

## MINUTES OF THE METRO COUNCIL

December 17, 1993  
(Special Meeting)

Council Chamber

Councilors Present: Presiding Officer Judy Wyers, Deputy Presiding Officer Roger Buchanan, Richard Devlin, Jim Gardner, Sandi Hansen, Ruth McFarland, Susan McLain, Rod Monroe, Terry Moore, George Van Bergen and Ed Washington

Councilors Absent: Mike Gates and Jon Kvistad

Also Present: Executive Officer Rena Cusma

Presiding Officer Wyers called the special meeting to order at 4:01 p.m.

### 1. Presentation of Options for Dealing with the Metro Center Building

Executive Officer Cusma introduced Don Rocks, Executive Assistant, who distributed and explained Options 1, 2 and 3. He said Option 1 would extend the lease with AMCO, the corporation that owned Metro Center Building (2000 SW First) to allow subletting to Metropolitan Family Services (MFS), Parametrix, Inc., and other prospective tenants and extending leases for existing tenants. He said Option 2 would limit Metro's obligation for the building and associated operating costs to the remaining 2.5 years lease period. Under Option 2, he said empty space would be filled as much as possible with replacement tenants and/or other uses. Mr. Rocks said Option 3 would mothball the building.

The Council and Mr. Rocks discussed the three options as presented.

Councilor McFarland noted the Public Employees Retirement System (PERS) had been interested in the building last year and would have been a large tenant. She asked what happened to PERS as a potential tenant.

Councilor Monroe noted Option 1 called for \$500,000 in tenant improvements and asked what those improvements would consist of and whether or not they would improve the building. He asked if Metro would get its money back. Mr. Rocks said Metro would not, but that Metro would get monies out of pocket from the owner to complete those improvements. Councilor Monroe asked if outside legal counsel had been hired yet.

General Counsel Dan Cooper said acquisition of outside legal counsel was in progress and expected to know details about outside legal counsel by next week.

Jennifer Sims, Director of Finance & Management Information, discussed Options 1, 2 and 3 from the financial perspective and offered comparisons of all the options offered. The Council and Ms. Sims discussed the financial options further.

Councilor Devlin asked how strong the potential leases were and if they contained termination clauses.

Brad Pihás, CB Commercial, said he had contacted all of the building tenants who said still wanted to rent there if possible. He said none of the leases contained escape clauses, except for the lease with MFS, which contained a non-appropriation clause. Councilor Devlin asked where the 7,000 square feet of unoccupied space was. Mr. Pihás said that space was in the SW and NE corners of the first floor.

Councilor Moore asked who the existing and potential tenants were, and whether they rented on a month-to-month basis.

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Mr. Rocks said current and pending tenants included Pacific Marine Fisheries; Moskowitz & Thomas; MFS; Morrison Center; Parametrix, Inc.; Downstream Editorial; Solus Systems, and Newton Bard.

To Presiding Officer Wyers' question, Mr. Pihas explained Solus Systems would occupy space rent-free until improvements were made. He explained when five-year leases were given, additional incentives such as free rent were given. He said because of the condition of the building, certain work was needed and enticements had been offered to potential tenants.

To Presiding Officer Wyers' question, Ms. Sims explained necessary funds would be borrowed from the Unappropriated Fund balance.

Presiding Wyers asked, if Metro would lose money, how it would pay back losses on the building. Ms. Sims said losses would be paid out through the Cost Allocation Program billed to other departments so that the fund could be replenished.

Councilor Moore asked when Metro engaged a commercial broker. Mr. Rocks said that was done nine months ago.

The Council and Ms. Sims discussed financial issues further. Ms. Sims said with regard to Option 3, the building would be empty and Metro would need a conditional use permit from the City of Portland to obtain parking income from the parking lot. She noted the building next door had applied for a conditional use permit and been denied. She said figures for Option 3 also did not assume any real estate consultation fees. She said it assumed tenants would move out and the building would be empty for 2.5 years. Ms. Sims said with regard to Option 2, figures were hard to calculate. She said with the current tenants, maintaining the building would cost approximately \$700,000 until the end of the lease.

The Council and Ms. Sims discussed the issues further. Councilor McFarland said Option 3 seemed to be the preferable option. Ms. Sims and Councilor Monroe discussed costs per square foot. Councilor Monroe said he would have preferred that staff provide a range of options costs. He said the numbers presented to the Council at this meeting were worst-case scenarios except in the case of Option 1.

Executive Officer Cusma said Mr. Saling and Mr. Pihas briefed the Regional Facilities Committee on the issues October 6, 1993. She said if that briefing had posed problems, the Committee should have addressed those issues then.

Councilor McLain asked for a one-page format/synopsis of all numbers provided at this meeting to be provided at the next Council meeting.

### 2. Report from CB Commercial on Potential for Leasing Metro Center Building Under Various Options

Mr. Pihas reported on the building and what improvements he thought it would require.

The Council and Mr. Pihas discussed the building, necessary improvements and tenant status. Councilor Gardner asked if Metro pursued Option 2, that option would prevent tenants from negotiating with AMCO and/or preventing tenants from moving in to be Metro tenants for 2.5 years. He said Metro could make the improvements and negotiate with the building's owner for longer leases for the tenants.

MR. Pihas said the owner preferred strong, single tenants. He said the only way to make the owner comfortable with multiple tenants in the building was to give him additional time. He said tenants would require improvements and that Metro would not get that money back after 2.5 years. He said Metro would need five years to achieve any gain on rental rates. He said he tried to get Metro out of the lease. He said other brokers had expressed interest and the building did now have current/prospective tenants on each of the three floors.

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The Council and Mr. Pihas discussed options for the building further. Councilor Hansen discussed the commercial real estate glut. Councilor Monroe asked how often Mr. Pihas had been in contact with Mr. Saling. Mr. Pihas said he reported to Mr. Saling by the 15th of each month so that Mr. Saling would have his reports in time for the Regional Facilities Committee meetings.

Councilor Devlin asked why the owner thought he would find a single tenant after 2.5 years if Metro could not find one now. He said the owner could also procure a commercial manager to manage the building for him.

Presiding Officer Wyers asked if any of the prospective tenants could occupy space at Metro Regional Center (600 NE Grand). Executive Officer Cusma said staff would research that option and report back at the Council meeting December 23.

Presiding Officer Wyers asked why fire and safety improvements were paramount issues now since the building had always had multiple tenants. Mr. Pihas said Metro was considered the only tenant since it sublet to others and said codes had changed which required more upgrading anyway.

Presiding Officer Wyers asked why staff did not deduct the excise tax from lease income or why it was not assumed. Ms. Sims said historically, the rents had been quite low.

Staff distributed Council Analyst Casey Short's December 17 memorandum, "Regional Facilities Committee Briefing on Metro Center." Councilor McFarland said the transcripts contained in the memo did not indicate a "go-ahead" from the Committee to staff. She said the Committee believed it would receive further financial information, and that whatever happened, the Committee and finally, the Council, would approve any action taken. She said the Committee was not given adequate materials for decision-making. She said she knew the prospective tenants negotiated in good faith, but said the Committee did not know what was going on because staff was not giving all the information.

Executive Officer Cusma noted she had appointed Douglas Butler, formerly with the Portland Development Commission (PDC), to act as interim Director of Regional Facilities.

Mr. Pihas concluded his presentation. He said he believed that Mr. Saling had been operating from the best of motives, that he, Mr. Pihas, was as unaware of the pending issues as the Council was. Mr. Pihas said the numbers given at this meeting would likely end up being lower or in the mid-range. He said financial losses would not be as bad as they looked now. He said moth balling the building would mean expenditure with no hope of earning any back. He said continuing to sublease was the best option. He noted there were arbitrage firms that bought leases on a speculative basis also. He said prospective tenants had been as surprised as he was of the news of these events.

### 3. Report from General Counsel on Status of Existing and Potential Leases

Mr. Cooper briefed the Council on the letters of intent signed with prospective tenants to enter into leases and for Metro to begin building improvements. He said those building improvements had not been done because Mr. Saling did not have the budget authority to do so. He said he understood the building owner was not interested in managing a building with multiple tenants and was not willing to make any firm commitments to any subtenants of Metro to remain in the building after the Metro lease expired. He said the owner was willing to leave the latter option open because he did not know what his goals would be. He said the owner did not mind lease carry-overs, but wanted to retain the option to terminate, and was firm on not paying for tenant payments unless Metro extended the lease. Mr. Cooper noted a specific letter from Mr. Janik, the owner's representative, stating that the owner had no interest in MFS remaining as a carry-over tenant after Metro's lease terminated.

### 4. Public Comment

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Presiding Officer Wyers opened a public hearing.

Gary Withers, Metropolitan Family Services (MFS) executive director, introduced their deputy director and chief financial officer, Bill Schaeffer, and the chair of the MFS board of directors, Lynn Saxton.

Mr. Withers thanked the Council for acknowledging that circumstances were urgent. He thanked the Council for returning his phone calls promptly and their empathetic response to the situation MFS now found itself in.

Mr. Schaeffer noted Mr. Pihás had mentioned the arbitrage/broker option, said he thought that was a really good idea, but said he did not intend to address that issue. He said time was of the essence to MFS. He said they sold their building June 28, 1993, and immediately did an exhaustive search to find the best location for their clients. He said after looking at 25 sites, they thought 2000 SW First was the best space for their agency. He said per the Oregonian, Metro was paying \$9.60 per foot for empty space(s). He said per Ms. Sims' testimony at this meeting, renters would pay \$14 per foot and the best option appeared to be for Metro to sign leases. He discussed financing issues further, and said MFS had entered the lease in good faith. He said MFS had incurred costs in time and money negotiating the lease and designing space. He said the Council should be aware that as a social services agency, MFS was facing cuts and said they could not afford to lose that kind of money. He said the new owners of their old building had given them time, but that they would need to move into the building soon. He said their clients would suffer if they had to start the process all over again. He said MFS was a United Way Agency with 5,000 low-income clients, including children and seniors. He asked the Council to honor the commitment Metro had made.

Mr. Withers said he was surprised to hear the building owner was not willing to extend their lease, and said MFS would investigate that. Mr. Withers said he had believed Mr. Saling had the authority to act on Metro's behalf, as Mr. Pihás had also stated at this meeting. He said it was a complete surprise to him that Mr. Saling did not have complete authority.

Ms. Saxton said because Metro had advertised the old building and used a real estate broker, there had been no reason for MFS to believe that Metro was not really leasing their property. She said if the building was not going to be available to them, they needed to know as soon as possible.

Councilor McFarland asked if MFS would be willing to continue the lease with the building owner after 2.5 years. Mr. Withers said MFS would consider that, but said a 2.5 year lease per the owner was not very stable. Ms. Saxton said 2.5 years did not offer enough assurance for them to move in. Ms. Saxton said MFS was unclear on the building owner's true position on the leases and the numbers used by Metro staff because they had not seen them and did not know what was being discussed.

Councilor Moore and Mr. Pihás discussed building improvements and their costs.

Councilor Devlin asked how much time Metro had before it had to give MFS an answer. Mr. Schaeffer said Metro had, at most, six weeks.

Councilor Monroe asked when MFS signed the lease. Mr. Schaeffer said the lease was signed October 25, 1993. Mr. Withers said MFS considered that lease binding at that time. Councilor Monroe asked if MFS was told the Council needed to approve the lease. Mr. Schaeffer said MFS was not told that. Mr. Schaeffer said he talked with Executive Officer Cusma December 8 who said the Council would review the issues December 9.

Presiding Officer Wyers asked if MFS would be willing to lease space in Metro Regional Center (600 NE Grand) for 2.5 years. Ms. Saxton said MFS could not afford to risk a 2.5 year lease. She reiterated again the desirability of location for their clients. Ms. Saxton said they would consider it if they had no other place to go and that such a lease

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would be dependent on its terms. She said if Metro paid all tenant improvement and build-out costs, they would seriously entertain the offer.

Presiding Officer Wyers said staff had to determine what the costs would be to Metro and if the costs would adversely affect Metro's other functions.

Councilor Moore asked why the building was now no longer considered ADA compatible. She said it appeared to be acceptable when Metro was housed there.

Larry Six, Pacific Fishery Management Council (PFMC) director, said PFMC was one of Metro's smaller existing tenants. He said he received a letter in September 1993 stating that Metro might lease the whole third floor to another tenant, but that Metro wanted PFMC to stay on as tenants if they were willing to relocate within the building. He said PFMC began to discuss another location in the building with tenant improvements with a five-year lease. He said PFMC hoped for a long-term lease and said they liked the location.

Councilor Moore and Mr. Six discussed PFMC's current and proposed future space. Mr. Six said PFMC would pay higher rent in return for the tenant improvements as promised.

Dan Swift, Cushman & Wakefield, said he worked for Parametrix, Inc., as their real estate broker for the past eight months. He said he found the 2000 SW First Avenue site after reviewing four sites. He said they sent Metro a letter asking for a five-year lease. He said he received a letter proposal from Metro on October 4 to lease for five years. He said the document never mentioned a successful lease agreement was dependent upon Council approval. He said they had already paid space planners to assess Metro's space. He said after negotiations, Parametrix and Metro signed a lease November 15. He said they were then told the lease was dependent on board approval. He said they were surprised, but also stated they had to be in the space no later than February 1, 1994. He said Metro representatives said they would give them a letter contract which would commence all tenant improvements and get their space ready. He said Parametrix signed that document on November 24 and Metro signed it on December 6, 1993. He said Parametrix then gave notice to their current landlord. He said that landlord now had interested prospective tenants. He said Parametrix, Inc. acted in good faith.

Councilor Monroe asked which Metro staff signed the lease. Mr. Swift said Mr. Saling signed the lease document.

The Council and Mr. Swift discussed lease details further. Presiding Officer asked if lease documents with either MFS or Parametrix were made available to other Metro staff before this date. Mr. Cooper said he received copies of all documentation December 16.

Councilor Gardner asked Mr. Swift if the final agreement contained an option beyond the five year term. Mr. Swift said their proposal and lease did contain five year options after the first five year term. He said the documents also stated the lessor, AMCO, had the right not to renew the lease. Mr. Swift said it had been asked why the owner did not contact proposed tenants directly. He said once it became apparent the lease would require Council approval, he said they directly contacted the building owner and that the owner's representative said the owner was not interested in multiple leases. He said the representative was asked what would happen if the lease were bought out immediately. He said the response was that the owner/corporation would wait for a single tenant to occupy the building. He said Parametrix, Inc., had no interest in a 2.5 year lease. He said very few commercial tenants were interested in less than three years and also did not take space in as-is condition.

The Council and Mr. Swift discussed lessee/lessor relations further.

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Presiding Officer Wyers asked if any other persons present wished to testify. No other persons appeared to testify and the public hearing was closed.

The Council and Mr. Pihlas discussed lease details further. Mr. Pihlas said he would research the building manager option further and provide a list of potential names to the Council. He said even in view of likely financial losses, the building was nice and the location was good.

Mr. Withers asked the Council to give MFS a definitive answer by December 23 on whether they could move into Metro Center Building or not. He noted MFS had a \$4 million budget and had a board with well-known members of the community. He said MFS would make a very good tenant. He asked Metro staff to provide them with the numbers provided at this meeting.

Mr. Swift said Parametrix, Inc., also needed to know what the Council wanted to do as soon as possible. He said they needed to be able to extend their current lease, and that if they did, they would have to pay double-rent to hold over on a month-by-month basis.

Presiding Officer Wyers said the Council would consider this issues again at the December 23 Council meeting for a time certain at 4:00 p.m.

**EXECUTIVE SESSION Held Pursuant to ORS 192.660(1)(c) to Consult with Representatives Regarding Real Estate Transactions**

Presiding Officer announced the Council would now hold an Executive Session pursuant to ORS 192.660(1)(c) to consult with representatives regarding real estate transactions.

The Executive Session began at 6:51 p.m.

Present were: Councilors Van Bergen, McLain, Gardner, Devlin, Wyers, McFarland, Monroe, Washington and Moore; Executive Officer Cusma; Deputy Executive Officer Dick Engstrom, Don Rocks, Executive Assistant; Lisa Creel, Associate Public Affairs Specialist; Craig Prosser, Financial Planning Manager; and Don Carlson, Council Administrator.

The Executive Session ended at 6:56 p.m.

Presiding Officer Wyers adjourned the special meeting at 6:56 p.m.

Respectfully submitted,



Paulette Allen  
Clerk of the Council  
MCMIN93.351