



METRO COUNCIL MEETING

Meeting Summary

Dec. 6, 2012

Metro, Council Chamber

Councilors Present: Council President Tom Hughes and Councilors Barbara Roberts, Carl Hosticka, Kathryn Harrington, Rex Burkholder and Shirley Craddick

Councilors Excused: Councilor Carlotta Collette

Council President Tom Hughes called the meeting to order at 2:02 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

David Bragdon, 343 Gold St., Brooklyn, NY: Mr. David Bragdon, former Metro Council President, thanked Councilors Carl Hosticka, Rex Burkholder and Barbara Roberts for their service on the Metro Council. He shared personal comments about each of the councilors and their accomplishments over the years.

Nancy Newell, 3917 NE Skidmore St., Portland: Ms. Newell addressed the Council on the treatment of animals, specifically the elephants, at the Oregon Zoo. Ms. Newell discussed the public's reaction to a recent article in Seattle, Washington regarding the Zoo's elephant contract with a third party. She questioned the Zoo's policies, program and the living conditions for the elephants. She stated that Zoo was not building relationships with the community and that 2008 bond supporters would come back to voice their concerns.

Courtney Scott, 2106 NE Flanders, Portland: Ms. Scott encouraged the Metro Council to move the elephants to a preserve or sanctuary. She stated that the fact that the Zoo has a contractual agreement with a company that trains animals for entertainment, specifically a company with cruel training methods, spoke volumes about the Zoo's lack of concern for the elephants. She stated that 22 zoos have closed their elephant exhibits and moved their elephants to sanctuaries. Ms. Scott addressed the potential health impacts elephants face in captivity including foot and joint problems and stress. She stated that the 2008 bond measure included money for an offsite elephant preserve; a place for the elephants to live more naturally and free. She stated that the Zoo's planned expansion is not sufficient, especially as the herd continues to grow. She recommended the Zoo consider installing a 24/7 live camera feed at the preserve. The public would make online contributions to view the elephants. (Written testimony included as part of the meeting record.)

Ninelle Jones, 7637 N. Interstate, Portland: Ms. Jones echoed Ms. Scott's comment that over 20 zoos have closed their elephant exhibits due to a variety of reasons. She was concerned that 8 elephants on one acre was not appropriate and could be considered hoarding. She stated that the voters approved the 2008 bond measure because there was a sense of urgency, however, no strides have been made to date. She stated that the proposed 6-acre expansion is still inadequate for 8 elephants. She recommended that if the money to operate the offsite preserve cannot be found, that

the \$30 million that was to initially allocated for the preserve be reallocate to send Rose-Tu and the new baby offsite. In addition, Ms. Jones addressed the location of the Zoo's elephant habitat's proximity to the light rail.

Shelley Oylean, 5428 N. Bowdoin St., Portland: Ms. Oylean was opposed to Resolution No. 12-4394. She stated that she had been a recipient of North Portland Enhancement grant funds in previous years. She stated that the funding is unique and is accessible to a variety of organizations including local neighborhoods. She believed the intent of the funding was to continue and to sustain the local community long term. She stated that it would be difficult, once the grant funds are gone, to secure a sizable seed money for future programs. Ms. Oylean understood that rates were currently low, but believed it would change long term. She stated that an additional option should be considered; that the money be disbursed after it reaches a certain amount such as \$150,000 or \$200,000. She emphasized the importance of the fund and encouraged the Council to hold the money, wait to disburse, and save on administrative costs.

3. CONSIDERATION OF THE MINUTES FOR NOV. 29, 2012

| | |
|---------|--|
| Motion: | Councilor Shirley Craddick moved to approve the minutes for Nov. 29, 2012. |
|---------|--|

| | |
|-------|--|
| Vote: | Council President Hughes and Councilors Roberts, Hosticka, Craddick, Burkholder and Harrington voted in support of the motion. The vote was 6 ayes, the motion <u>passed</u> . |
|-------|--|

4. RESOLUTIONS

4.1 **Resolution No. 12-4394**, For the Purpose of Revising the North Portland Enhancement Committee Policies and Authorizing the Committee to Charger Expenditures to the Fund Principle.

| | |
|---------|---|
| Motion: | Councilor Rex Burkholder moved to approve Resolution No. 12-4394. |
| Second: | Councilor Craddick seconded the motion. |

Councilor Burkholder introduced Resolution No. 12-4394. Councilor Burkholder stated that over 20 years ago Metro inherited the St. Johns Landfill from the City of Portland. When Metro took over the landfill, began to modernize it and protect the surrounding area from future environmental impacts, Metro also collected fees and created a legacy fund that has been funding small regional grants. However, the interest generated on the fund's principle balance, \$1.5 million, is decreasing and only reached \$9,800 in 2011. Additionally, Councilor Burkholder stated that the actual cost of overseeing the program has continued to grow and exceeds the amount of money produced. The resolution, if approved, would program the principle balance over a maximum five-year time period. He stated that the current committee would continue its service and is expected to come to the Council in spring 2013 to ask for facilitation and planning assistance. Councilor Burkholder stated that Metro Councilor-elect Sam Chase would chair the enhancement committee in his absence.

Councilor Burkholder welcomed North Portland Enhancement committee members Mr. Shawn DeCarlo and Ms. CeCe Hughley Noel to express their support for the resolution. They stated that the recommended program changes reflect the voices of North Portland residents and local non-profit staff, and that while people had varying opinions on how to spend the balance, all expressed their

desire to ensure the local community was the primary beneficiary of the remaining funds. Their presentation briefly overviewed the committee's deliberations and the impact of the grant program.

Council discussion

Council thanked the committee members for their service and Ms. Oylean for her testimony. Councilors asked clarifying questions regarding the fund's 2018 sunset. Councilor Burkholder clarified that the committee was undecided on how to allocate the funds, but believed that the five-year time period would provide sufficient time to decide and make responsible decisions on how to spend the money. Additionally, he stated that the five-year time period would provide flexibility to respond to unforeseen requests. Councilor Hosticka expressed his preference that the committee has more flexibility in terms on how long the fund is alive and that each time the committee considers a project, it looks at the criteria and determines whether the expenditure is more valuable now or in the future. Council President Hughes stated that having a councilor chair the committee sort of automatically provides flexibility with the sunset date.

Councilors also acknowledged the concerns about spending the money but did not believe the fund interest would be replenished soon. Councilors stated that the committee's recommendation was a wise proposal and that the bigger financial opportunity could provide some truly transformational investments in the community. Additional discussion included projects' ability to leverage (or not leverage) additional funding resources; examples included the past Peninsula Children's Center.

Vote:

| |
|--|
| Council President Hughes and Councilors Roberts, Hosticka, Craddick, Burkholder and Harrington voted in support of the motion. The vote was 6 ayes, the motion <u>passed</u> . |
|--|

5. ORDINANCES - SECOND READ

5.1 Ordinance No. 12-1296, For the Purpose of Amending the Urban Growth Boundary in the Vicinity of the City of Lake Oswego Upon Application by the City of Lake Oswego.

Council President Hughes stated that Ordinance No. 12-1296 required quasi-judicial hearing. As part of the hearing process, Councilors were required to declare a conflict of interest, bias or ex parte contact prior to the staff presentation. No Councilors declared conflicts of interest, biases or ex parte contacts for Ordinance No. 12-1296.

Metro Attorney Alison Kean Campbell read the procedural requirements for quasi-judicial hearing for Ordinance No. 12-1296.

Mr. Tim O'Brien of Metro provided Metro's staff report regarding the City of Lake Oswego's application to amend the urban growth boundary (UGB) under the major amendment process outline in Metro Code. Mr. O'Brien stated that the city has applied to amend the UGB to include 9.8 acres to be used for an indoor tennis facility. He stated that the current facility is heavily used and that due to restrictions in the city's charter, the current facility cannot be expanded. The proposed new site, titled the Rassekh property, is owned by the city, currently zoned for park and open space use, and is located at the intersection of SW Stafford Road, SW Rosemont Road and Atherton Drive in Lake Oswego. The property was initially included in the UGB in 1998 but then removed in 2006 and exchanged for 13.9 acres, now known as Hazelia Field at Luscher Farm. It was believed the sport facility was better suited for the larger site due to potential environmental impacts to the Rassekh parcel.

Mr. O'Brien stated that in 2008 the city initiated a feasibility study that looked at co-locating a new indoor tennis center at the city golf course site; however it was determined that expansion at the golf course was not feasible. Mr. O'Brien stated that of the six areas studied, three – including the Rassekh property – had the best potential for a new indoor tennis facility. Specific site plans and refined development costs were developed for these three sites and resulted in a determination that the Rassekh parcel was the most suitable location. The study also recommended the city sell the existing facility for residential use as a way to help fund the new facility. (Mr. O'Brien also noted that as part of the application process and requirements of Metro Code, the city analyzed three other locations within the adjacent urban reserve area to determine their suitability for the tennis and park facility.)

The criteria for the major amendment of the UGB are contained in Title 14 of the Urban Growth Management Functional Plan and are the same required when considering legislative amendments to the UGB. Mr. O'Brien stated that code requirements are divided into two groups: identifying a valid need, and secondly identifying the best location to meet the identified need. This occurs through the application of the locational factors that are weighed and balanced to determine the most suitable location for the UGB expansion. The determination of the most suitable location occurs once the need has been validated and it has been determined that the need can't be satisfied on land already within the UGB. He stated that based on the city's analysis Metro staff has determined the application has met the need portion of the code requirements. As such, staff has determined that the need cannot wait 2 to 4 years until the next UGB legislative cycle when such a park land need may or may not even be considered. Furthermore, staff noted that of the analyzed locations – both inside the city and the adjacent urban reserve – that the most suitable location for the new facility and park was the Rassekh property. Staff recommended approval of the application.

Mr. O'Brien stated that the hearing's officer, Administrative Law Judge Bernadette House, held a public hearing on September 20 to receive testimony on the city's application. Her report, Exhibit A to the ordinance, expressed support for the city's application. The Metro Council was presented with four options for their consideration:

- (1) adopt Ordinance No. 12-1296 and approve the city's application based on the findings of fact and conclusions of law in the hearing officer's report;
- (2) adopt Ordinance No. 12-1296 and approve the city's application based on revised findings of fact and conclusions of law to be prepared by Metro staff;
- (3) Remand the proceeding to the hearings officer for further consideration; or
- (4) Adopt a resolution to deny the city's application based on revised findings of fact and conclusions of law to be prepared by Metro staff.

Lastly, Mr. O'Brien stated that pursuant to Code Section 3.07.1455, the Council may establish conditions of approval it deems necessary to ensure the addition of land complies with state planning laws and the Regional Framework Plan.

Councilors asked clarifying questions about the definition and intent of the term "need," why the application could not wait until the next UGB expansion cycle, and if the need identified by the city was for the tennis facility or the property use. Mr. O'Brien and legal counsel Roger Alfred clarified that the need identified by the city was not currently met within the existing boundary and that the need was for the property use not the actual tennis facility. Staff stated that if the ordinance were approved, the UGB expansion would remain in affect even if the tennis facility was not constructed. Staff also overviewed the UGB expansion process and clarified that the major amendment process allowed for open space needs. Staff also stated that the current favorable economic conditions were

a factor in the city's application, but clarified that the city also heavily documented the need for the use.

Council President Hughes opened a public hearing on Ordinance No. 12-1295

Applicant Presentation:

- **Jack Hoffman, City of Lake Oswego:** Mayor Hoffman expressed his support for staff's and the hearing officer's recommendation to expand the UGB to include the small parcel. He stated that the application was not suitable for the legislative amendment process scheduled for 2015 since housing and employment are not needed. He also stated that the city has signed a memorandum of understanding with Clackamas County agreeing to participate in the framework level planning efforts for the Stafford Basin.
- **Kim Gilmer, City of Lake Oswego:** Ms. Gilmer stated that tennis has been an extremely popular program since the 1970s, and that current players are using the same four court facility. She stated that the city's charter does not allow for the expansion of the current facility; there are restrictions on the facility's footprint. She stated that while the city knew anecdotally there was a demand for tennis facilities, it was not until the 2009 feasibility study that the city understood to what degree. She discussed the independent consultant's report and emphasized that the consultant's intent was to avoid over construction of facilities. She overviewed his methodology and market analysis findings regarding demand. Similar to Mr. O'Brien's report, she provided information on the five sites considered for the facility and addressed why the other four sites were not selected to move forward. Highlighted reasons included parcel size, sensitive lands, topographical issues, property ownership, and cost. She stated that while the market is lower for construction services, it was not the only reason the city submitted the application. She reiterated that the market analysis demonstrated the need for the tennis facility, and stated for the record that the Stafford Hills Racquet Club was included in the study's assumptions. Additional comments addressed the city's tennis summer participation rates. She emphasized that the city's tennis participation rates are higher than the national averages for September through May. She stated that pending the Metro Council's approval, the city would begin design and development review to build the facility.
- **Mary Dorman, Angelo Planning Group:** Ms. Dorman stated that she prepared the UGB amendment on behalf of the city. She reiterated that there are three tracks for UGB amendments: the typical five-year legislative process, and major or minor UGB amendments. She discussed the UGB amendment process to date and outreach completed. She stated that approval of the application was a critical first step as the facility would require urban infrastructure, water and sewer. She also addressed and reiterated staff's comments regarding the review of other properties in the Stafford area and urban reserves. She stated that the staff and hearing officer's reports found that the application met the criteria, and that the proposed site was the most suitable to meet the needs of the tennis center. In summary, she stated that the city's application provided the evidence and findings to document compliance with the criteria and factors called for in Metro Code.
- **Sally Moncrieff, City of Lake Oswego:** Councilor Moncrieff stated that she has chaired the city's comprehensive planning citizen advisory committee for the last three years. Over that time the citizens have expressed their support for the facility. She stated that the facility was an essential service for the city and a factor in defining its livability. She stated that the facility provides opportunities for all ages and emphasized the positive health impacts and the facility's ability to create a sense of community for Lake Oswego residents. She

emphasized that the project was a priority for local residents and was identified in the Parks Plan. She stated that by implementing the plan, the city would realize its vision for Lake Oswego as a thriving city.

Council asked clarifying questions about the possibility of building the current facility up versus out, and the status of the Stafford Basin framework plan and work with Clackamas County and surrounding cities. Additionally, councilors asked clarifying questions about the traffic impact analysis and how customers would access the site (e.g. cars, bikes, etc.).

Citizens in Support of Ordinance No. 12-1296:

- **Doug Jost, 3140 Westview Circle, Lake Oswego:** Mr. Jost was in support of the ordinance and stated that the City of Lake Oswego had done an excellent job of establishing the need for the project. He stated that competitive recreational tennis is categorized in three areas based on gender, age and ability. He stated that there is no competitive tennis at the current facility and that the city was in desperate need of the facility.
- **Cyndi Murray, 3140 Westview Circle, Lake Oswego:** Ms. Murray was in support of the ordinance and stated that she lived in the Palisades Neighborhood approximately one mile from the proposed site. She stated that while the surrounding area is developed with soccer, football and other recreational fields, tennis is her sport. She stated that she has yet to win the lottery for court time and as a result has had to drive to Vancouver, Washington to play on a team. She thanked the Lake Oswego City Council for its past work and a decision to build the existing facilities as that too was controversial.
- **Evie Fuson, 1255 Chandler Rd., Lake Oswego:** Ms. Fuson expressed her support for the ordinance. She stated that the courts are overcrowded and that it was difficult to get professional instructor and class time. She stated that the independent consultant clearly documented the need for the facility. Additionally she stated that as a former consultant with an international firm specializing in market and financial feasibility of large scale land use projects for recreational uses, she could state with certainty that the existing usage statistics do not predict future demand accurately. She emphasized the huge unmet potential for indoor courts. She stated the facility's ability to attract new users to the sport is restricted due to inadequate facilities. She also addressed private versus public clubs and stated that private for profit clubs offer wonderful expanded amenities, but also require a level of financial and time commitment many users can't or don't want to make.
- **Paul Kachel, 3085 Westview Circle, Lake Oswego:** Mr. Kachel was in support of the ordinance and stated that he plays at the Lake Oswego indoor courts when he can get court time. He stated that the shortage of courts is well documented and that it impacts players of all ages. Mr. Kachel stated that the city has found the solution and the proposed property for the new tennis center is within city limits and until recently also sat within the UGB. He stated that the land parcel has never been used for agriculture activities and that the proposed court is directly in line with other recreational activities along Stafford Road and adjacent Lakeridge High School property. He emphasized that the land parcel already sits in a sports corridor and stated that the request to add it back into the UGB was not a drastic reassignment.
- **Liz Lamade, 2486 Palisades Crest Dr., Lake Oswego:** Ms. Lamade was in support of the ordinance and stated that the property was purchased with active recreational use in mind. She stated that until recently the property was in the UGB and that it was time to correct the short-sighted property switch. She stated that tennis requires a covered, indoor facility and

it was well documented that there are not sufficient affordable public indoor courts. She also stated that the courts are not just for Lake Oswego residents, but also support West Linn, the neighboring city.

- Mary Ann Kunkel, 3085 Westview Circle, Lake Oswego: Ms. Kunkel expressed her support for the ordinance and stated that the property was purchased in 1996 for sports and active sport use. She stated that the site sits in line with other properties on Stafford Road including the golf course and multi-purpose field, as well as sports fields and facilities owned by Lakeridge High School. She stated that the property was at the city's outskirts, but was within city limits.

Citizens in Opposition to Ordinance No. 12-1296:

- Rick Cook, 18451 SW Stafford Rd. Lake Oswego: Mr. Cook stated that he was not opposed to tennis, but was opposed to the ordinance. He stated that he was a historic property owner, and a member of the Stafford Hamlet and Tualatin Stafford CPO who have also opposed the ordinance due to the piecemeal planning that had occurred. He stated that the Stafford area needed to be planned prior to development. In addition he recommended the city consider a property in the downtown Foothills development and stated that the urban area would be accessible to everybody. Mr. Cook also reference and read from Title 14, 3.07.1430 regarding major UGB amendments which would allow the Council to consider an amendment outside of the application window upon the request of a Metro Councilor after the area's master plan is implemented.
- Jim Zupancic, Legal Counsel for Stafford Hills Club LLC: Mr. Zupancic, on behalf of the Stafford Hills Club, LLC was opposed to the ordinance. He stated that the 93,000 square foot recreation and wellness facility opened on December 3 and sits within the UGB approximately 600 feet from the northern Lake Oswego boundary. He stated that the City presented an argument for demand, but did not believe that it was an extraordinary circumstance to go outside the regular legislative process. He cautioned that if approved, Metro would receive other applications and special requests. He stated that the need for the activity in the region existed, but that other regional facilities have been built that will address a great amount of the need. He encouraged the decision be postponed until 2014 and stated that he did not believe the criteria under 3.07 had been met.

Council asked clarifying questions about the facility's uses, membership and footprint. Mr. Zupancic stated that the facility contains 10 courts and has additional space for other kinds of programs. He stated that the facility has members joining every day, but that one could play as a guest at the facility. Additionally, Mr. Zupancic stated that approximately six acres of the property is being developed.

- Jeanann McCoy, Atherton Heights Homeowners Association: Ms. McCoy stated that she was not opposed to the tennis facility but was opposed the proposed property. She asked for clarification on if the UGB expansion is approved and the facility is not constructed, what would happen to the annex property. She addressed safety concerns related to the transportation roundabout and entrance to the proposed facility.
- Anita Derry, 2195 SW Pattuco Way, West Linn: Ms. Derry opposed the hearing officer's findings, specifically page 21 of 40 of the report regarding findings on avoiding conflict with significant fish and wildlife habitat. She stated she lived one mile south of Stafford in the Mossy Bravewater neighborhood, an area that is under consideration to be annexed into the

UGB as wildlife habitat. She spoke for the local wildlife and stated that development will move wildlife out. She stated that this was rural land with people and wildlife living on it.

Rebuttal:

Council President Hughes welcomed Mayor Hoffman and Mr. Evan Boone, legal counsel for the City of Lake Oswego, to rebut testimony from ordinance opponents. Mayor Hoffman stated that the proposed tennis courts would be funded through tennis revenues; he emphasized that the public dollars would be invested in the public facility to meet the needs of the public. He compared this investment to other public investments (e.g. water towers) and stated that if the city chooses to wait to build prices will increase. He stated that communities should be given some discretion to define livability and that one definition might not fit each community. For Lake Oswego recreation needs have been identified as an element of livability. Mr. Boone echoed the Mayor's comments regarding livability and stated that the need is personal and has long not been met. He stated that the Metro Code allows for UGB amendments outside the legislative process for public facilities and that the legislative process is not conducive to these types of requests because it is focused on housing and industry amendments. Mr. Boone addressed the citizen comments regarding potential traffic impacts and stated that this would be addressed during the permitting process. He also stated that the city does protect its sensitive lands, has met the appropriate criteria, and that the proposed recreation use or park use would be less impactful than residential use. He stated that the city intends to build the tennis facility on the site.

Seeing no citizens – either in support or opposition to the application – who wished to testify, the public hearing was closed.

| | |
|---------|--|
| Motion: | Councilor Harrington moved to approve Ordinance No. 12-1296. |
| Second: | Councilor Barbara Roberts seconded the motion. |

Council President Hughes, and Councilors Harrington, Craddick and Roberts expressed their support for the ordinance. They cited the rigorous UGB expansion process, the demonstrated demand and need for the facility, the local community's aspirations, and the positive health impacts of tennis as reasoning. Councilors also stated that the amendment process was in place and written in law for this type of purpose and application. Councilors stated that while the term "need" can be a matter of opinion at times, the local community found a need and the city completed the appropriate steps for the application. Additional discussion included future UGB expansion requests and if approval of the ordinance could set a precedent future actions.

Councilor Burkholder stated that he would not be in support of the ordinance. Having participated in two previous legislative UGB expansions, he stated that the process should be defended. He was concerned and not convinced that the application satisfied a need versus a desire for the public facility. He also stated that the city's financial reason was not one of the requirements for UGB expansion and was concerned with the argument that the expansion must occur now to save money. Councilor Hosticka also stated that he would not support the ordinance and stated that he tends to be very conservative in expanding the UGB. He stated that he was more conservative with, and cautious of, the city's application because of the planning and development uncertainty of the Stafford Basin. While he appreciated the city's agreement with the county, he stated that there was a long way to go before Stafford has a concept plan – which is a requirement for UGB expansions. He was also unconvinced that the project could not wait, and believed the planning should be completed as part of the larger Stafford Basin discussion.

Vote:

Council President Hughes and Councilors Roberts, Craddick, and Harrington voted in support of the motion. Councilors Hosticka and Burkholder were opposed to the motion. The vote was 4 in favor and 2 opposed, the motion passed.

6. CHIEF OPERATING OFFICER COMMUNICATION

Ms. Martha Bennett's update included:

- The new operator will begin at Glendoveer Golf Course will begin on January 1. Additionally, the new and more permanent agreement with Ringsid will begin on January 1.
- Ms. Bennett, Council President Hughes and Councilor Burkholder met with the Oregonian's editorial board to discuss the possible natural areas local option levy. Staff and councilors are also expected to meet with the Portland Tribune on Friday, Dec. 7.
- There will be a celebration at the Oregon Convention Center on December 13 to recognize outgoing Councilors Burkholder, Roberts and Hosticka for their service on the Metro Council.

Ms. Kean Campbell stated that the Office of the Metro Attorney will file by Tuesday, December 11 a response to litigation filed in the urban and rural reserves case. Legal counsel does not anticipate a final decision until May 2013. Legal counsel is available to brief the Metro Council after their response has been drafted.

7. COUNCILOR COMMUNICATION

Councilor updates included the recent Hillsboro City Council meeting, and completion of the Community Planning and Development Grant administrative rules.

Councilors highlighted that the Metro plaza has been renamed the Apotheker Plaza and dedicated to former Metro employee Steve Apotheker for his contributions on waste reduction and recycling.

8. ADJOURN

There being no further business, Council President Hughes adjourned the regular meeting at 4:47 p.m. Council will convene the next regular council meeting on Thursday, Dec. 13 at 2 p.m. at the Metro Council Chamber.

Respectfully submitted,



Kelsey Newell, Regional Engagement and Legislative Coordinator

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF DEC. 6, 2012

| Item | Topic | Doc. Date | Document Description | Doc. Number |
|-------------|--------------|------------------|--|--------------------|
| | Testimony | 12/6/12 | Written testimony submitted by C. Scott | 120612c-01 |
| 3.0 | Minutes | 11/2912 | Council summary for 11/2912 | 120612c-02 |
| 4.1 | Handout | N/A | Collated citizen comment on Resolution No. 12-4394 | 120612c-03 |