, Burkholder, 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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3.2 **Resolution No. 03-3266**, For the Purpose of Appointing Moji Momeni to the Metro Committee on Citizen Involvement (MCCI)

Motion:	Councilor Newman moved to adopt Resolution No. 03-3266.
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Vote:	Councilors Hosticka, Burkholder, 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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4 CONTRACT REVIEW BOARD

4.1 **Resolution No. 03-3268**, For the Purpose of Authorizing the Release of Request for Proposals No. 03-1038-REM for Analytical Laboratory Services.

Motion:	Councilor Burkholder moved to adopt Resolution No. 03-3268.
Seconded:	Councilor Newman seconded the motion

Councilor Burkholder reviewed the specifics of the resolution. Councilor McLain thought that the request for proposal was important. She suggested that staff keep a record of who applied for the work so that they could attract new bidders and encourage minority bidders. She supported the resolution. Council President Bragdon direct staff to provide this information to Councilor McLain.

Vote:

Councilors Hosticka, Burkholder, 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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4.2 Deliberation on Appeal by Hattenhauer Distributing Company of Executive Director's Rejection of Appeal of contract for Provision of Diesel Fuel to Devin Oil Company, Inc.

Council President Bragdon reviewed the process for this deliberation (a copy of which is included in the record). He noted that the Council was not obliged to act today. He reviewed the procedure for the Appeal by Hattenhauer Distributing Company (a copy of which is included in the record).

Councilor Hosticka asked about the nature of the proceedings, was it quasi-judicial? Marv Fjordbeck, Senior Assistant Counsel said this was similar to a quasi-judicial matter. He explained the difference.

Thomas Peachey, Attorney for Hattenhauer Distributing Company, said he and Mr. Hattenhauer were here today seeking review of this contract bid award. He said Council's role required that they comply with all state and local laws regarding the awards of bid. He explained further what those laws required. He felt a fundamental issue involved in the appeal was supporting impartiality. The two elements being addressed today were the operation of a cardlock facility and compliance with regulations that would accommodate tractor trailer combinations and allow cueing for vehicles. Their primary issue was to suggest that the Hattenhauer facility was able to accommodate the bid process that was put together by Metro. Devin Oil was the bid that had been recommended as being awarded in this matter. They had come to Metro with a proposal that a .075-cent markup be applied; Hattenhauer bid was .0725, which was the low bid. This had a financial impact on Metro of about \$12,000 to \$13,000 savings if Hattenhauer were awarded the bid. Hattenhauer originally rejected the bid because its facility did not have in existence the things that were requested in the bid. The proposal by Mr. Hattenhauer was that they would make the changes to meet the requirements of Metro's bid. That proposal was rejected by Metro as a result of these requirements not being in existence. They could have reasonably done the work by the time the fuel would have been provided by the contract. He noted a letter supporting this work. After the bid was denied to Hattenhauer, Metro obtained a report from an engineer that was dated December 30th who went out and looked at Mr. Hattenhauer's site. The DKS engineering report did not exam the Devin Oil site. That caused them a measure of concern. They believed that there were similar issues raised with both sites. They thought neither of the sites were perfect but believed both of the sites met the practical impartial requirement that were set forth by Metro when they initiated the bid. The primary concern of the engineering report (Exhibit F) from DKS Associates questioned whether the site could accommodate the needs of Metro. They had a number of issues with the report. The report itself talked about traffic volumes on Hwy 217 as being some basis to make some calculations with regards to this site. The volume figures were wrong. He noted the videotape that they would show showing similar sized vehicles accessing the location. The State of Oregon had permitted the use of the approaches for Hattenhauer's location and similar approaches for the Devin Oil location. Applications and permits for approaches were submitted for the record. He explained that he felt that these applications and permits were

relevant to the issues of whether these trucks can reasonably access the Hattenhauer location and therefore, justify Metro awarding a lower bid and saving some money.

Finally, part of the packet included a letter from Mr. Gronquist, the manager for CSU Transport dated October 4, 2002 to Chuck Geyer, stating that if Mr. Hattenhauer could make his cardlock in Gillam County so that CSU trucks and drivers could safely get off the road to obtain the fuel, then he had no problem fueling there. He thought this was truly the primary issue here. Had Hattenhauer reasonably met the requirements and proposed to meet the requirements under the bid? He thought they had and should be awarded the contract. They were the low bidder. He requested that they be awarded the contract. They had obtained the services of Mr. David Weaver, licensed traffic engineer, civil engineer and land surveyor to evaluate the bid requirements. Mr. Weaver had some materials to show Council with regards to focusing on the access issues. Mr. Weaver said when he was contacted in January to evaluate this site he was told it was an existing facility. They wanted him to use drawing templates to see if things would or would not work. He had advised Mr. Peachey to take a couple of vehicles to the site and drive them through. He showed some pictures demonstrating truck access to the Hattenhauer south. He then showed a video of trucks accessing the site. The video was to demonstrate the capacity to fuel 2 trucks and cue 4 trucks as well as the clearance of fixed objects. He talked about the cueing. He also showed the Devin site on the video.

Councilor McLain asked clarifying questions about cueing and fueling. Councilor Newman asked if they had a plan view of the site. Mr. Weaver said Mr. Hattenhauer prepared this plan view. Mr. Hattenhauer explained further the proposed plan and the cueing of the trucks. He showed how there would be more access in the future by removing some of the barriers. Councilor Newman asked about the fueling pumps. He asked about the number of trucks, cueing and fueling. Mr. Hattenhauer showed examples of how trucks could cue and fuel. The radius met the requirements of the bid. The facility and the trucks met the requirements of the bid. He explained some of the concerns about the site and how they would accommodate those concerns. It was a doable project. Mr. Weaver said in his 48 years of experience he was in a position to review problem truck sites. He believed this project was doable.

Chuck Geyer, Solid Waste & Recycling Department, was the project manager for this contract. He gave an overview of the history (a copy which is included in the meeting record titled Fuel Contract Background). He explained the reason why they were doing this Release For Proposal (RFP). He then reviewed the current procurement and technical requirements (a summary of this is included in the meeting record titled Metro's 2002 Fuel Procurement). He showed a drawing of what was submitted at the time of the bid. (A copy of Mr. Geyer's presentation is included in the meeting record). He then gave a power point presentation (a copy of which is found in the meeting record), which dealt with a review of the truck turning paths.

Councilor McLain asked, if during the bid process, was Hattenhauer told that they couldn't have any cars on the site? Mr. Geyer said no, they said that the company had to have cueing for four vehicles at all times. Councilor McLain inquired, that was after the bid was offered? Right now, status quo, they were not required to quit business while they were going through this bid process. Mr. Geyer said they had asked them to provide cueing at all times. What they submitted to Metro was a drawing. You couldn't put four trucks on that site because of the passenger vehicles. They were planning to continue their retail operation. They have made no provisions to prevent the situation. They were out of compliance with the specifications. Council President Bragdon said this picture did not demonstrate that. This picture demonstrated the condition during the time of the bid. Councilor McLain's question was did the RFP say when you were bidding you were not allowed to have cars there? Mr. Geyer responded that the RFP said that your site had to provide

cueing for four CSU trucks at all times. Council President Bragdon added, if you win the bid. Mr. Geyer said yes. Council President Bragdon said Councilor McLain's point was that this picture was showing the current conditions. Mr. Geyer said his point was that they were not changing their conditions. Councilor McLain asked clarifying questions about the bid. She said Hattenhauer understood that they had to have a minimum of four vehicles. Mr. Geyer agreed. He continued to show the lack of truck clearance. They had determined that Hattenhauer did not meet specifications.

Councilor Hosticka said it would be helpful if they had the RFP in front of them. Mr. Fjordbeck provided a copy of the scope of the RFP (found in the meeting record). Councilor Burkholder talked about the bid language and that Council was allowed to determine what must be in place at the time of the bid. Council President Bragdon said that was Councilor McLain's point. Mr. Geyer continued with his presentation. Councilor Burkholder asked why Highway 19 was required in the bid? Mr. Geyer said that was the historical pattern that the contractor enjoyed prior to allowing Metro to buy fuel. It was one of the conditions he wanted for Metro to purchase the fuel. The reason was, it was convenient to his operations. Councilor Newman said there was current retail at the Hattenhauer site and that retail activity was anticipated to continue even if they were awarded the contract. If retail activity occurred after the bid was awarded, there may not be a space or the cueing areas as outlined in the RFP, was that correct? Mr. Geyer said that was correct and Hattenhauer stated in his bid that the activity will continue. Councilor Newman said it seemed to him that the slide showing current retailing activities was relevant because it could create problems in the future. Councilor McLain asked about retail activity at Devin Oil? It was a cardlock so anyone who had a card could pull into the Devin lot. Mr. Geyer said that was correct but they didn't have retail. Councilor McLain clarified that Devin could service anyone they wanted to. Mr. Geyer said yes.

Randy McCord, DKS Associate traffic engineer, said they were brought in to take a look at the site and to apply some standard engineering criteria given the situation where the pumps weren't there and take a look at the circulation patterns on the site. In looking at the site, they applied some standards truck turning templates that were developed by the American Association of State Highway and Transportation Officials. He would also be showing some truck turning paths. He talked about some of the key issues and showed a power point presentation of different truck positions (a copy of the power point presentation is found in the meeting record). He said what they found was not un-similar to what the video found which was that a truck could make the maneuver but there were some things relative to the site that made it very difficult. He noted building and fence issues. It required very close truck maneuvering to avoid collision. Councilor McLain said this site was used when Devin Oil's system went down. Were there any problems or accidents? Mr. Geyer said no. Councilor Monroe asked about traffic patterns and safety issues. Councilor McLain asked about the difference between entering and leaving the highway at the two different sites. Mr. Geyer summarized that they believed that the bid didn't comply with the RFP requirements because you can't cue four vehicles at one time. The only technical information they got to make their decision were the drawings from Hattenhauer.

Councilor Hosticka asked about cueing being available at all times regardless of what else was going on? Mr. Geyer said yes, it meant at all times. Their interpretation was a practical one at most times under most circumstances. They had observed the Devin site for quite some time. He explained issues about the Hattenhauer site and if one vehicle shut down on the site. It was a safety hazard.

Richard Devin, Vice President of Devin Oil, P.O. Box 6, Arlington, OR 97812 spoke to the Release For Proposals. They had invested money to be prepared for this RFP. He was responsible

for the service provided at the lot. He felt they had provided the best service. He thanked the Council for the award and provided a photo of the Devin Oil site. Councilor Hosticka asked about the computer problem. Mr. Devin said they were just updating the system. It was about a half hour problem.

Dennis Gronquist, CSU Transport, Box 547, Arlington, OR 97812 talked about Change Order 15 (he read a portion of the change order). He talked about the high level of service at Devin Oil and the importance of safety. If Hattenhauer had other trucks or vehicles on the lot, there was not enough room to accommodate fueling. There would be no place for the trucks to get off Highway 19. The location was wrong. Councilor Newman asked why the RFP was specific to Highway 19. He asked if it was historical, was there an effort to keep that business in Gillam County? Mr. Gronquist said they were trying to keep as many jobs in the county as possible.

Mr. Peachey closed by talking about the existing Hattenhauer's facility and how many trucks could be fueled in a certain period of time. He said Metro would save money if they awarded this contract to the lowest bidder. He said there was no requirement that the facility had to be ready at the time of the bid opening. That was patently ridiculous. You would never have anyone bid on anything if you required this at the time of the bid. He noted that pictures provided to Council on Devin Oil showed no other vehicles. He felt this was a bit disingenuous. He closed by saying that the public bidding process was put into place to foster competition and to encourage public savings. The recognition and acceptance of this appeal would do just that.

Councilor Newman said you have demonstrated to me that technically you can get four trucks on your site. If one or two additional vehicles were using those pumps could you assure Council that you could get four additional trucks on the site whether they were cueing or fueling? Mr. Peachey responded that neither of the bidders could meet that requirement. Councilor Newman repeated his question. Mr. Peachey said if the vehicles were fueling much like Devin, yes they could. Council President Bragdon reviewed the requirement for cueing. Mr. Peachey said they had not restricted the use of the lot. He suggested that maybe the bid needed to be rewritten to have some restrictions in that regard. He felt that as long as it was the commercial cardlock use lot in the bid, that issue existed for both of the bidders. Mr. Weaver added some additional remarks about the truck turning radius, speed of vehicles, and acceleration rates. Oregon law required that you stopped before entering the roadway, which was exclusive of the shoulder. He didn't think it made a difference at either site.

Council President Bragdon reviewed the three options available to the Council. Councilor Hosticka asked procedural questions. If we resolved the question that it was at the time of performance then we were asked to make some predictions about what might have happened. He wondered if there was any standard that they had to be convinced that it was actually going to happen or did they have to think it was possible that it could happen? Mr. Fjordbeck said the standard of review that the Council would be held to if this matter were further reviewed would be whether or not there was substantial evidence to support the determination. That standard was the one he suggested Council apply. Councilor Hosticka said if Council decided that the appellant could meet the criteria under the specifications for the work, was Council required to take the low bidder? Mr. Fjordbeck said that was the Council's third choice. You could uphold the appeal and direct the department to re-bid the item with specific direction. Councilor Hosticka said price was a relative term, was meeting specifications also a relative term or once you have passed the threshold of being able to meet the specifications, were you required to award it to the low bidder? Mr. Fjordbeck said if you determined that these specifications were met, then in this matter, you would be required to award to the low bidder. Councilor McLain spoke to Devin Oil's relationship to Metro. Metro had received wonderful treatment and had a great interaction

and business relationship, so anything they discussed today was not reflective of that past relationship. She had gone through this process three times. Safety had to be the number one goal. The bid document was unreasonable in its present state. As she saw it, there was no one that could ever beat in a bid the company doing business with Metro right now because they have all of the qualifications that Metro said they were looking for. The RFP needed to be re-scoped to make it fair to people who were in the business now to do business with us in the future. She spoke to unfairness issues. She suggested a shared bid where both companies participated. She felt that there was reasoning and justification to indicate that the bid document was flawed from the very beginning.

Motion:	Councilor McLain moved to look at the third option of upholding the appeal and direct the contract to be re-bid and give direction to staff on what they wanted in that bid document.
Seconder:	Council President Bragdon seconded the motion.

Councilor Hosticka asked procedural questions. Mr. Fjordbeck responded that given the bid document that was put out and approved by the Council, the Council's task today was to determine, based on the appeal of Hattenhauer, if they had met the specifications. Staff's conclusions were that they did not meet the specifications.

Councilor McLain withdrew her motion and requested making a new motion.

Motion:	Councilor McLain moved to uphold the appeal because the appeal was valid and direct that the contract be re-bid.
Seconder:	Council President Bragdon seconded the motion.

Councilor Newman said he was opposed to the motion and explained why. He believed that this Council last November authorized a release of bids. If you wanted to send a message or change the policy by which these bids are issued, that was the time to do it. At this point, the bid had gone out. We had two groups who had responded in good faith and submitted their time and effort to respond to that bid. Now we were saying that we didn't like our original motion or should have directed staff three months ago to make changes on the request for bid. He thought if he was a business owner he would be very frustrated to do business with this agency after Metro had authorized a bid, we pulled the bids away. This contract was for two years. We should reward the folks that have responded in good faith by awarding the bid today. If Council wanted to give guidance to staff to change the requirements, they should change the language for future bids.

Councilor Burkholder said staff and staff presentation convinced him that the appeal did not have merit. He was going to propose that we put it back out for bid and change some of the requirements but was convinced by Councilor Newman's discussion not to do this. He was concerned about the provision under scope of work that restricted them to Hwy 19. He believed if we were looking at promoting competition and getting the best deal for our citizens of Oregon and this region, he thought that specific criteria limited our ability to do that. He opposed the motion and would look at changing this contract in the future to ensure there was sufficient competition.

Councilor Monroe said he was in agreement with Councilors Newman and Burkholder. He talked about safety as well as competition issues. He spoke to the benefits of Devin Oil's lot. The prudent thing to do was to award the contract today and take a look at the criteria for the next go around. Councilor Hosticka said he thought it was a theoretically possible in the future that the

appellant could meet the specifications. However, based on Councilor Monroe’s comments he would be opposing the motion. Councilor McLain closed by explaining her motion. Safety was always the issue. She suggested that they needed more than one vendor. This was not the first time this appeal has been made. The document and the review process were not valid. She planned to be giving direction for the Release for Proposals. She noted that every document they saw from Metro staff today was very selective and not helpful. This was not the first time this appeal had been made. She thought we had given direction to staff that Council didn’t want to be in this position again. We were in this position today because the document itself and the review process were not working. We were asking for things that were unreasonable.

Vote:

Councilors McLain and Council President Bragdon voted in support of the motion. Councilor Hosticka, Burkholder, Newman and Monroe voted no. The vote was 2 aye/4 nay, the motion failed.

Motion:	Councilor Monroe moved to accept the staff’s recommendation, reject the appeal and award the contract to Devin Oil.
Seconded:	Councilor Newman seconded the motion.

Council Newman explained his vote. He felt that the Hattenhauer proposal had a fatal flaw, which even with the improvement, was that it had not been proven to him with other retail activities occurring that Hattenhauer could meet the minimum requirements of the bid. Because of that Metro could accept the appeal. He would be happy to be involved in rewriting the criteria.

Council President Bragdon said he would be voting against the motion and explained his vote. He said if this were just a matter of looking at the Hattenhauer situation as it was currently situated, he might have voted in favor of this motion. But, in part, because of how this information had worked as well as how the business people have been dealt with, he thought when a public agency put bids out, the process should to be done in a way that invited clear competition and was clearly unbiased. When information was presented to the Council, he expected that it be presented in an unbiased fashion and that it be neutral and that pictures not be used to disadvantage one bidder in the way they were taken. He also asked, in the future, judgments that were to be made by the Council be reserved for the Council. He would be voting no and be looking for a different level of performance on future presentations.

Councilor Monroe closed by saying the RFP maybe should have been drafted more carefully but our job was to look at the RFP and determine whether or not the appellant qualified and clearly the appellant does not qualify. We were required at this point to go ahead and grant the contract to Devin Oil.

Vote:

Councilors Hosticka, Burkholder, Monroe, Newman voted in support of the motion and Council President Bragdon and Councilor McLain voted against. The vote was 4 aye/2 nay, the motion passed.

5. COUNCILOR COMMUNICATION

Councilor McLain talked about the Jackson School Interchange and the discussion at Joint Policy Advisory Committee on Transportation this morning. She suggested a discussion at an Informal on this issue. Councilor Hosticka suggested talking about the management plan versus the design of the interchange at the Informal. Councilor McLain said there were objections to both plans.

The second issue was that she would be making available to Council several reports on some of the issues that they were trying to deal with agricultural strategy in Task III of Period Review.

Councilor Newman said the South Corridor Policy Committee made their Locally Preferred Alternative final recommendation on the South Corridor Project, which was the combined option. He explained what this option entailed. The recommendation was now being sent to local jurisdictions. The Council April 17th would consider the recommendation. Councilor Monroe said this was an exciting step in the process. He noted that the vote was unanimous which gave a strong indication that every jurisdiction would be in support. He gave accolades to Councilor Newman for his leadership.

Council President Bragdon said MPAC met last night and talked about affordable housing and performance measures.

6. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:10 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 13, 2003

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
3.1	MINUTES	2/6/03	METRO COUNCIL MINUTES OF FEBRUARY 6, 2003 SUBMITTED FOR APPROVAL	021303C-01
4.2	MEMO	2/10/03	TO: DAVID BRAGDON, COUNCIL PRESIDENT FROM: MARV FJORDBECK, SENIOR ATTORNEY RE: SUGGESTED PROCEDURES FOR APPEAL BY HATTENHAUER DISTRIBUTING COMPANY	021303C-02
4.2	MEMO	2/12/03	TO: DAVID BRAGDON, COUNCIL PRESIDENT FROM: MARV FJORDBECK, SENIOR ATTORNEY RE: APPEAL BY HATTENHAUER DISTRIBUTING COMPANY OF EXECUTIVE OFFICER'S REJECTION OF APPEAL CONCERNING NOTICE TO AWARD DIESEL FUEL CONTRACT	021303C-03
4.2	RFP SCOPE OF WORK	NO DATE	TO: METRO COUNCIL FROM: MARV FJORDBECK RE: SCOPE OF WORK FOR RFP	021303C-04
4.2	APPLICATION AND PERMIT TO CONSTRUCT APPROACH ROAD	1994	TO: METRO COUNCIL FROM: DAVID WEAVER, TRANSPORTATION ENGINEER RE: COPIES OF APPLICATIONS AND PERMIT TO CONSTRUCT APPROACH ROAD FOR HATTENHAUER AND DEVIN	021303C-05
4.2	PRESENTATION	NO DATE	TO: METRO COUNCIL FROM: CHUCK GEYER, SOLID WASTE & RECYCLING DEPARTMENT RE: PRESENTATION FOR HATTENHAUER APPEAL	021303C-06
4.2	POWER POINT PRESENTATION	NO DATE	TO: METRO COUNCIL FROM: DKS ASSOCIATES RE: POWER POINT PRESENTATION ON TRUCK TURNING PATHS	021303C-07