

MINUTES OF THE METRO COUNCIL WORK SESSION

September 3, 1998

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer) Ruth McFarland, Ed Washington, Don Morissette, Patricia McCaig, Susan McLain, Rod Monroe

Councilors Absent:

Presiding Officer Kvistad convened the Regular Council Meeting at 2:06 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATIONS

None.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the August 13, 1998 Regular Council Meeting.

Motion: Councilor McLain moved to adopt the meeting minutes of August 13, 1998 Regular Council Meeting.

Seconded: Councilor Morissette seconded the motion.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

7. ORDINANCES - SECOND READING

7.2 **Ordinance No. 98-772**, For the Purpose of Amending First Tier and Urban Reserve Planning Requirements for Urban Growth Boundary Amendments and Establishing Priorities for including land in the Urban Growth Boundary.

Motion: **Councilor McLain** moved to substitute Ordinance No. 98-770 and Ordinance No. 98-772 with Ordinance No. 98-772A.

Seconded: **Councilor Monroe** seconded the motion.

Councilor Morissette said he would have “the usual questions” for Mr. Cooper. He said he would like Councilor McLain to go ahead with her presentation if there was not going to be a vote because she already knew the questions he would have.

Councilor Monroe said he believed Councilor McLain wished to have Ordinance No. 98-772A substituted for Ordinance No. 98-772. He felt it would be appropriate as a separate action to table Ordinance No. 98-770.

Councilor McLain reviewed Ordinance No. 98-772A. She said there had been quite a bit of work done on Ordinance No. 98-772 since the last Council meeting. She said MPAC and MTAC committees had reviewed them and MTAC had voted that morning to support Ordinance No. 98-772A. She noted staff documents that would help with the decision. She asked Mr. Cooper to summarize the 3 goals of the ordinance.

Mr. Dan Cooper, Legal Counsel, stated that the Growth Management Service Department conclusion that the current Metro Code requirements for all urban growth boundary amendments to come from First Tier lands and have fully approved and adopted urban reserve plans in place before the Urban Growth Boundary could be moved was going to produce a conflict with the state mandate that the Metro Council move the Urban Growth Boundary to meet half the need as determined by the adoption of the Urban Growth Report. He explained that the governance portion of the urban reserve planning requirements had 3 ways for land to meet the requirements set by Council regarding who would be the service provider and how the new territory would be governed when it was developed which had to be resolved prior to the Urban Growth Boundary being moved. He felt the MTAC recommendation for Resolution No. 98-772A almost but not quite did away with the First Tier designation in that land could be brought inside the Urban Growth Boundary regardless of whether it was First Tier land or not provided it met all of the remaining urban reserve planning requirements for governance and concept plan provisions. He explained that amendments to the boundary could be initiated by a city or a property owner or by the Council itself through a legislative process. He said there was a provision for limited exceptions to the completion of those 9 elements if there was documented commitment from a city or county to complete the planning requirements after the land was brought inside the Urban Growth Boundary. That documentation would have to show a work program, time line and funding commitment for completing the planning process after the Urban Growth Boundary was moved. He said that wouldn't change the governance requirements previously set. He felt Councilor McLain or others could better comment on how that was expected to be able to meet the need to move the Urban Growth Boundary half the way and where those lands were.

He went on to clarify code revisions. He said the proposed language made clear what had to be done for any land to be brought into the Urban Reserve Boundary. He noted the new Exhibit B which was the Functional Plan provision to protect the land until the urban growth plans were adopted and implemented. He said you cannot urbanize land without first adopting an approved urban reserve concept plan. He said there was no timeline involved because the concept plans would either be approved and adopted at the time the urban growth boundary was moved or the local government would commit with a timeline as part of moving the urban growth boundary.

Councilor Morissette asked if the requirement for 50% of the need to be brought in this year, or an extension to be requested, was still in effect.

Mr. Cooper said this did not change that requirement.

Councilor Morissette asked if the complete document, and not just the amendments, required 50% of the designated land to be brought in.

Mr. Cooper said state law required that and it was not a requirement that could be altered by Council.

Councilor Morissette restated from Mr. Cooper's preliminary questions that land "won't be coming in until master planning, governance, and all that is done". He said that presented a conflict with that rule in his mind unless there were willing partners for all that need.

Mr. Cooper said the factual premise for this ordinance was that there was the expectation that there was sufficient land that would meet the criteria Council was being asked to consider that would meet half the need.

Councilor Morissette said he was comfortable with that subsequent to the need that 50% had to be done this year.

Mr. Cooper said the key provision of this ordinance was the ability to bring land before all of those plans were done with the local government commitment.

Councilor Morissette wanted to make clear that Ordinance No. 98-772 or No. 98-772A would not be in conflict with the need, short of an extension, for 50% of the need to be brought into the urban growth boundary.

Mr. Cooper said that was true assuming there was sufficient land that cities and counties would commit to to complete the process.

Councilor McLain commented that MPAC and other subcommittees had talked about the issue with local jurisdictions, the jurisdictions felt the language would meet the need to get to half the need this year.

Councilor Morissette said one of his other concerns was that once land was brought in, it would not be moved back out if a conflict arose, and there would be pressure to get that master planning done.

Mr. Cooper said that if a jurisdiction changed their mind or started dragging their feet after the land was brought in, Metro and MPAC had the ability to override the decision and make sure the land got developed consistent with being inside the urban growth boundary. He said there was not a method for taking land out of the urban growth boundary.

Councilor Morissette said it was very important to him that the 50% need was met this year without an extension. He said the reality was that things did not always move as quickly as some would like and that if some form of dispute resolution or pressure was brought to engage the process so the property would be available, he was concerned about the timeline.

Mr. Cooper said the timeline came with the local commitment for each individual parcel brought in not already fully planned. You would have to agree that the timeline was reasonable when you brought it in.

Councilor Morissette asked how that reconciled with the requirement that the 50% need be done this year.

Mr. Cooper said the state law did not require that the land be developable, only that there be enough land inside the urban growth boundary to meet the need and that the boundary be moved. He said the fact that there was land not yet fully planned and not ready for development was irrelevant. The state law requirement would be met.

Councilor Morissette asked if the language for this process met the test of reasonable accomplishment.

Mr. Cooper said yes.

Councilor Morissette said his last point was that the need had not changed although there had been some debate about that.

Mr. Cooper said these code amendments did not deal with the need number.

Councilor Monroe clarified that they were trying to meet the statewide 50% requirement but they were not guaranteeing that all of that 50% could be developed in the next couple of years. He said some of the development might be delayed depending on how long it took a particular local government to carry out its plan. He reminded Council that moving the urban growth boundary under state requirement was supposed to provide enough land over the next 2 years for the 20 year need. He said some of the land would be developed rather quickly and some of it would not be developed for a while. He said as long as the cities, counties and developers all knew where the boundary was and that the city or county was working on a master plan prior to developing a particular area according to the timeline they had outlined and council had approved prior to bringing it in, then development could take place. He said they were meeting the state requirement, not asking for an extension, and in a prudent way, making sure that development would not take place until appropriate planning happened.

Councilor Morissette said they were moving the boundary prior to master planning and saying that before it was urbanized there was going to be a master plan done in a prudent fashion.

Councilor McLain summarized that this Metro Code ordinance as well as decisions coming up in the next 4 months would answer the question regarding whether this was a process or a code that could be implemented. She said local jurisdictions and MPAC/MTAC had reviewed and were reviewing this in a favorable way. She said this substitution was an agreement that this could be done and would help meet the need assessment for the state law. She said they had honored First Tier lands by considering them first in this ordinance, but with the understanding and recognition that there were differences in the quality of findings needed for urban growth boundary amendments. She said they must only consider First Tier and not say that they had the alternative analysis that would uphold those First Tier above all other lands. She thought this ordinance did that. She felt it made a commitment to planning because it gave local jurisdictions the understanding that governance must be completed with documentation that proved they had a timeline and the funding for the plan so they could be considered for the exception, thus allowing us to be able to meet our 50% need assessment. She felt the language was good and the package

would allow the Council's 1998 work to be done. She added that it did not complete the code for the work that was needed in 1999. She felt with the commitment to do the work in 1999 they would have a complete document and be able to live up to their responsibilities in 1999. She said she felt it was solid work and hoped it would be moved for insertion now.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion to substitute Ordinance No. 98-772A passed unanimously.

7.1 **Ordinance No. 98-770**, For the Purpose of Amending First Tier and Urban Reserve Planning Requirements for Urban Growth Boundary Amendments.

Motion: **Councilor Monroe** moved to table Ordinance No. 98-770.

Seconded: **Councilor McFarland** seconded the motion.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

Councilor McLain said that Washington County and Hillsboro had had a difference of opinion regarding some issues with Ordinance No. 98-772A and that MTAC had not wanted to act on that at the morning meeting. She believed the issue would come back for the next meeting so there would be probably not more than a paragraph that would need to be dealt with later. She thought most of the technical changes had been done in the amended version.

Councilor Morissette read from A: "satisfies the requirement for an urban reserve plan as specified by 301.012(e) the Metro Council may consider First Tier lands where the city and county commits to adopt such an urban reserve and revise documentation to support this commitment in the form of a work plan, limit the timeline for completion, identify funding for the program adoption by the city or county" He said he believed more work needed to be done on the language. He said the assumption, based on current commitments, was that there was enough demand to do the 50% need. He said to Councilor McLain that he though she was not worried about it, they still needed to fix that so they could meet the requirements.

Councilor McLain said in review that Councilor Morissette would like to have the opportunity to make sure the 50% goal would be met and to craft another sentence or 2 for the item. She asked Mr. Cooper to comment.

Mr. Cooper said it may be that more code changes would be needed as the end of the year got closer and it became clear how much land could be brought in under the code changes they were working on.

Councilor Morissette said they would need the ability to find the 50% if the agreement didn't exist or there wasn't adequate supply to cover 50% of the need.

Mr. Cooper said nothing prohibited that. He said it was a matter of concern and should be paid the attention it needed. He said it was a matter for future consideration.

Presiding Officer Kvistad reviewed that there would be an MPAC and an MTAC meeting before final action. He said they would have the substituted ordinance before council on the 10th for changes and/or possible action.

8. EXECUTIVE SESSION, Held pursuant to ORS 192.660 (1)(h), to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Members Present: Members of the Press, Auditor Alexis Dow, Jennifer Sims, Dan Cooper

9. COUNCILOR COMMUNICATION

Motion: **Councilor Washington** moved to remove Ordinance No. 98-769 as introduced from the Growth Management Committee and placed on Council agenda.

Seconded: **Councilor McLain** seconded the motion.

Motion: **Councilor McFarland** called for the question.

Presiding Officer Kvistad said that was not the procedure that was followed when there was general discussion on an item before the Council work session.

Councilor McFarland asked the procedure.

Presiding Officer Kvistad said members of the Council had the option to discuss it when there was something on the table. He said that had been a long-standing procedure since he had been on the council.

Councilor McFarland said if there were 4 people present who wanted to discuss it they could vote.

Presiding Officer Kvistad said that was correct but he was going to move into discussion on the item before council and then a motion.

Councilor McFarland said the first item before council was she moved the question.

Presiding Officer Kvistad asked Mr. Cooper for an opinion about a motion to call the question before there was discussion on the motion.

Mr. Cooper said it took a second and was then not debatable. He said it took two thirds of those present and it then moved immediately to a vote on the matter in front of you.

Seconded: **Councilor Washington** seconded the motion.

Vote: The vote on the question was 4 aye/ 2 nay/ 0 abstain. The motion passed with Councilor Morissette and Presiding Officer Kvistad voting nay and Councilor McCaig absent from the vote.

Presiding Officer Kvistad handed the gavel to Deputy Presiding Officer McFarland and left the meeting. Deputy Presiding Officer McFarland called for the vote on Councilor Washington's motion to remove the ordinance from Growth Management Committee.

Councilor Morissette said something was being ramrodded through and it was wrong. He said people had a right to bring their grievances out when something was pulled.

Deputy Presiding Officer McFarland told Councilor Morissette he was out of order.

Councilor Morissette responded good, at least he was on the record.

Deputy Presiding Officer McFarland said it was a nondebatable item and if enough people agreed with him they would vote against it.

Councilor Morissette said it was on the record. Deputy Presiding Officer McFarland agreed.

Vote: The vote was 4 aye/ 1 nay/ 0 abstain. The motion to remove Ordinance No. 98-769 from Growth Management Committee and be place it on the Council agenda passed with Councilor Morissette voting nay and Presiding Officer Kvistad and Councilor McCaig absent from the vote.

Mr. Cooper said the action removed the ordinance from committee and placed it on the agenda for a public hearing and possible action at the council next week. He explained it was a totally procedural item.

Deputy Presiding Officer McFarland said the matter brought by Councilor Washington would be done with as this statement said, it would be put on the Council agenda for the full council to deal with.

Councilor Monroe added that there would be plenty and full opportunity for public discussion of this on the council agenda and full opportunity for all members of the council to discuss and debate it at that time as well. He said they were not doing anything that thwarted the public will or ability. It was something that needed to be done to get it moving because it had been dangling for a long time. He said the committee had been appointed and there had been discussions and compromises and now it was time to get to work.

Councilor Washington commented that there would be opportunity to discuss this at the full Council meeting and this had been needed to get it moving. He said he was sorry some councilors felt it was being ramrodded, but that if it was, it would have been voted on today as well. He said he did not appreciate anyone thinking he was trying to ramrod anything when he were just trying to do his job.

Councilor Morissette said even though he considered Councilor Washington a friend but he disagreed with Councilor Washington's comment. He felt Councilor Washington had plenty of opportunity to come to committee to debate it and each time had refused. He said there had not been majority support in committee and what had happened today was without the knowledge of the committee members as far as he was aware. He said this was the first time a resolution to bring something out of the committee had happened like that since he had been a councilor and there had been no discussion about it. He thought it was a terrible way to do things. He said the fact of the matter was that he had tried to engage Councilor Washington many times, in committee, personally, and any other way he could, to engage him on this subject, to try to talk about it. He said Councilor Washington had basically said "here is the way it is, no changes". He felt that was wrong. He said he would never treat Councilor Washington like that and he was very disappointed in the approach and how it had been put together. He said it was not what had been described to him because he had been working on it. He said whether or not he was ultimately successful in how the committee was made up, he had concerns and would debate those concerns in front of the full council. He said the practical reality was that they could have easily negotiated something that would have worked here. He said in his opinion, this was clearly bad government.

Councilor McLain said she thought what had just been done was procedural on something that had been dangling since January. She said they wanted it in front of full council. She said all of them had been working diligently on it and she was looking forward to September 10 where all 7 councilors could discuss it.

10. ADJOURN

There being no further business to come before the Metro Council, Deputy Presiding Officer McFarland adjourned the meeting at 3:02 p.m.

Prepared by,

Chris Billington
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
090398c-01	9/2/98	Letter to Council from W. James Kuhl concerning first tier, governance and urban service agreement and concept plan requirement	TO: Metro Council FROM: W. James and Olive Kuhl 445 S Rosemont Rd West Linn, OR 97068-9328	Ordinance No. 98-770 and Ordinance No. 98-772
090398c-02	9/3/98	Metro Urban Reserve Requirements A summary of MTAC Recommendations to MPAC regarding Ordinance No. 98-772A	TO: Metro Council FROM: Mark Turpel Growth Management Service Dept	Ordinance No. 98-772A
090398c-03	9/3/98	MPAC Code Revision Ordinance (98-772A) Analysis	TO: Metro Council FROM: Meg Bushman Reinhold Council Analyst	Ordinance No 98-772A