

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF WAIVING ) RESOLUTION NO. 94-2016  
THE FILING DEADLINE FOR A )  
PROPOSED URBAN GROWTH ) Introduced by  
BOUNDARY LOCATIONAL ) Councilor Richard Devlin  
ADJUSTMENT )

WHEREAS, Metro has adopted and LCDC acknowledged procedures for making amendments to the Metro Urban Growth Boundary (UGB) in Metro Code Chapter 3.01; and

WHEREAS, One of the types of UGB amendment is a "locational adjustment," a limited change to the UGB which is either an addition or deletion of 20 net acres or less; and

WHEREAS, Metro Code Section 3.01.033 requires petitions for locational adjustments must be completed and filed by property owners prior to March 15 each year; and

WHEREAS, Metro staff are required by Metro Code Section 3.01.33(c) to return all petitions not made complete by the ordinance deadlines; and

WHEREAS, Mr. Richards' and Mr. Starr's petition for a 1.3 acre locational adjustment adjacent to I-5 near Charbonneau was submitted prior to March 15, but not made complete within the 14-day time limit after notice of the missing items, resulting in return of their petition; and

WHEREAS, Clackamas County has acted on its recommendation and the city of Wilsonville has acted to respond positively as provider of several urban services; and

WHEREAS, The petitioners have indicated that they will experience a hardship if action on the now complete petition cannot begin until March 15, 1995; and

WHEREAS, A waiver of the petition filing deadline may be requested by a Councilor

or the Executive Officer and approved by a two-thirds vote of the full Council under Metro Code Section 3.01.033(d); now, therefore,

BE IT RESOLVED:

1. That the March 15, 1994 deadline for filing Mr. Richards' and Mr. Starr's locational adjustment petition is hereby waived by this action of the Metro Council.
2. That the resubmitted petition must be complete under Metro Code Section 3.01.033 and received by Metro staff within 30 days of the adoption of this Resolution.

ADOPTED by the Metro Council this 8th day of September, 1994.

  
Ed Washington, Deputy Presiding Officer

KLA  
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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 94-2016 FOR THE PURPOSE OF WAIVING THE FILING DEADLINE FOR A PROPOSED URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT

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Date: July 28, 1994

Presented By: Councilor Richard Devlin  
and Stuart Todd

#### FACTUAL BACKGROUND AND ANALYSIS

The annual filing deadline for Urban Growth Boundary (UGB) amendments is the 15th of March of every year. An applicant must complete the petition application, including service provider comment forms, and receive the position of local government with land use jurisdiction of the proposed property by this date or within approximately two weeks of Metro's review of the application (a provision for allowing any deficiencies in the application to be remedied). The procedures require that service providers and local governments be given a minimum of 120 days to review and make their comment or position known. This is clearly stated in the UGB Amendment Procedures and is incumbent on the applicant. If the service providers and the governments have been given the allotted time and fail to comment an applicant may ask for a waiver of the comment from the executive officer and such waiver is granted if proof is shown of adequate notice.

Mr. Donald P. Richards and Mr. Roger A. Starr's petition was found incomplete earlier this year because they did not have a complete application. They did not have all the service provider comments nor the local government position. They also had not given the service providers nor the local governments the required 120 days notice and could not apply for a waiver of these elements from their application. (See letters attached, March 18 and April 7, 1994.)

#### *Current Status*

Mr. Richards and Mr. Starr are now asking for a waiver of the UGB amendment filing deadline, a course of action outlined in the procedures - Metro Code (3.01.33(d)). The Code allows the annual filing deadline to be waived by a two-thirds vote of the Metro Council. This process is initiated either by a Councilor (as in this case) or the Executive Officer.

Mr. Richards presented his revised application to staff on June 29, 1994. The application appeared complete, including both Clackamas County's neutral position on the application, and the City of Wilsonville's completed service provider comment form. (See attached letter dated July 14, 1994.)

Mr. Richards and Mr. Starr are seeking to petition Metro for a 1.3 acre amendment of the UGB in a location adjacent to Charbonneau at the I-5 exit. This is zoned RRF-5, a rural residential zone. They own an adjacent parcel currently inside the UGB, and seek to develop both.

There is a quasi-judicial process for hearing UGB amendment petitions, which is a separate procedure from this request to waive the filing deadline.

### ***Considerations***

Staff knows of no prior waiver of the UGB amendment filing deadline by the Council. Mr. Richards had come into the office at a much earlier date to receive information on the UGB including the Procedures. Staff believes Mr. Richards had adequate information available to prepare his application in a timely manner. It appears Mr. Richards originally allowed approximately two months instead of the required four months for comment on the application he submitted in March of this year.

### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends adoption of Resolution No. 94-2016.

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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-3738  
TEL 503 797 1700 | FAX 503 797 1797



METRO

March 18, 1994

RETURN RECEIPT REQUESTED

Mr. Donald P. Richards and  
Mr. Roger A. Starr  
P. O. Box 267  
Wilsonville, OR 97070

Dear Mr. Richards and Mr. Starr:

In response to your Urban Growth Boundary Petition to add land known as T.3S R. 1W Section 25 Tax Lot 16100 in Clackamas County, submitted on March 15, 1994, the following items were deficient in the petition application and need to be filed with this office by 5:00 p.m. on April 5, 1994, or the petition will not be considered and will be returned to you.

Under Metro Code 3.01.33, Applications for Major Amendments and Locational Adjustments, these primary items were deficient in the petition:

1. The list of names and addresses submitted for notification purposes needs to be certified in one of the ways directed (attested or affidavit) in Metro Code 3.01.33(g)(1-3).
2. The position of the City Council of Wilsonville on the petition (3.01.33 (h)(1)). And, the City will need to comment on the provision of urban services for which it is responsible, including water, sewer and transportation. The City may include this in its position statement or, if it wishes, submit individual service provider comment forms from individual departments.
3. The position of the Clackamas County Board of Commissioners on the petition (3.01.33(h)(1)).
4. The names, addresses of parties testifying at any hearing held by a city, county or special service district, and copies of any exhibits or written testimony submitted for the hearing (3.01.33(h)(3)(B)).

Mr. Donald P. Richards and  
Mr. Roger A. Starr  
March 18, 1994  
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5. A statement of your intent to file the Boundary Commission annexation petition within ninety (90) days of Metro actions, conditioned on approval (3.01.33(i)(1)(B)).

Also, the following items were not completed in the petition form itself or were not completed as instructed by Metro (see: Instructions for Filing A Petition for a Major Amendment or Locational Adjustment to the Metro Urban Growth Boundary; Items Needed to Complete a Petition; Calculation of UGB Amendment Deposit):

6. Calculation of UGB Amendment Deposit form, and deposit fee (\$2,300.00), (3.01.45).
7. Section Maps showing the property and all tax lots within 500 feet of the property addressed in the petition; specifically, maps for Section 26 T.3S. R.1W and any other maps needed to show the tax lots of all property owners within 500 feet. (Highlighting in Red the subject property boundary, and in Yellow a perimeter line 500 feet from the subject property.)
8. Item 24 in the petition form, signatures of all the petitioners are required. The petition was only signed by Mr. Richards.

It was also noted that the legal description, item 6(a), appears to be have a mistake, Section 25 instead of Section 26 is cited. Please confirm this.

Sincerely,



Stuart K. Todd  
Assistant Regional Planner  
Planning Department

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cc: Wayne Sorensen, City of Wilsonville  
Dick Van Ingen, Clackamas County  
Larry Shaw, Metro Office of General Counsel



**METRO**

April 7, 1994

Mr. Donald P. Richards and  
Mr. Roger A. Starr  
P. O. Box 267  
Wilsonville, OR 97070

Dear Mr. Richards and Mr. Starr:

Your Urban Growth Boundary Petition for an approximately one acre site along Interstate 5 at Charbonneau is being returned to you. The petition was not complete by the filing deadline, nor were you able to complete the petition in the ensuing time allowed. Under Metro Code Chapter 3.01.33(c), failing to make the petition complete in a timely manner results in the petition being returned to the petitioner and no further consideration given.

In speaking with Mr. Richards about the completeness of the application, it appears the only delay was in receiving timely comment from the City of Wilsonville, although other elements of the petition form were needed also (see Metro letter of response March 18, 1994). Since the petitioner did not give the City 120 days notice for its position, a waiver of this element cannot be considered and the petition must be considered incomplete.

Enclosed are the originals received: the petition, local position and service provider comments received (Clackamas County, Tualatin Fire, Clackamas County School District #86), petition for annexation to be filed with the Boundary Commission, and a list of property owners within 500 feet.

I understand you have a Planning Commission meeting scheduled with the City of Wilsonville in the next month, with City Council action to follow shortly thereafter, and that you intend to ask for a waiver of the UGB filing deadline once the local position is made.

Let me know if I can be of further service in answering questions related to this potential new UGB petition in the future.

Sincerely,

Stuart K. Todd  
Assistant Regional Planner  
Planning Department

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Enclosures

cc: Wayne Sorensen, Planning Director, City of Wilsonville  
Dick Van Ingen, Clackamas County  
Larry Shaw, Metro Office of General Counsel



**METRO**

July 14, 1994

Mr. Donald P. Richards  
Burda and Richards  
P. O. Box 427  
Wilsonville, OR 97070

Dear Mr. Richards:

As you know we have an annual filing deadline for Urban Growth Boundary (UGB) amendments, the next filing deadline is March 15, 1995. We cannot process a UGB amendment petition from you at this time. It does appear that your updated petition (submitted incomplete on March 15, 1994) for inclusion of a 1.3 acre parcel adjacent to Charbonneau and along I-5 is now complete based on our meeting June 29, 1994. This is subject to verification. The material you forwarded to me from the City of Wilsonville does indicate the City could provide urban services.

The Metro Code (3.01.33(h)(1)) requires the local government position, it specifies this to be from the government with land use jurisdiction. In this case, it would appear to apply only to Clackamas County, from whom you have secured comment. We do, however, believe it is important to understand the City of Wilsonville's position on the proposed UGB amendment, not just the provision of services. Presumably, this property would be annexed into the City of Wilsonville. In light of your interest in seeking a waiver of the UGB petition filing deadline, the Metro Council may want clarification on this issue.

Let me know if you do intend to pursue a waiver of the filing deadline. Either a Councilor or the Metro Executive Officer may submit your request to the Council. A two-thirds vote of the full Council is required to waive the filing deadline (3.01.33(d)).

Sincerely,

A handwritten signature in cursive script, appearing to read "Stuart K. Todd".

Stuart K. Todd  
Assistant Regional Planner  
Planning Department

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cc: Rena Cusma, Executive Officer  
John Fregonese, Manager, Growth Management  
John Kvistad, Chair, Planning Committee  
Gail Ryder, Council Analyst



## PLANNING COMMITTEE REPORT

### **CONSIDERATION OF RESOLUTION NO. 94-2016 FOR THE PURPOSE OF WAIVING THE FILING DEADLINE FOR A PROPOSED URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT**

Date: August 5, 1994

Presented By: Councilor Devlin

**Committee Recommendation:** At the August 4 meeting, the Planning Committee voted 4-2 to recommend Council adoption of Resolution No. 94-2016. Voting in favor: Councilors Kvistad, Devlin, Moore, and Washington. Voting no: Councilors Gardner and McLain. Absent: Councilors Gates and Monroe.

**Committee Issues/Discussion:** Councilor Richard Devlin and Stuart Todd, Assistant Regional Planner, presented the staff report. Councilor Devlin explained that this resolution is in response to a request he received from Mr. Don Richards who is seeking a waiver from the March 15 filing deadline for a proposed urban growth boundary (UGB) locational adjustment. He clarified for the committee that this action is not a quasi-judicial action, as would be the actual approval or denial of the proposed adjustment. If this waiver is granted that action will take place at a later date, perhaps after the first of the year.

He said he had met with Mr. Richards and his co-applicant, Mr. Roger Starr, and believes that their request is warranted, that extenuating circumstances prevented presentation of the completed application in a timely manner. He asked, however, that Mr. Richards and Mr. Starr be allowed to speak for themselves to explain the circumstances.

Councilor Gardner asked staff to describe the chronology of events and rationale for returning the application. Mr. Todd explained that the application was found incomplete and returned in part because the City of Wilsonville needed 120 days to comments on provision of service. This time period ended after the filing deadline.

Councilor Moore asked about the original rationale for setting the March deadline. Councilor Devlin and Mr. Todd explained the history of the requirements that originated during a time when no deadlines were imposed, UGB activity was high, and the application process was continual. This created a hardship for staff. Originally a June deadline was considered but discarded because it was summer and therefore more difficult.

Councilor Moore then asked about whether consideration of this application will cause a hardship on staff; whether time was available for the case. Mr. Todd replied, yes.

Councilor Gardner expressed discomfort with the resolution. He said that the city's delay was one of many reasons why the application was returned. He thought it inappropriate to establish a precedent allowing deadlines to be taken casually.

Councilor McLain agreed that the deadline should be kept. She felt that allowing the waiver and setting the precedent would undermine the timing of local jurisdiction comment.

Public Testimony: The two applicants, Mr. Richards and Mr. Starr, testified that the deadline wasn't met because of several reasons. First, the property closure date occurred later than they had hoped and they didn't feel it appropriate to begin proceedings until final closure. Then the Wilsonville City Council and Planning Commission needed 120 days which ended after the filing deadline. Further complicating the matter, the Oregon Department of Transportation, who owned the sewer line, imposed a two year deadline on water and sewer in order to assure capacity. This latter deadline which is usually only offered for one year, runs out in June 1995.

Councilor Moore, in making the motion to recommend approval of the resolution, stated that there were two reasons why the Council should approve the request: 1) the fact that the City of Wilsonville needed 120 days, bringing the time line after the Metro deadline; 2) ODOT's facility capacity placement of a two year time frame; and 3) the ability of Metro staff to accommodate the request. She felt that the statement of these reasons will help clarify for future Council's why this case warranted a waiver without setting the "precedent" feared by Councilors Gardner and McLain.

Councilor Devlin reiterated that this action was not a burden on Metro; that we are no longer operating under the circumstances that were occurring when the deadline was approved by an earlier Council.

Councilor McLain countered that just because we were not burdened with UGB cases now didn't mean that we wouldn't be in the future.

Following the 4-2 vote, Councilor Moore disclosed for the record that she had discussed this waiver with Charlotte Lehan, Wilsonville City Councilor.