

## MINUTES OF THE METRO COUNCIL WORK SESSION MEETING

Tuesday, November 30, 2004  
Metro Council Chamber

Councilors Present: Brian Newman (Deputy Council President), Carl Hosticka, Rod Park, Rod Monroe, Rex Burkholder

Councilors Absent: David Bragdon (excused), Susan McLain (excused)

Deputy Council President Newman convened the Metro Council Work Session Meeting at 2:02p.m.

### **1. DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, DECEMBER 2, 2004/ ADMINISTRATIVE/CHIEF OPERATING OFFICER AND CITIZEN COMMUNICATIONS**

Deputy Council President Newman talked about the December 2, 2004 Council agenda. He called for questions. There were none.

Michael Jordan, Chief Operating Officer (COO), updated the Council concerning helping out Damascus with staff assistance. He noted what we were currently doing. The Metro staff had suggested a peer-to-peer relationship between their city councilors and our Metro Councilors. They will pick their mayor in January 2005.

### **2. MEASURE 37 DISCUSSION**

Dan Cooper, Metro Attorney, noted a handout that he had passed out concerning the specific language of the measure as well as issues and highlights (a copy of this handout is included in the meeting record). He explained what Measure 37 did. It paid compensation or “waived” regulation. He explained the difference between the pay compensation and the waive regulation.

Councilor Burkholder asked Mr. Cooper to explain the inheritance issues. Mr. Cooper responded to his question. Councilor Burkholder then asked about those properties that were not owned by individuals. Councilor Newman asked about purchasing back a piece of property but there was a different ownership in between. Mr. Cooper explained that the grant of a waiver would only be with the most current purchase of the property. He said the author of the measure specifically was looking for the waiver component rather than the compensation component.

Mr. Cooper then explained that a written demand was what triggered the compensation process. He went through the next several steps. Councilor Hosticka asked about attorney’s fees. Mr. Cooper said there was nothing in the measure about attorney’s fees. He continued with what happened if they went to court. If compensation was not paid within 2 years of the date of which the filing accrued, the owner may use property as allowed at the time of acquisition. He noted a conflict in this portion of the measure. One of the issues was do you only get the benefit of the use restriction that you complained about or more. Councilor Hosticka asked what happened if compensation was paid. Mr. Cooper said there was nothing in the measure that addressed this issue. It didn’t addressed whether the owner could come back with another issue. He explained what some governments were considering doing. If you had a claim, the government might buy

the property and sell it with specific deed restrictions. Mr. Cooper talked about the market value then, the market value now, and the expectation of the value by the owner. Councilor Hosticka talked about the initial regulation claim and could the property owner come back with another regulation. Mr. Cooper said the measure wasn't clear on this issue. He talked about when property was brought into the Urban Growth Boundary. Most of the time, the property increased in value rather than diminished.

Councilor Monroe said that some of the issues in his district were around Johnson Creek. He asked what the City of Portland could do. Mr. Cooper talked about buying the flood plain properties. Councilor Monroe indicated that a jury would determine condemnation. Mr. Cooper said condemnation was for a public purpose. He gave some example of condemnations and the court rulings.

Mr. Cooper said local governments could adopt procedures but the failure for adopting the procedures did not deter filing a lawsuit. H spoke to local governments' concerns and their liabilities. He talked about the need for documents on regulations, appraisals as well as the legislative history of the regulation. There was a statute of limitation, which may or may not be true. You had two years from December 2, 2004 to file a claim. It didn't cut off any claim. He explained how you could keep your claim alive. He then noted exemptions for health and safety, building codes, federal law and nuisances. Councilor Hosticka said there were words in the document that had been consistently left out, he asked why. How narrowly or broadly did those words apply such as pollution? Councilor Hosticka said they would have a discussion on the Department of Environmental Quality's new regulation. Mr. Cooper said there were questions about whether the Oregon Legislature would try to redefine the law.

Councilor Newman said there was a question about whether special districts would be covered by Measure 37. Mr. Cooper said state law specifically defined special districts. He talked about the Clean Water Special District, which was where Title 3 was buried. Councilor Newman asked how you would treat claims for compensation where they never intended to develop the land. Mr. Cooper said the measure itself didn't set a limit on the use of the waiver. He gave an example. Several jurisdictions were setting time limits.

Councilor Hosticka asked about the difference between waivers. Mr. Cooper responded to his question. Councilor Park asked about MPO issues such as the Clean Air Act. Mr. Cooper said the question as to whether the Clean Air Act certification made the land use-planning model exempt, as being a federal requirement was one they could litigate. Mr. Cooper said there were some things that we did that could make that claim and others that you couldn't do. Councilor Park talked about federal funding for the light rail.

Mr. Cooper addressed what Metro regulations were implicated. Metro did not directly regulate land use. Metro regulated jurisdictional land use. Metro could be viewed as regulating Title 4, Industrial Lands, Title III, Streams, slopes and wetlands, Title II, Parking and Title 1, Minimum Density. Several titles in the Functional Plan could produce a claim. He explained further how these titles could be viewed as a regulatory. He felt that part of the answer that they had for Centers was that the value of the property increased, it did not decrease. Councilor Park asked if the removal of a regulation could trigger a claim. Mr. Cooper said he didn't see that possibility. He expressed concern about what relationship we wanted to have with a local jurisdiction if they were following Metro's Functional Plan. Mr. Cooper asked if they wanted to set up a review mechanism for local jurisdictions. He would be meeting with local jurisdictions this week to talk about how the process would work. He also noted that they didn't know what the Oregon Legislature would do.

Councilor Park said the capacity question was a state requirement. He talked about diminished capacity. How would you apply the state law that said you had to apply this? Mr. Cooper said diminished capacity inside the Urban Growth Boundary (UGB) with the exception of the industrial land was probably not a Measure 37 issue. Measure 37 was about compensating and waiving down zoning requirements, not up zoning. The housing capacity did not go down because of Measure 37. Councilor Park asked how you go about showing capacity when you couldn't predict. Mr. Cooper said there was no predictability. Councilor Hosticka asked about the mechanics on this fund. Did we have to create a fund? Mr. Cooper said his conservative advice was adopt a budget that created such a fund and put in the fund as little as the Council wanted to and limit your liability. If the fund was not enough to cover, the Council could make decisions about other forms of compensation. He said there were two ways to do compensation and explained those two ways. Councilor Hosticka asked if they could compensation people with free passes at the Zoo? Mr. Cooper responded that the barter market was out there but the measure did not speak to that. Councilor Park asked if they could raise garbage fees to go into to this fund. What would be the mechanism? Mr. Cooper said the way Measure 37 was passed, the decision not to fund a compensation fund allowed for waivers.

Councilor Burkholder asked what should Metro do? What responses should Metro have? He felt there was a wide range of responses that they hadn't discussed. Mr. Cooper said he was thinking about the political ramifications. Councilor Newman asked what they needed to do right now. Mr. Cooper said they did have a window of time to take the time to do this. He talked about the claims that were already in the pipeline, most of these were on rural land. Councilor Newman asked about compliance requirements. Mr. Cooper responded to his question. Councilor Park talked about development outside the UGB when there were no other exempt regulations that applied, the measure clearly allowed them to develop or to be compensated. Mr. Cooper responded to his question. He spoke to the unknowns of the Measure. There was a question of will there be a Measure coming out of the Legislature that would set up a fund. Another question was will there be attempts to clarify some of the questions so there was easier ways to determine a claim. He talked about the possibility of the trade offs. Councilor-elect Liberty asked about Metro's role in fulfilling the Clean Air Act. Mr. Cooper said we had been able to certify a demonstration of compliance with the Clean Air Act. If we were unable to get certification, DEQ would have to find other ways to comply. Councilor-elect Liberty asked about the industrial lands issues. Mr. Cooper said you could not predict a future calculation of need. Councilor Newman asked about next steps. Mr. Jordan said Randy Tucker would be monitoring the session. They hadn't scheduled anything pre-session but Council may want to create a set of principles. He then spoke to Metro Policy Advisory Committee (MPAC) recommendations. He also spoke to the possibility of a local government that was not willing to compensate but who might be looking for a deeper pocket. Mr. Cooper said the Measure was clearly written with something of a bias to a waiver. Mr. Jordan asked Council if they wanted to meet before the session began? Councilor Newman urged meeting again. Councilor Burkholder suggested a set of principles. Mr. Cooper said he would find out on Friday who had claims filed. He suggested a central notice so that we were informed about the claims in the region.

Councilor Hosticka said as we take steps such as Goal 5, what were the potential implications. Mr. Cooper said as the Council moved forward with Goal 5, the regulatory issues would need to be looked at carefully.

### **3. GOAL 5 AMENDMENT DISCUSSION**

Chris Deffebach, Planning Department, talked about the proposed amendments for Goal 5. She reviewed the chart. She also had brought a memo from WRPAC/Goal 5TAC (a copy of which is included in the record). She said the chart in the packet differentiated the amendments. The major program features focused around five areas (a copy of this chart is included in the meeting packet) 1) acquisition bond measure, 2) regionally significant habitat covered by regulatory program, 3) effective data of regulatory program, 4) reporting requirements – assessment of program toward meeting regulation outcome measures and 5) significant/use of regional outcome measures.

Councilor Newman suggested Councilors asked questions. Councilor Monroe wanted to know about the procedures for public input. Ms. Deffebach said two public hearings had been held on the original resolution. The amendments had been provided to policy advisory committees. Councilor Monroe suggested having the amendments included in the packet and posted on the web. Councilor Burkholder asked about local performance measures and having the Allow Limit and Prohibit (ALP) adopted. Why would you need local performance measure if you have a strict ALP? Councilor Hosticka clarified that there were performance standards and outcome measures. He thought we needed to be aware of what the trajectory points were so we could determine whether what we were doing was working or not. Councilor Burkholder asked why we would add on outcome measures. Councilor Hosticka said that we were pioneering outcome measures in the Metro region.

Councilor Newman said that regardless of our philosophical outlook, it was important to set performance standards for local jurisdictions. Ms. Deffebach differentiated between the local performance standards and the outcome measures.

Councilor Newman said he didn't have a problem with outcome measures or monitoring progress over time. Councilor Park asked about the ALP change in Councilor Newman's amendment, what the implications would be in regard to Measure 37? Councilor Park talked about the different amendments and impacts on Measure 37. Councilor Newman said his amendment followed more of a model similar to other regionally significant programs. It raised the significance bar. It changed the ALP significance. Councilor Hosticka said as he read his proposal it didn't require an ordinance until 2012. Councilor Park said it depended on how the ordinance was written. If they were successful with outcome measures, you wouldn't have to write an ordinance. Councilor Newman said we would adopt a regulatory program this spring with Councilor Park's proposal but it would have delayed implementation. Councilor Park said the main question was how you captured the mindsets of the people. Measure 37 impacted this measure. Councilor Newman suggested Councilor Park let the public know what their intentions were. Councilor Park said his intent was pre-Measure 37. He wasn't sure now that it was a post-Measure 37 environment. Councilor Hosticka suggested describing what we were trying to achieve and then find a way to engage people, such as nature-friendly. Councilor Monroe talked about modifications to the resolution. Councilor Hosticka suggested discussing the architecture of the whole resolution. He explained the major differences. Councilor Park said he liked Councilor Burkholder's amendment because it put the pressure on a measure to pass. Councilor Newman explained his amendment and what a ballot measure would do. Councilor Burkholder said he liked Councilor Hosticka's amendment but there was too much. He liked the different approaches but felt they should be combined. Councilor Monroe suggested the sequencing of the amendments was very important. Councilor Newman said he still had questions about the outcome measures and what they looked at to determine performance measures. Ms. Deffebach said they had drafted a list of what outcome measures could be. It took the vision and broke it into

components such as restoration and some things that you would measure under all of those. They had a list of indicators with blanks of what the policy measure should be. She felt the outcome measures needed to get public input. Councilor Newman asked about the rigor of the development standards? Ms. Deffebach said they had a list of tools that local jurisdictions had in place. What standards should we encourage across the region. Mr. Jordan said it would be driven by where you set the target. Councilor Hosticka said under his proposal we didn't have to determine that today. Protect now, learn later versus learn now and protect later. Mr. Jordan talked about judging substantial compliance. Ms. Deffebach talked about different programs at the local level, which got tailored back to the expectations that Councilors wanted to see. Councilor Park talked about urbanizing the new areas and degradation of the habitat. Ms. Deffebach said those were the areas that they could best protect. There were great opportunities to protect existing habitat in the new areas. Mr. Jordan asked if Councilor Newman had had a discussion with Paul Garrahan, Metro Assistant Attorney, about the scoring of the inventory. It may have been a more legally defensible consideration. Councilor Newman said he had had that discussion and was advised to write the amendment in a certain way. Councilor Hosticka talked about the Tualatin Basin agreement. Andy Cotugno, Planning Director, suggested not doing at the Economic Social Environmental and Energy (ESEE) step but at the inventory step. Doing a non-regulatory program for the uplands. If you went back to the inventory step, some of the scoring might change. Ms. Deffebach asked why Councilor Newman called the uplands "allow" rather than lightly limit. Councilor Newman said he had gotten input for a lot of people about what Metro's role should be. He said this discussion would occur at MPAC on December 8<sup>th</sup>. Mr. Cotugno asked how they should approach this issue at the meeting. How did they want to illicit input from MPAC? Councilor Burkholder said there were possible mix and matches. Councilor Newman said he knew that Clackamas County had met and had their recommendations. Councilor Park said Councilor Hosticka's issue was mainly the date and how often the monitoring occurred. Councilor Park clarified Councilor Newman's major concerns. Councilor Newman asked Councilor Hosticka about the date and felt that it was somewhat incompatible with the Park/Bragdon resolution. Councilor Hosticka said there was continuing monitoring of habitat. Councilor Newman asked about how this was different than the current program. Councilor Hosticka noted that there was no current program but his resolution supported the current direction staff had taken. Councilor Hosticka reminded that this was not a final action.

#### **4. COUNCILOR BRIEFINGS/COMMUNICATIONS**

Councilor Park reminded that December 16<sup>th</sup> there would be a small reception for the new council of Damascus. Councilor Newman said Sunday December 12<sup>th</sup>, Councilor McLain had scheduled a holiday potluck. He urged attendance. Councilor Burkholder asked about a new elected official orientation. Mr. Jordan said they were planning on doing this in January or February.

There being no further business to come before the Metro Council, Deputy Council President Newman adjourned the meeting at 4:15 p.m.

Prepared by,

Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF NOVEMBER  
30, 2004**

Item	Topic	Doc Date	Document Description	Doc. Number
1	Agenda	12/2/04	Metro Council Agenda for December 2, 2004	113004c-01
3	Memo	11/22/04	To: Metro Council From: Chris Deffebach, Planning Department Re: Goal 5 TAC/WRPAC comments on Resolution No. 04-3506 and amendments	113004c-02
2	Summary of Measure 37	11/30/04	To: Metro Council From: Dan Cooper, Metro Attorney Re: Measure 37 Summary, Issues and Text	113004c-03