

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: May 29, 1992
MEETING: Drafting Sub-Committee
DAY: Friday
TIME: 8:00 a.m.
PLACE: Stoel Rives Boley Jones & Grey, Conference Room 24
West, 900 SW 5th Avenue, Portland

8:00 Meeting called to order.

Consideration of Charter elements which have been drafted. Discussion of recommendations to be made to the full Committee on additional Charter provisions.

10:00 Meeting adjourned.

MINUTES OF THE CHARTER DRAFTING SUBCOMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

May 29, 1992

Stoel Rives Boley Jones and Grey
Conference Room 24 West

Subcommittee Members Present: Hardy Myers (Chair), Larry Derr, Frank Josselson

Subcommittee Members Absent: Ron Cease, Matt Hennessee, Ray Phelps, Mary Tobias

Chair Myers called the subcommittee meeting to order at 8:15 a.m.

1. Consideration of Charter elements which have been drafted

Chair Myers suggested that the subcommittee put the preamble aside and get directly into the charter. The subcommittee will come back to the preamble later. He asked Tim Sercombe to walk through the charter draft.

Tim Sercombe said that the first three sections of the draft--*title of charter, name of regional government, boundaries*--are the standard and typical introductory sections of the charter. He said that the charter title is provided for discussion purposes only and not as a recommendation. He said that he used the term *region*, as opposed to district, to describe the type of government even though the regional government will be thought of as a metropolitan service district for purposes of ORS 268. He said that he worded it that way because he thought it would be easier to describe its officers and bodies. He said that, under ORS 268, when the regional government takes on a transit district, it is possible that the jurisdiction can be extended out to boundaries of the mass transit district. If the jurisdiction remained the same, for purposes of governance and regulations affecting mass transit, there could be a penumbra outside the boundaries. For this reason, he included in the charter "any territory annexed or subjected to its governance under state law". He said that the issue of territory being withdrawn from the region as provided by region council ordinance has not been litigated a lot, but the taking on of additional territory to a local government is a matter of state law. He said that he thinks that taking away territory once the government has constituted it is a function of state law and local law so he put a provision in the charter that "territory may be withdrawn from the region only as provided by ordinance of the region council."

Frank Josselson said that the Constitution authorizes a charter dealing with matters of metropolitan concern and it does not talk about boundaries. As time goes by, the region is going to grow or there will be a recognition that matters of metropolitan concern are very much affected by things that happen around the region. He said that the way that territory is now annexed to any district is pursuant to Boundary Commission statutes. He asked if that is what Tim Sercombe was proposing.

Tim Sercombe said that it might not be under the Boundary Commission statute if ORS 199 is repealed in part or in whole. He said that it may be under ORS 198 or a different process, but the point is that it is real clear that the only way for local governments to add territory to their jurisdictions is through state law, and not unilaterally. He said that there were a couple of early Oregon Supreme Court decisions which made clear that, with respect to municipal home rule, cities must use state law to add territory. To withdraw territory, state law must also be used, but it is subject to local government consent. He said that the point goes back to the overriding limitation on

home rule that a government lacks extraterritorial authority beyond its political boundaries. Any time that you affect territory outside your boundaries, it has to be pursuant to state authorization which includes annexations and regulations.

Frank Josselson asked how one would find out where the metropolitan service district boundaries are today, or will be on November 3, 1992.

Tim Sercombe said that he did not know. He said that he has not investigated how they keep their boundaries or record it. He said that a reference in the charter would be better than a statement of the boundaries as of a particular date.

Frank Josselson said that the legislature repealed a legal description of the boundaries of Metro. He said that there was no legislative history which gave any indication of where the boundaries might be or how the repeal of the boundary provision of the statute affected the boundaries. He said that the description was a very specific means and bounds description.

Chair Myers asked what was put in their place.

Frank Josselson said that nothing was put in their place. He said that Dan Cooper thinks that it was done by the legislature to avoid having to reprint the means and bounds description every two years at the risk of making mistakes in the description.

Tim Sercombe asked if it said what the initial boundaries were. He said that they might have repealed it so that additional territory could be added through the Boundary Commission process as opposed to the statutes.

Frank Josselson said that it does not state the initial boundaries. He said that it has always been the process to add territory through the Boundary Commission. He said that the ORS said "subject to annexation or withdrawal of territory, under ORS 198.705 to ORS 198.955, the boundaries of the metropolitan service district shall be..." which is followed by a legal description of the land. He said that the entire section was repealed last session.

Chair Myers asked how the district is described now.

Frank Josselson said that the district is not described in the statute.

Janet Whitfield said that it is a generic description.

Tim Sercombe said that might be okay. He said that once the district is constituted, and it is created as a legal corporation, he would presume that the legislative intent was not to mean that the district has no boundaries when they repealed the initial boundaries. He said that it is possible, as an option in the charter or attachment to the charter, to have a description of the boundaries of the district. He said that it could be referred to, in the initial sections, as the initial boundaries of the district. Changes to that could be allowed by processes in accordance with state law. He said that some localities do that. The risk is that, if there is any sort of error in the description of the boundaries, it would require further charter amendment to correct the error. He said that it is more typical to refer to it as the boundaries that are in existence as of a particular time and then any additional territory can be added on to it.

Chair Myers asked Tim Sercombe to follow up on the boundary description. He said that he was confused about the source of the description of the boundaries if the statute has been repealed.

Frank Josselson said that, in the charters he has seen, they describe the boundaries of the jurisdiction.

Tim Sercombe said that they do, but they are typically the older charters. He said that it could be described, but it is not legally necessary to do that in order to have the precision. He said that if there is some uncertainty about what the current boundaries are, then it would be a good idea. He said that there has been litigation about whether or not, when the jurisdiction's boundaries are described in the charter, it takes a charter amendment to do an annexation. For that reason, people have shied away from actually saying what the boundaries are. He said that section four is the meat of the charter. It describes the overall jurisdiction of the region. He said that *jurisdiction* is the constitutional term. He said that section four basically describes some, not necessarily all, matters of metropolitan concern. He said that the matters of metropolitan concern include what he heard from the subcommittee to be the primary mission of the entity--the planning and management of urban growth and the coordination of public services and facilities within the region. Section four states that "matters of metropolitan concern also include the activities of a metropolitan service district authorized under current and future state law and those matters designated by the region council". He said that this provision deals with the three inquiries that need to be made before a particular activity of the region would be authorized. One is that it pass the hurdle that it is a matter of metropolitan concern. Second is that it pertain to a function that is authorized under the charter. Third is that, in conducting the activity, it exercise a power that is allowed to the region under the charter to deal with the function. He said that the draft has a broad definition of *matters of metropolitan concern* in order to avoid excessive litigation about the first hurdle. Instead, it discretely defines the functions of the entity by the provisions of the charter that talk about its functions. He said that he put in the statement "in designating a matter of metropolitan concern, the council shall consider whether financial savings, service efficiencies, greater government accountability, satisfaction of regional demand, or needed regulatory consistency will result by involvement of the region" as a discussion point. The committee instructions require that the region council make some findings or conclusions about whether a matter is of metropolitan concern and why it is important for the region to assume that function before taking on any of the optional functions. He said, because of that, he thought it would be important to give some factors which might be helpful in focusing the finding on matters of metropolitan concern. He said that the factors are some discussed by the Committee in its earlier discussions. He said that the options are: to eliminate any sentence like that, to rework the factors or have an inclusive definition of matters of metropolitan concern that defines what it means as opposed to giving some of the factors that are relevant in addressing the problem.

Frank Josselson said that the first sentence--"the region has jurisdiction over matters of metropolitan concern"--is fine. He said that the statement "the coordination of the provision of public facilities and services within the region" is repeated from the preamble and other parts of the draft. He asked what Tim Sercombe had in mind by that statement.

Tim Sercombe said that the process outlined and agenda struck for the rRegion council is to develop the Future Vision concept and develop a regional framework plan that includes goals and policies, benchmarks for performances, and functional plans. He said that functional plans, typically, pertain to the provision of public facilities and services to consumers within the area, to insure that those services are coordinated between governments in order to eliminate duplication and provide services in a timely and orderly way. He said that it is recognized in land use law, as it has evolved over the last 20 years, that the provision of public services and coordination of that is a key component of the first part, in terms of the planning and management of urban growth. He said that he assumed that part of the agenda of the regional planning organization would be to manage growth, principally from the concept of the functional plan through the coordination of public facilities and services. He said that is the way that the state law is structured in terms of some of the coordinative aspects in ORS 197 and the statewide planning goals.

Frank Josselson said that he does not remember the Committee ever deciding that this government shall coordinate the provision of public facilities and services within the region. He said that he remembers the Committee specifically deciding that regional government ought to keep its nose out of a lot of aspects of public facilities and service delivery, specifically limiting the powers of the council or governing body with respect to service delivery to certain regional services that are specifically identified on the list. He said that this implies that the regional government will have the authority to tell cities to consolidate police or fire departments based on financial savings, service efficiencies, greater governmental accountability, or satisfaction of regional demand.

Tim Sercombe said that is not its intended effect. He said that this section pertains only to defining what is a matter of metropolitan concern. He said that he did not feel that there was any dispute that a matter of metropolitan concern included the coordination of public facilities and services within the region. He said that it seemed that it was part of the key mission in terms of developing functional plans and region-wide policies in terms of services, utilities, and government functions. Whether or not the entity assumes the matter of metropolitan concern or adopts policies addressing it is subject to an altogether different process under the charter. In the Committee outline, under *matters addressed*, it says specifically that in functional plans, there are aspects of a lot of things that are of metropolitan concern--water, solid waste disposal, and transportation. He said that he assumed that it was, when talking about delivery of urban services, to be a matter of metropolitan concern. Whether or not the government did something like that would be subject to a political and legal process.

Frank Josselson said that he thinks the Committee contemplates that the planning process--urban growth management strategies for functional plans--will identify levels of service to be delivered in particular areas. It is one of the aspects of planning that will be undertaken. He said that "coordination of the provision of public facilities and services" implies to him that the regional government will do more than that--it will dictate to the local governments. He said that creates a problem because, he thinks, the Committee specifically wanted to keep the regional government out of who delivers the service. He said that the Committee is trying to rebuild local government confidence and trust in regional government. If there is a regional government that can order them around--coordinating who, where, and when, services are delivered--it defeats the purpose.

Mike McKeever said that part of the confusion is over what the term *functional plan* means. He said that he is hearing Tim Sercombe equating functional plan with an operational plan related to a specific service that is being delivered. He said that he is not sure that there is a single version of what it means, but he does not think that Tim Sercombe's definition is it. He said that it is a subset of functional plans. He said that Dan Cooper said that functional plan expressly only relates to land use matters at hand and that, by state statute, it has nothing to do with services.

Ken Gervais said that solid waste, which is a different kind of function, is an exception to that.

Mike McKeever said that he does not think that it is accurate to interpret functional plans to be synonymous with coordination of actual services or facilities.

Tim Sercombe said that he does not think that coordination implies that the region is providing the services. He said that he thinks coordination means looking at an issue on a regional basis and dealing with it on a regional basis. How the regional government deals with it is subject to a lot of other processes. He said that all it means is that there are a number of service providers, there are a number of different levels of provision of service, and there are number of different standards for the provision of service. He said that he had assumed that one issue of metropolitan concern was involving the regional government in looking at the services on a regional basis, which is all that the provision means. Whether or not the actual coordination involves service functions by the regional government, prescription of service levels, or if it talks about specific facilities and where they go are choices of the

region council when it does this. He said that the provision does not talk about what it does, but talks only about looking at public services and facilities on a regional basis and acting in a way that coordinates that delivery is a matter of metropolitan concern. He said that those are many of the functions and activities that are authorized in the current state law for the Metropolitan Service District. He said that the provision does not need to be kept in the charter.

Chair Myers concurred that the provision ought not include "and coordination of the provision of public facilities and services within the region". He said that whether something should go in its place, ultimately, can be left as an unresolved issue.

Frank Josselson said that the Committee debated and debated and failed to come to any kind of a consensus in terms of definition or criteria describing matters of metropolitan concern. If no decision was actively made not to do that, then, at least by default, there was a decision made not to try to describe matters of metropolitan concern. He suggested rewording the provision to read "the region has jurisdiction over matters of metropolitan concern as defined in this charter or as added pursuant to processes identified in the charter" in order to make it non-controversial.

Tim Sercombe suggested just using the first and third sentences so that it would read "the region has jurisdiction over matters of metropolitan concern. Matters of metropolitan concern include the activities of a metropolitan service district authorized under current and future state law and those matters designated by the region council".

Frank Josselson said that services and planning functions can be added through processes later defined in the draft. He said that "matters designated by the region council" appears to give the regional council greater authority than subsequent provisions. In other words, it appears to give the Region governing body unilateral authority to expand its jurisdiction. He said that, historically, there has been tremendous tension and hostility between local governments and the regional government in the Portland area. He said that a key concept that a lot of the Committee members were concerned about was developing a charter that made the regional government and local governments partners. He said that if the charter states "matters of metropolitan concern include the activities of a metropolitan service district authorized under current and future state law and those matters designated by the region council", it runs into the principles that the Committee has worked hard to establish in other areas for adding functions and expanding jurisdictions. He asked if his interpretation was accurate.

Chair Myers said yes.

Frank Josselson said that he would prefer the provision to state "the Region has jurisdiction over matters of metropolitan concern as defined in this charter or as added pursuant to processes identified in the charter".

Tim Sercombe asked what would be the definition in the charter.

Chair Myers said that the word *defined* may not be the appropriate wording. He said that Frank Josselson is talking about the assignment in the charter--the specific functions that are allotted by the charter.

Frank Josselson said that was correct.

Janet Whitfield asked, because there are so few members of the subcommittee present, that the changes be engrossed in the charter draft so that members could see what was cut.

Chair Myers said yes.

Tim Sercombe said that the subcommittee may not get very far if they word-smith each sentence, although it is important for him to know what the Committee's deliberations were. He said that there are a couple questions that the Committee needs to look at. One is if there is going to be any content to the meaning of matters of metropolitan concern in the charter, as different from the notion of what functions of the government are appropriate legally or politically. He said that the Committee may want to think about doing that because, if there is not some content to it, there will likely be controversy about it, as distinguished from whether or not to take on a function. The potential litigation about the concept may be reduced if there is some guidance in the charter over the meaning of this.

Chair Myers asked where the guidance is coming from in the language that they are proposing to delete. He asked what is in the language that is being deleted that would actually inform a court, more than it would be if the language were not in there.

Tim Sercombe said that it would depend on what language is being deleted.

Chair Myers asked, assuming that Frank Josselson's language replaces the provision, if the language that is being replaced actually contributes, in the legal sense, to the resolution of an issue around the meaning of metropolitan concern.

Tim Sercombe said that, in the factors considered by the council in determining whether or not a matter is of metropolitan concern, if there is guidance as to what sort of things are relevant in determining matters of metropolitan concern--that is, financial savings, service efficiencies, greater government accountability, regional demand, and regulatory consistency--then those will be issues or factors to look at. If, for example, there needed to be coordinated standards for local government decision making, in terms of land uses, to eliminate decisions in part of the region that counter-acted decisions in other parts of the region, in terms of the supply of various types of land, the council could look at the issue of coordinated land use standard and propose it as a function. If there is controversy about whether or not it is of metropolitan concern, there would be some guidance as to whether or not that would result in either regulatory consistency, service efficiency or greater government accountability. This would provide rationale for taking on a particular function or service. He said that if the concept is really amorphous, and the Committee has only dealt with it in terms of processes for taking on functions and the only part of the Committee instructions that deal with something being a matter of metropolitan concern is that the council, before taking on additional functions, is to make a determination that it is of metropolitan concern, it will be an invitation to litigate the findings.

Frank Josselson said that one requirement is for the council to do findings.

Tim Sercombe said that when the Council has to put down their rationale in writing, and do it in a quasi-judicial sense, it will be a recipe for litigating whether those findings are appropriate.

Chair Myers said that he agrees and he thinks that the Committee will look at that part very carefully again.

Frank Josselson said that he did not think that he does not think that it will be a quasi-judicial sense that those kinds of findings would be reviewed.

Tim Sercombe said that he meant it in the sense that they have some record to support them.

Frank Josselson said that they would have to survive a review of legislative findings. In other words, it would have to be a rational basis for determining that the function to be added is of metropolitan concern. He said that he agrees that it would be very helpful to enumerate and identify certain

aspects of metropolitan concern for review. He said that he is afraid that the Committee will spend too much time talking about it. He said that, as an alternative, the Committee has, as opposed to listing criteria and standards, set up procedures that are very likely to assure that functions added by the government are of metropolitan concern, in the judgement of the regional council and local governments or the regional council and the people. He said that he would be inclined to say that is as far as the subcommittee ought to go because, if they go any further, the Committee will go ballistic.

Chair Myers said that he agrees that Frank Josselson's conception captures what the Committee has decided. He suggested that Tim Sercombe redraft the section to include Frank Josselson's conception, but the rest of the language should be left in so that the Committee can see what the subcommittee's dialogue has produced by way of amendments. He said that it would be a one sentence section expressing that the Region has jurisdiction over matters of metropolitan concern assigned by this charter or acquired according to the procedures in the charter. He said that is what he thinks the conception of the Committee is.

Tim Sercombe said that one alternative is not to have anything in the charter. He said that it is real clear in the later sections how the regional government assumes and does functions, based on its jurisdiction of the constitution. He said that he will try to make it a one-sentence section.

Chair Myers said that there may be some virtue, for purposes of the regional voter, to have a very clear and straightforward statement that what the government can do is what the charter says that it can do or what it acquires pursuant to the way the charter says it will acquire additional functions. He said that it is a bridge to the description of what the charter says the government can do.

Tim Sercombe asked if the subcommittee wants to say anything about the inclusion of activities of a district authorized under current and future law.

Chair Myers said that he thinks the conception of the Committee is that the Legislature will be asked to withdraw authorities that the charter does not give and allow the future definition of the district's authority to be according to the charter's provisions.

Frank Josselson said that it is the view of Ron Cease and others that the charter has the authority to contract but not enlarge the authorities already delegated to Metro under ORS 268.

Tim Sercombe said that he does not agree.

Chair Myers said that he does not either, but the point is that the Committee's intention is that the charter should essentially be oblivious to state law and not reach out and make it inclusive.

Tim Sercombe said that the statement about the inclusion of activities of a district authorized under current and future law would not do that. It says that anything authorized now or in the future is a matter of metropolitan concern. It does not mean that if it is contracted later on for some reason, it would undercut that conclusion in the charter that those things that are presently in the statute are matters of metropolitan concern.

Chair Myers suggested that Tim Sercombe make the one change as indicated and bracket the rest so that the full Committee gets an engrossed version of the first draft so that they know what the original language was and how it has been replaced.

Tim Sercombe said that sections five and six are *general powers grant and construction of powers*. He said that these do not deal with the issue of what are appropriate functions of the regional government. They deal with what powers do they have to exercise those functions, if the functions

have been assumed under the charter processes. He said that he did not include in the draft the specific powers that are recited in the committee instructions including the power to have and use a seal, collect fees for information, acquire real property, or levy particular taxes because all of those powers would be subsumed within a general powers grant.

Janet Whitfield said that Chair Myers said that the Legislature will be approached to withdraw authority not provided in the charter. She asked, if the Legislature did not go along with it, would the charter be null and void. She said that she read one of Tim Sercombe's opinions that said something like that.

Tim Sercombe said no. He said that it depends on how the Legislature does it and what specifically it is doing. He said that he believes the Legislature would have authority over the home rule entity on a matter of substantive or regulatory aspects, but, in terms of what type of regulations it could adopt, how it could affect persons and governments, it would not have authority over structure or the mechanisms of governance that are expressed in the charter. In terms of its actual planning functions, it becomes more gray.

Chair Myers asked, just as a matter of form, instead of saying "exercising authority over matters of metropolitan concern", if it could be framed in terms of carrying out the functions assigned to it by the charter or acquired by it pursuant to the charter. He said that the term "exercising authority over matters of metropolitan concern" is a lawyer's preference but has a harder ring to it politically than "carrying out functions".

Tim Sercombe said that this section should not be any more restrictive than it has to be. He said that the government would only have those functions assigned by or under the charter. He asked what would happen if the government was contracting for services with another government or if the region were to deal with a mandate or some other function that may come about some other way than the charter process.

Chair Myers asked, if the government were carrying out something pursuant to a contract--such as an intergovernmental agreement--is it exercising authority over matters of metropolitan concern.

Tim Sercombe said that the contract would have to relate to a matter of metropolitan concern.

Chair Myers asked that Tim Sercombe give more thought to that issue.

Frank Josselson asked that, to make it consistent with section four, the language suggested by Chair Myers be used.

Chair Myers said that he had a placement question, just to put on the shelf for the moment. He said that the provisions may read more sequentially if the references to general powers grant follows, rather than precedes, the description of what the government is assigned to do or how it may acquire other assigned powers. Then the reference to having the authority pertaining to carrying out those functions will follow those.

Frank Josselson said that it also raises an important political function. If the general powers grant appears in the first three pages, it will likely be read and misunderstood by a lot of local government people.

Chair Myers said that he does not think that the Committee will not have any problem with the general powers grant, in terms of what it really means, but it is susceptible of misinterpretation of blurring the subject of it--the necessary and distinct clause as distinct from the description of what it is

that the government is actually assigned to do.

Frank Josselson asked that Tim Sercombe use a term other than "general powers grant" for the section title.

Tim Sercombe said that he does not recommend that. He said that he understands the need to camouflage it.

Chair Myers said that it is not camouflage--it is clarification that should minimize confounding or blurring of the powers grant with the actual functions assigned.

Frank Josselson said that the Committee got mired in discussion of general powers and limited powers. When it goes to the voters and says that it provides for a government of limited authority. He said that he is certain that some government will say that it provides for general powers.

Mike McKeever said that the RGC went back and forth on that issue with their legal counsel and Dan Cooper and their current notion is that, within the limited area of issues of metropolitan concern, the charter should confer very broad powers subject to the procedures of the charter.

Chair Myers said that it has broad powers to carry out limited functions.

Mike McKeever said that was correct. He said that the list of functions that the Council could get to via the process was broad.

Tim Sercombe said that it is the structure in the draft charter.

Chair Myers said that it is different from the power to carry out a function or authority that has been given or acquired.

Mike McKeever said that it is different than a general grant of powers to a local government.

Chair Myers said that pertains to how to describe the functions of the government.

Tim Sercombe said that his language is roughly consistent with the language that Dan Cooper and John Junkin were recommending.

Chair Myers said that he does not think that there is any discord between what Tim Sercombe is trying to do and what the Committee understands it decided to do. He said that it is just of question of making the distinction, between limited functions and the necessary and proper powers to carry out a given function, as clear as possible. He said that he would like the charter to avoid the sense that a grant of the broad necessary and proper clause is the same thing as a very broad grant of power.

Tim Sercombe said that he thinks it is a good idea to do the functions first and then talk about the powers later because it makes the context easier to understand. He said that the functions are described in two different ways. One is a function allowed by the charter and the other is allowed under the charter. He said that the functions allowed by the charter are those performed by Metro as of the date of the election. He said that they also include the performance of duties under a contract with another governmental unit. He said that he included it because much of the functional analysis pertained to actual functioning of the region with its own agenda and less so contracting with someone else for their agenda. He said that the functions under the charter are those activities related to matters of metropolitan concern that include authorized functions of a district, whether or not those functions require prior voter approval. He said that the next paragraph talks about the region council

having to authorize the function by a non-emergency ordinance which contains findings establishing that it is of metropolitan concern and sets forth the assumption and rationale. He said that it states that it may be referred to the voters by the council or petition and may be subject to the particular process of section eight. He said that he did not think that the assumption function limitation was intended to restrict the authority to supply services on a contract basis.

Ken Gervais asked if Tim Sercombe intended, by stating "before undertaking" that the Council should go back and pass new ordinances to continue what it is already doing on the adoption of the charter. He asked if they would have to do findings.

Tim Sercombe said no, it applies only to functions allowed under, as opposed to by, and the functions by are the existing functions.

Chair Myers said that distinction is a little awkward.

Frank Josselson said that the intent of the Committee is better expressed in saying, in the first sentence of section seven, "the functions of the Region are limited to those assigned to the council by the charter or subsequently added pursuant to processes set forth in the charter."

Chair Myers said that was already said in the preceding section on metropolitan concern, as amended.

Frank Josselson said that he does not know that it is entirely true that all functions delegated by the charter are being performed by Metro as of November 3, 1992.

Tim Sercombe said that there are two types of functions being described in the charter--functions allowed by the charter and functions allowed under the charter. He said that those functions allowed by the charter are those current functions and they are not subject to any other process. The functions allowed under the charter are those of metropolitan concern and are subject to the processes described in section eight. He said that the reason for the nomenclature is to distinguish between the two types of functions that the Committee discussed. He said that it was more a matter of drafting ease to categorize those two things differently than for the later type of functions and particular processes.

Chair Myers said that the first question to confront under this section is, assuming that what the charter assigns is being performed, whether it is more consistent with the expectation of the Committee, or more intelligent politically, to specifically enumerate those present functions that are being authorized. He said that it was his sense that was what the Committee would expect the draft to do. It would describe the functions assigned with respect to land use and growth management and the functions of the government with respect to solid waste, regional facilities management, etc. He said that the charter should enumerate those in some modified form of the present statutory provisions, rather than encompass them with a reference to ORS 268, so that the voter can see, in the charter, what the charter is asking the region to endorse as the role of the government.

Tim Sercombe said that he did not know what those functions are. He said that he knows, in broad categories, the things that it is doing. He said that it depends on how specifically the Committee wants it enumerated.

Chair Myers said that there may be a political aspect to it. He said that there is some merit to keeping it brief and broad, but there may be a legal issue of how broad it needs to be to make sure that it accurately captures the function.

Tim Sercombe said that it would also depend on whether or not it is descriptive enough in terms of the

list.

Chair Myers said that the outline of Committee decisions has a shorthand version of the different functions as they have been approved by the Committee.

Tim Sercombe said that one of the problems with enumerating is that if the regional government does some land use functions now, or should be, and is partially doing it now, a description of that function would be hard to figure out. He said that it is a reasonable technique to enumerate, but there is a risk that not all the functions will be captured as precisely as necessary and controversy could be created about whether or not it is a function that is authorized now or if it is subject to the additional processes.

Chair Myers said that there is also danger with the present arrangement when the benchmark of authority defines the present performance. He said that is also a squishy standard. He said that it would be more consistent with the Committee's expectation and decision making if it is set out. He said that, initially regarding the service area, if the service area responsibilities are set out captured as briefly and succinctly as the Committee might ultimately come to judge as adequately describe that function.

Tim Sercombe asked if it could be said that "they are those performed, which include" and then list them. He said that if the list is wrong, there will be a fall back, but there will be a description for political purposes of enumeration.

Frank Josselson said that the Committee worked very hard to circumscribe the functions of the government. He said that the Committee was pretty careful of what it wants the government to undertake. He said that the draft version stating that "the functions allowed under this charter are activities related to matters of metropolitan concern. These include, but are not limited to, the authorized functions of a metropolitan service district under ORS 268" is inconsistent with what the Committee did and what the Committee wants. He said that the Committee wants a government with limited functions just as the Committee has described them in a series of deliberations and motions.

Tim Sercombe said that he did not read the outline that way. He said that he read the Committee to say that there is an open ended list of the functions relating to matters of metropolitan concern. He said that there is a closed list in terms of those that are identified and they automatically go into functional planning and the future vision. He said that there is a descriptive list of those that can be deemed to be matters of metropolitan concern and, with the consent of RPAC, can be undertaken by the government through the functional planning process. He said that anything else that is a matter of metropolitan concern and that relates to a function has to go through a process of RPAC approval or the voters. He said that he does not understand it to be a closed list. He said that it is an open ended list and the only limitation on adding to the list is that it be related to a matter of metropolitan concern. He said that he understands it to not be a list of things that it can do and no other. Instead, here is a list of things that can be done now, here is a list of things that can be done under a different process, and if it wants to do further things, it has to go through a third process. He said that if his understanding is wrong, then there could be a listed static function of what the government does.

Larry Derr asked if what Tim Sercombe was trying to set forth was a compressed version of the process for adding functions.

Tim Sercombe said that the process for adding is in section eight. He said that this section just says that the functions allowed are activities related to metropolitan concern and include these things and the council must pass an ordinance before a function is taken on. In section eight, the assumption or termination of certain functions allowed under the charter require additional procedures and those

processes are set out in the section.

Larry Derr asked how Tim Sercombe would differentiate between the ones that are on the list that it is doing and can continue to do and those that have to go through the process.

Tim Sercombe said that the drafting distinction is that certain functions are those allowed by the charter and certain functions are those allowed under the charter. The ones by the charter are those enumerated functions that are current Metro functions. The ones allowed under the charter are those relating to metropolitan concern. Before any of the functions that are allowed under the charter can be done, an ordinance must be passed and the ordinance may be preferred. If it pertains to certain types of functions, then it goes through particular processes. He said that those processes are spelled out.

Larry Derr asked if the second paragraph of section seven is the authorization to presently conduct any function that falls within that statement.

Tim Sercombe said no. He said that it is a description of the type of functions that would be subject to that process.

Chair Myers said that the distinction between *by* and *under* is hard to grasp.

Tim Sercombe said that if the functions were enumerated, then that distinction does not need to be made.

Chair Myers said that there would then be provisions that describe how further functions relating to matters of metropolitan concern can be acquired by the district. He asked if that would resolve the problem.

Ken Gervais said that, almost certainly, there will be a proposal to the voters to authorize Metro to get into greenspaces and finance those on the November ballot. He said that if the effective date for functions allowed by the charter is the same as the election, the greenspaces issue might be in a no man's land. He said that it would be nice not to have an amendment to a charter that has not been approved in order to do what the voters have voted to do in that process.

Tim Sercombe asked if it was a finance matter only that was on the ballot.

Ken Gervais said no. It is an authorization to do the activity as well. He said that, at this point, it is not also a charter change. He said that he is not suggesting what the outcome will be, but the Committee should be aware of the fact that the effective date, if something else gets approved on the same ballot, would leave the issue in limbo.

Tim Sercombe said that he would list it and add that it would be subject to voter approval. He said that, right now, greenspaces is listed under the process which allows for the assumption with voter approval or RPAC. With the advice of RPAC it can, by council action, be addressed by the regional government. He said that it would be subject to an additional process if it is not included.

Chair Myers summarized the requested changes for section seven. He said that there would be an enumeration of existing functions. He said that he would leave the question of planning functions up to the discretion of Tim Sercombe because there is a fairly elaborate set of provisions with respect to the planning/land use/growth management function of the government.

Tim Sercombe said that it gets into the question of the relationship of the current planning program to

the framework plan and the assumption process called out in section eight. He said that section eight calls out the framework plan instructions pertaining to the greenspaces issue. He asked how the framework plan relates to existing planning activities. He said that the instructions state that there are certain things that go into the framework plan--transportation, urban growth, boundary management, and federal and state mandated functions. It says that any additional function must have the concurrence of RPAC and other things require a referred approval by RPAC or the voters. He said that one of the issues in this is how it relates to the existing planning program if it is not one of the three that are authorized initially to go into the framework plan. Do those plans continue to have effect or do they go into the framework plan automatically? The degree of the enumeration of the existing functions may affect that issue also. He said that regarding section eight, *approval of assumption or termination of particular functions*, the first decision about process was an ordinance assuming functions relating to the provision of services that are performed at the time of the assumption by one or more local governments in the area. He said that he assumed the Committee was talking about traditional local governmental services and that it included the functions of making local land use and land division decisions. He said that there was some discussion generically in the outline about planning functions, which he interpreted to refer to regional planning functions and the process for taking on local planning functions is described at the beginning of section eight. The approval of RPAC or the voters could be either the adoption of a referred measure or the authorization of a finance measure that is specifically related to the exercise of the function. He said that provision mimics a statute in ORS 268 on the different forms of approval for the functions that require voter approval.

Janet Whitfield asked if that would be confused with its approval authority over financing provisions for taxes. She said that had approval authority by different entities that included local government.

Tim Sercombe said that if a dedicated tax is referred to the voters and, say, that it is a tax that will be used for the acquisition of greenspaces, then, to the extent that there is a need for function approval, it would constitute that function approval in addition to the finance approval. He said that the second part of the provision pertains to the processes for the assumption of local service functions, other than those currently being provided. Included in this is the Boundary Commission and the requirement that the RPAC recommendation be obtained before assumption. The recommendation of JPACT or its successor needs to be obtained before assuming the functions pertaining to a mass transit district. He said that assumption of the functions can occur by a vote of the electorate. He said that he did not include that provision because the introductory language in section seven says that the approval can occur by charter amendment or vote. He said that the Committee instructions talk about taking on the Boundary Commission functions by referral of the charter that allows for the Boundary Commission function to be assumed by ordinance. He said that he did not feel that it was a proper process under state law. He said that he thought it would not likely be held up as satisfying the requirement on the specific proposition of assuming Boundary Commission duties as a referral from the district governing body.

Janet Whitfield asked, if the RPAC disapproved with the government's assumption of a service, would that stop it from going ahead.

Tim Sercombe said no, it would not stop it. He said that the Committee determination that the region council review boundary change procedures and adopt any changes to the current process deemed necessary before assuming the functions of the Boundary Commission was omitted from the draft. He said that he felt that the council would lack authority to adopt many changes to the process of what has to occur in order to adjust the boundaries of the governments in the region. He said that there may be some internal administrative process as to how it is done or who staffs it, but in terms of the processes for how boundary changes are made set out in ORS 199, the council would have the power to change those procedures for affecting boundary changes. He said that the Committee instruction

for continuing the Tri-Met board after assumption of the mass transit district functions was left out because state law says that the offices of the directors are dissolved after transfer of the transit system. He said that he felt that law would control over anything in the charter.

Chair Myers said that there might, ultimately, be changes around the whole Tri-Met issue by the Committee. He said that if it is Tim Sercombe's view that literally providing, in the charter, that the Tri-Met board would continue would be void under the state law, he thinks that the Committee action calls upon a binding provision in the charter that would provide for the organization and conduct of that service under a board of directors. If the charter cannot legally continue the existing Tri-Met board, the Committee would expect the charter, as a part of defining the structure of the delivery of transit services, to call out a board of directors.

Tim Sercombe asked if it would be an advisory board or a governing board.

Frank Josselson said that it would be the governing board that would intervene for them sometimes. He said that it would be a board of directors similar to the current board of directors. He said that, in its works, the Committee consciously made a decision very early on that the provisions of the charter that conflict with state law would control, or that there would be conforming legislation so that there would be a consistency between state law and the charter. He said that the Committee operated without shackling themselves by existing constraints of ORS 199 and ORS 268. He suggested that, where the Committee has made a decision and Tim Sercombe thinks that it may be unlawful because of existing law, the Committee has probably considered it. He said that it is well for Tim Sercombe to point out in a footnote that it might require a statutory change to do that, but it would be more appropriate to follow what the Committee has done. Specifically, he said that he understands Tim Sercombe's section eight to combine, into one section, all of the processes that the Committee established for adding functions. He said that he thought it would be appropriate to do it in one section, but there may be a better way to do it.

Chair Myers said that he was thinking that section seven would become the start of the charter provisions that actually assign functions to the government. He asked if it would be possible to have the section retitled so that it is clear that this is where the functions of the government are going to be spelled out. He said that he would then like to see the assignment of functions organized in a way that is more consistent with the Committee's sense of priorities of the government. He said it is more consistent with the Committee's overall discussion and evaluation of priorities to pull forward section nine, *Regional Planning and Coordination*, to make it the first area of description of the functions responsibility. He said that he would like to see a separate section that would describe how additional planning functions are acquired by the government. The service responsibilities that are being allocated by the charter as part of the government's initial charge would follow. There would be a separate section that would describe how additional service functions are acquired.

Tim Sercombe said that the only argument he can see against it is that it will push particular activities to the front of the charter, before discussion of powers and authorities. It would get into the nitty gritty of what activities it does before describing its functions in terms of how to take on additional functions. He said that planning is the only function that has a particular description so it might be well to have that description of the function first and then go on and talk about other functions and how they are assumed.

Frank Josselson said that the Committee determined that this would be a government of enumerated powers and the charter would be like, in some respects like article one, section eight of the federal constitution. He said that this part of the charter should say that this is a government of enumerated powers, and here are the powers and the ways that those functions can be enlarged or contracted.

Tim Sercombe said that the functions that the government has the power to do are an open ended list. He said that the charter would list the functions it can do--here are the current functions, here are the functions that can be assumed under a certain process, and here are the ones that can be assumed under a different process. He said that, as he understands it, that is not what the Committee has agreed to. He said that the Committee has agreed to say here is this process, this process, and the last process, which allows for a vote of the people or an RPAC recommendation, is open ended. He gave the example of the regional government deciding that it is necessary for the economic growth of the area that there be a centrally owned and managed fiber-optics system for the transmission of information to different areas of the Committee. If the regional government put that to a vote of RPAC or the people, it could assume that function even though it is not described anywhere in the charter.

Larry Derr said that he thought it was more of an emphasis than anything else. He said that Tim Sercombe is correct that the Committee did not intend to prohibit any function that, within the constitution, the district could undertake. He said that the Committee only intended to provide processes which it would have to go through first. He said that the Committee also intended to be quite specific as to those things that it is authorized to do out of the box under the charter. He said that is where the emphasis is--these are the things that, if you vote for the charter, you get. There is a process for anything else that might come along later. He said that it makes sense to move ahead those things that are granted in the charter and follow with the processes to add. He said that it is more a matter of style.

Chair Myers said that he did not mean to suggest that the description of the acquisition of additional functions is a closed end set of possibilities.

Larry Derr said that he would like to see Tim Sercombe draft the charter, not to excise these things that might be contradictory to statute, but, since the Committee hopes that they have broader power than they ever realized or that they can get the statute changed, include them in the draft in a way that, if the Committee never gets them, they will do the least damage to the structure that has been created.

Tim Sercombe said that he did that, in the portion of the regional planning section dealing with the ability of the local government to review local plans for consistency with the regional framework plan and requiring region acknowledgement of local plans, he thought that there might be some issue of its authority to do that. He said that there are some things that are very clear in terms of state law. He said that it is not clear to him if there is any value in adding those things to the charter when they are clearly outside the authority of the region. He said that if the intent is to instruct the future governing body of the region to seek that authority, then it might be more clearly expressed that way. He said that there is no reason to say, in the charter, to do something that is clearly unlawful, and the authority to do that could not come from the charter, but only from state statute. There is no reason to authorize it in the charter when the charter has no control over it. He said, for example, that the charter could say that the council shall adopt changes in the laws before assuming the Boundary Commission that affect the ways the boundaries are changed in the region. He said that it could be said, but it is clearly unlawful, or the charter could say that the council shall propose legislation that would allow for certain changes in the boundary laws, or it could be silent. He said that it would be better to be silent because there is not bootstrapping of authority that is possible in the charter, and whether or not it occurs is purely a matter of state law. If the future governing body believes it to be important, they will lobby and seek that authority. He said that, if they do not, then they will not and perhaps what it says in the charter will not make that much difference.

Frank Josselson said the functions that the Committee has enumerated are ones that it wants the government to do. He said that the Committee also determined that they either want conforming

legislation or that the charter will control over existing state law. He said that the Committee is prepared to fight that out. He said that the difficulty in drafting the charter is putting the Committee's desires in a way that they are most likely to stand up in the event that there is not conforming legislation and setting them forth in a way that, if they are held beyond the authority of the charter, they do the least violence to the remainder of the charter.

Tim Sercombe said that a certain many of the issues do not have a fighting chance what-so-ever. He said that what he has read from the minutes, the Committee has obtained its own legal counsel's judgement on the scope of the region's authority over certain matters. He said that is the guidance he is giving now. He said that there are certain things where there is, in his judgement, absolutely no question about how a court would rule. He said that they are not gray--they have been litigated before in the context of entities that have larger home rule powers than this entity does. He said that he has litigated some of those cases. He said that, personally, it would be one thing to present to the Committee those things that he thinks are, under the current instructions, not likely to be upheld by a court.

Larry Derr said that is only one of two alternative ways to cause this to be lawful. He said that Tim Sercombe is saying that it will not work because the Legislature has adopted a different scheme and it would be deemed by a court to be a matter of state concern and not regional concern. He said that if the Legislature changes the law, then that argument is not there. He said that is one of two ways to have the rule conform to the charter rather than the other way around.

Tim Sercombe said that the issue becomes what relevance is it in the charter to have a provision that requires a change of law in the future for it to become effective. He asked if the intent of putting it in the charter is to instruct the governing body to seek that change of law. He said that if it is, that should be the way that it is stated. He said that it should not be stated, in his judgement, to say that the regional government shall change the law on effecting boundaries changes in the region. He said that if it is said that way, it makes the draft look not very intelligent.

Chair Myers asked if it was possible, in those instances where there is a high level of certainty that some legislative withdrawal from an area or concurrence is likely going to be necessary, to condition the provisions of the charter in some fashion, such as subject to legislative approval or authorization, that would describe the need for it, but still allow the Committee to take to the region its recommended approach toward the regional government's handling of or authority over a particular matter. He said that he thinks that the Committee would want to save its recommended approach on a given matter. If that is one that is likely going to have some legislative action required to validate it, it should be anticipated in the charter. He said that the Committee expected that it would have to do some of it.

Tim Sercombe said that he thought it could be drafted around.

Larry Derr said that the Committee thought there would be an accompanying document or it would be right in the charter. He said that it would be cleaner if it were right in the charter. He asked if there are any other areas, besides the Boundary Commission issue, that Tim Sercombe feels is as black and white.

Tim Sercombe said yes. He said that they are in the notes at the end of each section. He said that, stating in the charter, that the vote on the charter is also elector approval of assuming the functions of the Boundary Commission and the instructions that the region council adopt any changes to the current process for making boundary changes deemed necessary for the region are both clearly not appropriate. He said that the continuation of the Tri-Met board after state statute says that it is dissolved is also a problem.

Larry Derr said that state statute says that the regional government has the authority to subsume the functions for Tri-Met. He asked why, even under state law, would not the regional government have the authority to prescribe any function and method that it wanted to operate the district.

Tim Sercombe said that the instructions were that the existing Tri-Met board, at the time of assumption, would continue and would play some sort of role. The identity of the persons on the board would continue. He said that the Region government would clearly have the ability to set up a commission if it wanted.

Chair Myers said that the charter could prescribe that the same people would be initially appointed.

Larry Derr asked, if under present state law, Metro could do it, why the charter could not do it.

Tim Sercombe said that it could. He said that whether they would be willing to serve is a different question.

Larry Derr said that, going down Tim Sercombe's list, there might be different reasons, and they might not be the same or obvious, but he would be prepared to argue, with the exception of the Boundary Commission, that it is a case of regional concern, notwithstanding what the legislature said. He said that, for the rest of the issues, he could find ways in which, one way or another, the district has the authority.

Tim Sercombe said that there are some other issues that the subcommittee could get into with section nine.

Ken Gervais said that he would urge the lawyers to think about the fact that the voters are approving a measure that says that the regional government shall do this, this and this. They should then go back and explain to them, however, it will take conforming legislation to do this, this, and this. It gets very complicated for the voters to understand.

Chair Myers asked what the answer is to the problem, assuming there are certain preferred aspects of the government, as viewed by the Committee that will require legislative action to validate, as a matter of the charter.

Tim Sercombe said that there are a number of options.

Ken Gervais said that he does not have an answer. If the voters think that they are voting yes, but there are all kinds of caveats on it, it gets very complicated.

Janet Whitfield said that Chair Myers recommended a qualification that it is subject to legislation.

Larry Derr said that it is probably logical for the subcommittee to go through the items where Tim Sercombe has a concern. He said that he does not share the view that, generally, there is a great deal that is going to be that dependent upon external approval.

Frank Josselson said that there are a variety of reasons why he shares Larry Derr's opinion. He said that so much of this is authorized with either outright or voter approval under ORS 268 currently. He said that another reason is the legislative history of this constitutional amendment which has been related to the Committee. He said that there is some legislative history that is an issue. He said the legislature really wants the metropolitan region out of its hair. He said that Justice Lindy is now on the supreme court and the home rule authority of the region is determined to be broader than originally contemplated. He said that, regarding the Boundary Commission functions, ORS 268

provides a method for assimilating those into the existing MSD with a vote of the people. He said that the charter vote could serve as that vote. He encouraged Tim Sercombe to keep his eye on the ball which is, as he sees it, what the Committee really wants to do and to try to do it in a way that is most likely to survive judicial review in the event that there is not conforming legislation. He asked Tim Sercombe to suspend his disbelief for a moment and forget ORS 268.

Tim Sercombe said that he would be glad to do that. He said that he strongly believes that certain areas are not gray at all and he would like to take those issues to the Committee. He said that he does not believe that the Committee has obtained legal advice on many of the issues and, with the legal advice, they may make the same choice. He said that his intent was to pull those issues out. He said that he looks at his job, as counsel to the Committee, as one of pointing out where, in his judgement, there really is not much issue about it.

Frank Josselson said that, in terms of not getting legal advice, the Committee has gotten his own advice, Larry Derr's advice, Chair Myers' advice, and the Committee has asked for Dan Cooper's advice on occasion. He said that the Committee has had a lot of legal advice. He said that the Committee has not had their own legal counsel sitting there. He said that the Committee is aware that there are some legal issues. As a practical matter, he said that the June 6 Saturday session will be a nightmare if the subcommittee goes into the Port of Astoria and La Grande and say that the Committee cannot do this, this or this without conforming legislation. He said that it would be better if the subcommittee could reduce that to a preface.

Janet Whitfield said that there have been members of the Committee who have expressed a desire to get outside counsel's opinion.

Chair Myers said that there is no doubt in his mind that the Committee is wanting and expecting Tim Sercombe to act as lawyer as well as drafter. He said that nothing that is being said should, in any way, be taken by anyone as an effort to put the thumb on that function. He said that there is a serious issue about whether a particular provision, absent some legislative action, would be void. He said that the Committee should know that. He said that, if that is the creative prophesy of the counsel and Committee, it becomes a policy judgement by the Committee as to how to address it--whether to take a different turn with regard to that provision or to build in qualifying language that anticipates the need for legislative action.

Tim Sercombe said that he understands and agrees with that. He said that he does not want to be in a position where the expression of his judgement is somehow limited because of what the Committee has done. He said that he wants to be able to say, in his judgement, this or that will not hold up and these are the different options.

Chair Myers said that is what the Committee is expecting him to do.

Tim Sercombe said that he would not work under any other basis.

Chair Myers said that there is no limitation on that. He said that the subcommittee is grappling with the question of how to address that.

Tim Sercombe said that there are different options for doing that. He said that he would try to keep those options in mind. In the next draft, he said that, in certain parts, he would re-insert certain things with some qualifiers if the subcommittee's desire is to put them back into the text rather than say that they have been left out because of this concern. He said that he can treat it however the subcommittee wants.

Chair Myers said that maybe the issues divide themselves into different kinds of problems. He said that, for example, the Tri-Met board is a drafting issue where Tim Sercombe just has to avoid crafting it in a way that would literally contravene state law as opposed to defining the structure of the government internal to the charter.

Tim Sercombe said that he could do the alternative that Larry Derr talked about--the members of the existing Tri-Met board shall be appointed as members of the committee, either governing or advisory--and how they would function in that area.

Chair Myers said that he thought it was the intention of the Committee that the incumbent members of the Tri-Met board would be the first members of this structure that is internal to Metro.

Tim Sercombe said that the Tri-Met issue is easy. He said that it is really where you get into the region dictating to local governments, by its own standards, what the boundaries of the local governments are, what procedures they must follow to accomplish certain results, when it states in the charter that here is what LCDC or LUBA shall do, or when it says here is the legal affect of this action in terms of whether or not the courts or agencies can take certain actions. He said that it is in those areas primarily that it has the risk of overstepping its bounds, if it declares that effect. He said that there are other ways of dealing with it. He said that one way was, as he drafted in section nine, to state that the council shall, to the extent allowable by law, and if necessary, seek additional authority to accomplish the following programs and those items would be listed out.

Larry Derr said that, taking the Tri-Met example and carrying over to some of those things and external review rather than saying this court or that administrative tribunal will review this, it should be crafted in such a fashion that it fits into their authority for review so that it comes out that way.

Tim Sercombe said that is what he tried to do on the Future Vision in terms of talking about its affect and trying to limit the possibility that it would be reviewed. He said that the draft cannot say, as the instructions literally state, that it shall not be reviewed by LUBA. He said that it is purely a matter of state law. He said that it could say that it is not intended to have regulatory effect.

Larry Derr said that it is an outline and is not the whole thing. The outline says where the Committee wants to get and the subcommittee is in the process of getting there.

Chair Myers said that the text of *Regional Planning and Coordination* needs to be looked at. He said that the organization of the charter should be revised to make section seven a functions assigning section and the functions pertaining to planning and growth management would be brought under that which is in section nine, then add the description of how additional planning functions would be acquired by the government, then a service functions assigning section with a sub-part that deals with acquiring additional service responsibilities.

Tim Sercombe said that there might be another section after that dealing with non-service functions or any sort of thing that is left over after planning and service.

Chair Myers said that if Tim Sercombe thinks there is something more, he can make it a recommendation.

Frank Josselson said that, regarding section eight, a basic principle of the Committee is that they have distinguished between planning and policy making functions and service delivery functions of the regional government. He said that the second sentence in section eight states "an ordinance assuming functions relating to the provision of traditional local governmental services, including making local land use and land division decisions and designating land uses on comprehensive plan maps, shall not be

effective...". He said that the land use stuff is all growth management planning and policy making and he would not be inclined to describe them as services.

Tim Sercombe asked if the government wanted to do these types of things, in terms of local adjudications and local land use designations, would they have to be done under the processes relating to the regional framework plan.

Frank Josselson said that this point is really critical, and potentially, inflammatory. He said that the regional government is specifically precluded from making local land use decisions or land division decisions--those that have been traditionally considered local use approval decisions.

Tim Sercombe asked if the regional government was precluded even by vote of the people or RPAC.

Frank Josselson said that if they are local, then they are not within the jurisdiction of the regional government constitutionally.

Tim Sercombe said that did not come out very clearly. He asked if the local government service function is being distinguished as everything but those services relating to a planning program. He asked if the government could, under certain processes, assume local government service functions but it could never assume a local government planning service function.

Frank Josselson said that, in terms of the regional government functions, there are two types--one is planning and policy making functions and the other is service delivery functions. The service delivery functions are solid waste, Zoo, performing arts and MERC kinds of activities among others. He said that the planning functions are basically the growth management functions of the government. He said that it is important to differentiate between them for a variety of reasons. In adding to the list of planning functions, there is a different procedure than in adding to the list of service delivery functions.

Larry Derr said that the differentiation between local and metropolitan concern is there in either case. There is no magic about whether something is a local planning function and is off base any more than something that is a local service delivery function and is off base. In the later case, it is a lot easier if there is a regional government that is willing to take over all aspects of police service and probably make an argument that it is a matter of metropolitan concern. He said that would be an inflammatory issue. He said that the Committee feels like it is an area that the government is more likely to get into the local/regional dichotomy where as deciding the variance for a fence height, no one expects that there will ever be an argument that it is a matter of metropolitan concern. He said that he noticed that Tim Sercombe made not an illogical differentiation when he said services, including planning. He said that, in a sense, planning is a governmental service. He said that the Committee used the word *service* to exclude planning and to encompass everything else.

Tim Sercombe said that it still leaves a hole. He said that suppose the governments agree that it would be important to have a hearings officer core for purposes of making adjudicative land use decisions because it would be better in order to have consistent training and consistent application of some of the standards that come out through the regional framework plan. He said that there would be a core of hearing officers that would be employed by the region government to all vote and agree on what they want.

Larry Derr said that he does not think that the Committee ever had a conversation that said that there will be language in the charter that prohibits the regional government from getting into something that is traditionally viewed as totally local planning, but the Committee certainly does not want the charter to call out anything that would sound like a local planning and operation as something

they are empowering.

Tim Sercombe said that the reason he distinguishes it is because the only reference to planning was through the regional framework plan which, he thought, was talking about regional planning as opposed to planning services. He said that he assumed that the planning services, if ever assumed, would be assumed under the same process that other additional local government services would be performed which is either by a vote of the region's electors or by a vote of RPAC. He said that there are a number of options. It could say that the regional government could never do that local service stuff.

Frank Josselson said that Tim Sercombe is differentiating between the administrative aspects of land use, such as the granting of permits, and the policy making aspects of land use. He said that is a natural and logical distinction to make, but it is not the one that the Committee made.

Tim Sercombe said that the first question is does the Committee allow that kind of function to be assumed. If the subcommittee members think they do, under what process would it occur.

Frank Josselson said that there is a provision in the outline authorizing the region to draft or recommend a zoning and development ordinance for local jurisdictions to promote uniformity in planning. He said that there is no requirement that any local jurisdiction adopt it. He said that he thinks that the Committee determined, at this stage, that it does not want the regional government involved in certain aspects of permit responsibilities in terms of land uses.

Larry Derr said that, conceptually, the extension into the areas Tim Sercombe is talking about can come under the planning side of the dichotomy between planning and service delivery. He said that, as he sees it, it would first have to assume authority for deciding land uses on the map and then put in place the administrative structure to implement and enforce that. He said that would be an extension beyond what is initially authorized so it would come under the planning process as opposed to the service delivery process for how you would extend authority.

Tim Sercombe said that the regional framework plan content is goals and objectives of the region, functional plans, and benchmarks for performance.

Larry Derr said that those are really more tools than substantive content.

Tim Sercombe said that is what the instructions say is the content of the regional framework plan. He said that he has always assumed that the regional framework plan is policies and is an exclusive process for doing region wide planning activities.

Larry Derr said that one of the things on the list is actually land use siting. He said that the planning activities would be subject to addition through the process. He said that the process that might lead to a regional hearings officers and deciding to do fence site decisions on a regional level should come under the planning addition process rather than service delivery.

Tim Sercombe asked what process they would follow for local land use decisions.

Larry Derr said that they would use the process for addition of a planning function, not a service delivery function.

Tim Sercombe said that the only discussion about planning functions occurs in the context of the regional framework plan which is why he distinguished between planning functions that were regional planning and planning functions that were local service. He said that the functions for regional

planning is through the framework plan and the functions for local services are another process.

Larry Derr said that an element to the regional framework plan could be added to say that it has become a matter of metropolitan concern to do all zoning designations throughout the region. He said that he does not see the regional framework plan as being that confining a concept. He said that it is just a box to put all of these things into.

Tim Sercombe said that the process for adding it to that plan is for RPAC approval or a vote of the population. He said that is the same process that is being used for approval of a local service function performance. He asked why not say, for local services, for planning or otherwise, there must be approval of RPAC or the voters and here is the process that will be used separately for a regional framework plan. He said that he always thinks of the regional framework plan as a document as opposed to doing some service. He said that he has not picked up anything from the written outline that conceptually treats local planning services any differently than any other service.

Larry Derr said that some of the things on the list are in the list of the contents of the framework plan and sound very much like a conditional use permit or a zoning siting decision, namely siting of significant land use developments. He said that the concept of the framework plan has to be broader. He said that the charter should reflect what the Committee intended and not what it said.

Tim Sercombe asked if siting of development in a framework plan would be more than these are the appropriate or preferred places for these developments to occur. Instead, it would actually be permitting and there would be a permitting process in the regional framework plan that would be adopted and administered.

Larry Derr said that is possible within the concept of the discussion.

Tim Sercombe said that everything under the region framework plan can also include the actual administration of regulations under the region framework plan.

Larry Derr said yes, in those limited areas. He said that could be expanded through the process.

Ken Gervais said that another area is what to do in the urban reserves. He said that the regional government or other governments may end up having to be the permitting agency in the urban reserve areas. He said that urban reserves are not listed as part of the regional framework plan.

Janet Whitfield said that urban reserves are not listed because the Committee did not know if the concept would last in the Legislature.

Frank Josselson said that Larry Derr's description of the regional framework plan as being more than a plan, but being a bag of tools or a box, is an appropriate one. He said that the term regional framework plan may have been misleading.

Tim Sercombe asked why call them parts of a plan. He asked if it is not cleaner, in terms of categorizing, to say that there are certain functions and here is the process for assuming these kinds of functions and here is the process for those kinds of functions. He gave the example of the voters approving Metro to take over local sanitary sewer service. He said that function would have a lot of regulations about who connects to it, what size of sewers, and different sorts of policies relating to the assessment of sewers. He said that not all of that would go into the regional framework plan. He asked why it would not go into the region code. He said that he did not understand why so much would be put into a plan.

Larry Derr said that sanitary sewers are in the other category of service delivery. He said that whether it be the personnel rules for the sewer workers or the regulations for the fee structure, it is under service delivery.

Tim Sercombe asked if siting would not be a service.

Frank Josselson said that was correct. He said that the regional framework plan would be better called a regional growth management plan which should be distinguished from regional services. He said that the services are the services that are enumerated in the outline.

Larry Derr said that there is probably a different word than *services* that is more generic.

Tim Sercombe said that it is cleaner to distinguish between the processes under which the government can make policy and the processes by which it administers those policies in the context of individual requests. He said that he is not sure that, as a member of the Committee, he would want to feed into a plan that is policy/formation/content. It is composed of policy about where or how these certain things are going to occur. He said that is what he thinks of when he thinks of the word plan. He said that implementation, the way that occurs, and the processes that you use is a separate issue about whether or not the government is in the business of providing the service of implementing it. He said that it would make sense that it would not be a process bound into the regional framework plan business because there is a lot of process that is used for amending it or validating it that should maybe not be the implementation of policies that are adopted through that plan. If solid waste disposal has certain standards for the area or coordination of functions, it might be one thing, but actually doing solid waste is a different thing. He said that where or how significant land use developments occur, to him, seems different than actually adjudicating whether or not it is appropriate on a particular piece of land for a land use development to occur.

Larry Derr said that the issue of putting planning over here and service over there, which Tim Sercombe is struggling with, is one that has caused much confusion for the Committee. He said that the two cannot be separated totally because they intermix. He gave the example of Tri-Met and the separation between planning and service. He said that Metro does the regional transportation plan and Tri-Met has all kinds of plans to tell it what it should do in the future to provide its service. He said that the Committee's concept has been the kind of planning that Metro is doing with the transportation plan which is seen in the planning box. He said that the kind that Tri-Met is doing in the implementation planning is on the service delivery side. He said that figuring out the line of demarkation, if it is all within one agency as opposed to two agencies, is kind of fuzzy. He said that Tim Sercombe asked the question of why try. Why not say if it is policy making, it will be in this box and if it is service delivery, it is this box.

Tim Sercombe said that the policy making aspect of land use is the creation of standards and policies and the service or implementation part of it is the application of those policies to particular designations of land or making individual land use decisions which include land division.

Ken Gervais said that the next major section of the outline says that the city and county plans have to be in conformance with the framework plan. He said that if the framework plan has all kinds of non-standards, but are implementing pieces such as the siting of a major facility, then city and county plans cannot be consistent because there is nothing to be consistent to.

Tim Sercombe said that he did not see it as a problem, it is just irrelevant.

Frank Josselson said that he thinks the Committee believes that, in the growth management planning area, regional government has not done a lot over the last 20 years. He said that it has been a step-

child of regional government functions. He said that, for example, when the regional government has a shortfall of \$600,000 out of the \$236 million budget, it takes that shortfall out on the planning department which it eliminated.

Ken Gervais said that is not true, they did not eliminate the planning department. There still is a planning department.

Frank Josselson said that he stands corrected and it is not an important point. He said that the essential point is that the regional government has not done enough in growth management and the Committee wants to see it do more and for growth management to become the primary function of this government. He said that if something is to be short, it is to be solid waste or MERC. He said that the primary thing, the essential thing, for this government to do is to make sure that the region does not turn into a Seattle or Los Angeles. He said that we also want this government to do macro-planning--major, broad, policy decisions--for the services such as transportation, mass transit, solid waste, or MERC. He said that the operational aspects and operational planning decisions should be left to administrative people.

Larry Derr said that by *this government*, Frank Josselson meant *the council*. If the regional government is implementing the service, then that level of decision making should be left at the administrative level. If some other element of government is doing it, it should be left to that element.

Frank Josselson said that, in the service delivery area, regional government will make major policies as it currently does with respect to, for example, Tri-Met and leave the operational decisions, as to where the buses go and how the light rail is to go along the line prescribed by Metro, to the administrative layers under the council.

Tim Sercombe asked if it is a service being done by the government.

Frank Josselson said yes. He said, in terms of local services, the regional government should not get into those at all, except to provide, in the regional framework plan, levels of service that are necessary to support regional policies that are established in the regional growth management and framework plan.

Tim Sercombe said that part is not clear from the outline at all. He asked, in order to assume a local service function, does there have to be authorization for it in the regional framework plan. He said suppose one of the three ambulance providers in the area goes bankrupt. He said that this scenario happened in Eugene and there was an immediate need to take it over in bankruptcy court or else there would be no ambulance provision in the area. The regional government decides that they should get into the ambulance business because it could be coordinated better, provide for the services, and raise money to take over it. The regional government asks RPAC for permission to take it over and they authorize it. He asked if it is not in the regional framework plan, would they be precluded from doing that.

Larry Derr said that it does not have anything to do with the regional framework plan, except possibly that the regional framework plan calls out regional disasters as an area of planning.

Tim Sercombe asked if just because it is not in the regional framework plan, is it not a limitation on the ability to do a service function.

Larry Derr said that they are totally separate issues. He said that if the regional framework plan calls out that a particular kind of public service is necessary in particular areas to have managed growth,

then that could be dictated to any service provider whether it be a city or special district or the regional government if the regional government is providing a service. He asked if there is a way that there can be a differentiation between policy making and service delivery that just stops there rather than policy making for planning and policy making for service delivery and still keep the clear distinction between planning and service delivery. He said that they are talking about bifurcating along two planes which is where it gets confusing.

Janet Whitfield said that the Committee had considerable discussion on dividing between service delivery and planning, but they did not actually come to a conclusion. She said that there was a vote on the structure for separating them, but the Committee did not support that. She said that she did not think the Committee agreed not to mix up service delivery and planning.

Larry Derr said that Janet Whitfield is touching on another issue, which is do you put them in different branches of government. He said that he is only talking about where you put the focus on planning or where you have different processes for making changes in the scope of planning and that has to be differentiated from service delivery because the processes are a little different. He said that members would always say that something sounds like planning when talking about planning for solid waste. He said that has been a troubling point.

Tim Sercombe said that the distinction he draws in the draft is that service delivery is distinguished from policy making. The second distinction is there are two kinds of policy making. The first is those that apply to local governments and other governments and that affect the content of their plans and regulations. The second kind of policy making is for those policies that affect what the region government does, in terms of policies. If they have a particular function and they are running a solid waste landfill, they must have policies as to what the tipping fees are. He said that what goes into the regional framework plan are policies that apply to other governments. It is a policy based document and services are assumed and performed by vote of the people. If they are assumed, they become a function of Metro and they are not necessarily bound to the regional framework plan or they do not have to be addressed through policies in that but they could be addressed in policies in an ordinance. He said that the function of the regional framework plan is a coordinative function and talks about what other comprehensive plans and regulations have to do.

Ken Gervais said that anytime the word *coordination* is used, there will be a problem with a lot of the actors. For some, coordination means a prohibition against providing services directly. He said that the Chamber of Commerce has had a proposal that will take the regional government out of service delivery altogether and have immense coordinating powers to control everything. He said that what Tim Sercombe is describing would fit the Chamber of Commerce's notion that the framework plan would be the plan that says what and how local governments do virtually everything. He said that he does not think that he has heard a vote of the Committee to do that.

Tim Sercombe said that they have because they have said you put stuff in the framework plan, and local governments have to make the comprehensive plans consistent with it.

Ken Gervais said that it is all in the land use area. He said that none of it is in the service delivery area.

Larry Derr said that the list of what goes into it was carefully considered and fairly well constrained.

Ken Gervais said that the desire for separating policies and growth management from service is a strong desire of some major segments of the Committee, including Larry Derr and Frank Josselson. He said that he did not know if it was a majority position, although it is very close. He said that there are other members of the Committee who do not see the distinction between planning and service as

being appropriate.

Tim Sercombe asked why not put in there that the regional framework plan is designed to have policies that govern the content of other policies and it is not there to regulate the provision of service.

Larry Derr said that there is an artificial distinction between planning and service delivery, as far as the terminology goes. He said that there is one form of governmental service, which is regional growth management planning, that the Committee wants to call out in its own section. He said that there is the list of additional governmental services that the Committee is empowering. Finally, there are some processes for adding to those other governmental services as well as some processes for adding to the scope of the regional growth management plan. He said that there then is the dichotomy between the macro-planning and the functional service delivery planning which is a separate distinction. The macro-planning should be in the council and the day to day operational things should be left to the executive side of the structure as much as possible. If the Committee realizes that it is talking about two different kinds of distinctions, and it could be called out that way in the charter, then that is one thing. He said that services is another issue. He said that they are calling out one special category of service-regional planning.

Tim Sercombe said that he thinks the policy making versus policy implementation is an overarching issue. It is not just in terms of distinguishing between appropriate functions. It is more in defining the role of the council. He said that the language in the charter for the regional framework plan states that this process for regional planning is an exclusive process for the adoption of certain policies and "these policies are those applicable to governmental units and service providers other than the region which affect the content of local land use comprehensive plans or regulations, the management of growth in the metropolitan area, or the provision of governmental or utility facilities and services". He said that there is a concept that needs to be in there that they cannot allocate service responsibilities. He said that could easily be added, but the notion is that this is a policy document that affects how other governments go about their business.

Chair Myers asked if the subcommittee is talking about policies that are applicable only to other governmental units. He said that he did not think that was correct.

Tim Sercombe asked who else it would be applicable to.

Chair Myers said that it is applicable to the regional government.

Larry Derr said that this government will also provide other services besides planning. He said that it would be needless and circular to say that its planned governance is planning, but it does govern its other service provisions.

Tim Sercombe said that he was thinking that it might be a useful distinction to distinguish between policies that apply to others versus the policies that apply to the government, because the process for adding to or changing things in the regional framework plan is different from the process for adopting an ordinance. Once a function is exclusive of the region, then there may not be as much a need to go through the formalistic structure of the regional framework plan in order to enact policies relevant to it.

Larry Derr said that it breaks out on a functional basis. He said that if the kind of planning that the Committee is talking about, even though it may affect a service provided exclusively by the regional government, is the kind of planning that affects regional growth management, then it will need to go through the framework plan process. He said that it should not have a shortened process just because

the regional government is the only one providing that service.

Tim Sercombe said that the problem is that, at some point, you have to say that anytime the regional government wants to make a policy of a particular type, it has to do it through the regional framework planning process. In other words, if this is to be an exclusive process for the adoption--getting concurrence that the government will deal with the area, adopting it through the process, and coordinating it with each other--of certain kinds of policies, then the regional government will have to say before the policy can be adopted, it must go through this process and it has to be part of this plan. He said that the Committee needs to figure out what kinds of policies those are. Certain policies--both policy and major--will be adopted by the council by ordinance and will not be put into a regional framework plan. He said that they might be policies relating to their own operations. He said that the question is how much of that policy that the council adopts by ordinance will have to go through the regional framework plan process.

Larry Derr said that it is no different than the situation today under the statute which says that to do certain things, Metro has to have a functional plan. He said that in many areas, it has had none or less than a complete plan as it struggled to get consensus on how to do it. He said that it has gone ahead and provided some services, particularly in solid waste, after the fact when the plans are caught up. He said that you still have the problem of whether it is an activity that had to be in the plan before it could be done or not. He said that there is no way to get around that question. He said that the better the bullet points of what goes into the plan can be described, the better guidance to give people to know whether or not it is an item that the policy making has to be through the plan or whether it can be outside the plan.

Ken Gervais asked if Metro's phosphate ban would have to be in the process.

Larry Derr said that he did know. He said that those kinds of questions are going to come up.

Chair Myers asked if the difference between planning responsibility of the council and the planning responsibility of an internal part of the government needed to be called out.

Frank Josselson said that it does not have to, but to the extent that the Committee has determined that it does not want the council picking out the glassware to be used at the Convention Center.

Larry Derr said that, if anything is said about it, it should say that policy making is vested in the council and implemented through ordinances. He said that there might be a few more words to tack onto that all other service implementation is the bailiwick of the administrative or executive side. He said that if there are a few more descriptive words that can be tacked onto what the Committee is talking about with the policy that is vested in the council, it can be constrained a little to the bigger issues.

Tim Sercombe said that it is not going to be easy to write the charter and will create more problems than they are trying to solve with the distinction that the council can only do certain kinds of policy making.

Frank Josselson said that the Committee is trying to solve the problem of having the council spend significant amounts of time picking out the art work and glassware for the Convention Center, the route of bus 26, etc. He said that Tim Sercombe is coming into the process cold and does not appreciate the proceedings that the rest of the Committee has been through. He said that regional government officials have come before the Committee and said that it is nice to be able to do those operational things that get done. He said that what he has seen from regional government, is a government that likes to do operational things. He said that this council likes to get involved in

operational kinds of service delivery things.

Larry Derr asked if there had been a vote of the Committee that has fully said that we want a line in the charter that proescribes them from doing that kind of thing or has the Committee tried to come at it in a variety of ways through structure.

Frank Josselson said that he thinks the Committee tried to come at it structurally.

Larry Derr said that unless there has actually been a vote up or down on having something that calls out that the council will only get into this kind of policy making, then it is not a drafting issue right now.

Tim Sercombe said that a typical way to do a regional government conferring of powers is to say that all powers are in the council unless the power is given to someone else in the charter. He said that it is very atypical to say that the council, as a council, cannot do these certain things. If the manager or executive will be the one to exclusively purchase goods or services, then you say that the region executive is going to purchase all supplies and goods and that function is exclusive. He said that, in terms of the way that politics works, this is a council that is going to be elected, have constituents, and is going to get involved in constituent problems. He said that is the way that politics operates, particularly with each councilor coming from a single district. When it is set up that way, they will feel some obligation to answer constituent complaints about bus service. He said that he did not know how practical it is to put something in the charter that says even though they want to get bent off on some issue, they cannot talk about it. He said that it will create more problems about whether or not the council does macro-planning, regular planning, or any planning. He said that when you start making distinctions like that, you are just setting yourself up for arguments about stuff that is not that fundamental and likely to produce a lot of litigation.

Frank Josselson said that Tim Sercombe is correct in that a line cannot be drawn with any degree of precision. He said that, given the nature of representative government, people will represent their constituencies. He said that he would like to assume, if there is a general principle set forth in the charter, that a competent council will do its best to follow it, with the recognition that the council may not. Under those circumstances, there probably is not a lot anyone can do about it or there will be a lot of legal problems.

Janet Whitfield said that is not a principle that has been voted on by the Committee.

Tim Sercombe said that there are political checks also. In considering whether or not there needs to be charter checks on the way that the governing body works operationally, most areas have dealt with that, figuring if it is a bad council, it will be voted out and that one cannot, through the charter, reach out and control elected officials in more than major ways.

Frank Josselson said that Janet Whitfield and Larry Derr were correct in that the Committee did not determine, at the time it set the structure, what the manager would do.

Chair Myers said that the Committee did approve certain functions and responsibilities of the manager under the aiges of the regional elected official. He said that his sense of the demarkation is broadly a demarkation between policy making and administration. He said that it is within the purview of any legislative body to define policy in pretty small bits.

Tim Sercombe said that the gray area is the administrative policies which typically come up with respect to personnel policies, purchasing, and contracting. He said those are the things that tend to get politicized and brought to the governing body level. He said that there are options to choose from

about how to separate the council. One way is a non-interference clause and another is by defining the functions of the region executive or the region manager as being exclusive in some ways and saying this subject area is off limits to the council. He said that he is not sure there is much to gain by distinguishing generically between the level of policy making that a council can do.

Larry Derr said that its function to get there is, in part, by the overall structure and, in part, by the kinds of specifically delineated areas that are hands off to anyone else.

Frank Josselson asked if Chair Myers or Larry Derr would disagree with the principle that the Committee believes that the council should be the major policy maker and should leave the administration and operations to the appointed manager.

Larry Derr said that it is hard to say. He said that the Committee had votes on a lot of issues and received strange results. He said that he personally believes that the council should be the major policy maker and should leave the administration and operations to the appointed manager.

Janet Whitfield said, as part of the structural issue, the Committee said that there would be a non-interference clause in the charter to minimize council involvement in operational matters.

Frank Josselson said that was his understanding--that the council would not get involved in the micro-management. He said that he thought that is what the non-interference clause motion was intended to convey. He said that he sees nothing wrong with the charter saying that the council shall do macro-planning for service delivery and leave the operational aspects and delivery of services to the management.

Chair Myers said that he is not sure whether it belongs there versus in the provisions of the charter that distribute responsibilities between the regionally elected leader, manager, and council, apart from how it is resolved.

Larry Derr agreed with Chair Myers and said that, logically, it makes sense to put it there so that it applies to any function.

Chair Myers said that it ought to be pushed into the portion of the charter that distributes responsibilities. Sections 9 and 10 should be what the government is about regarding the functions assigned to the government.

Larry Derr said that he agrees with what Frank Josselson is saying, that even if it is not a tightly defined issue, if it is called out as a goal, it might have some value, but he is not sure that anyone will know what the Committee means by macro-planning.

Frank Josselson said that he would not write it that way--he would look for a better term of art.

Chair Myers said that this discussion is one that the subcommittee should have when they see the piece that deals with structure.

Tim Sercombe asked, regarding the regional framework plan, if there are any other functions of the government that the Committee has discussed besides the provision of services to constituents, provision of services to governments, and the planning of the provision of services for other matters on a regional basis.

Larry Derr said that planning goes beyond planning for services--that is just one of 10 to 15 elements of a plan, following the state goals.

Tim Sercombe asked if the thought in the regional framework plan, on planning on a broad basis, includes such things as what comprehensive plans are suppose to do under state laws. He asked, potentially, would they be dealing with historic structures, open space, and designating and making particular geographic based decisions through this plan.

Larry Derr said that it has to be on the list. Historic structures is not one that is on the list, but planning for areas of intensity of development is within the concept of growth management.

Frank Josselson said that planning for historic structures could, conceivably, be added to the list with the approval of the RPAC.

Ken Gervais said that it is not just service. He said that the current idea of a functional plan is that there will be a light rail out here, spend a billion dollars, and tell the city of Beaverton that their comprehensive plan must provide adequate density around the light rail station to make it work.

Tim Sercombe said that he understands the notion that it creates policies for implementation through local comprehensive plans.

Ken Gervais said that they are not necessarily service related.

Tim Sercombe asked if the allowable functions are limited to services to governments, services to persons or constituents, and regional planning. He said that the Committee has talked about the assembly and marketing of information for persons on a commercial basis and he is not sure if the Committee is seeking that as a service function or where it fits in terms of the allowed functions. If it were to do that, and the provision of information is generally done by other governments in the area, it would need to go through the process of vote or RPAC majority approval.

Janet Whitfield said that it is on the list and will be authorized by the charter so it would not have to get RPAC approval.

Chair Myers said that it is just to replicate present statutory authority.

Janet Whitfield said that the Eugene provision is a copy of the one practiced by Metro.

Tim Sercombe said that he was trying to figure out if there were more commercial types of functions that it might do, such as governmental or utility type service provisions to constituents.

Larry Derr said that he does not understand what the problem is.

Tim Sercombe said that the categories the Committee talked about may not be inclusive enough for how functions are done. He said that the structure the Committee has set out thus far has the categories of a service being provided by a local government and its process for assuming additional functions; an existing function of Metro does not need a process, a service not being done by a local government has a different process, and a planning function goes through the regional framework plan process. He said that he is trying to figure out if there are additional functions beyond those that have not been detailed in the process.

Larry Derr said that there cannot be because one of the services delivered is the planning service for which there is a category. There is another category of everything else it can do which is, by definition, all encompassing. He said that the service delivery is intended to be all encompassing of its authority under the constitution. Within that category, the Committee has attempted to break it up into those two or three categories. The question there should be whether those are all encompassing

within service delivery. He said to take all the things that the regional government could, by constitutional authority, do and carve out planning, and then a process for what the regional government does now and what can be added, and then there is everything else for which there are processes. He said that there should not be any gaps.

Tim Sercombe said that service function is all inclusive.

Larry Derr said that service is not a good word and should not be used. He said that functions performed by governments and functions not performed by government are subsets to decide how to get into new ones.

Tim Sercombe said that suppose the regional government wants to manufacture t-shirts in order to sell them to the public because people in the metropolitan area would like to have a t-shirt with "Metro" on it. He asked what process would be used.

Frank Josselson said that the RPAC process or the process for functions that are not currently being carried out by local governments should be used.

Ken Gervais said that it is a function, but it is not a local government service. He said that if the local governments are regulating phosphates but Metro decides they need to do it, it is not taking over a government service, it is a government function. He said that service is too limiting.

Larry Derr said that function is a decently generic term.

Ken Gervais agreed, unless it is not confused with a functional plan.

Frank Josselson said that his section nine would be "Regional Growth Management." Subparagraph (a) "Future Vision". Subparagraph (b) "Regional Growth Management" or "Regional Framework Plan". Subparagraph (c) "How to delete or add to the list of regional planning functions. He said that his section 10 would be everything else to be done by regional government. He said that he would not include sub-paragraph (a) "Planning for it". It should just be the list.

Chair Myers said that it would be solid waste, regional facilities, providing information, and the process by which the government can add to those functions.

Frank Josselson said that there would probably be two of those sections--one for services that are currently being performed by a local government and one for services that are not currently being performed.

Tim Sercombe asked if, conceptionally, the Committee says that if they are going to do function, they first must pass an ordinance to say that they are going to do a function. He said that is true for any of these things. He said that there are only certain kinds of functions that require certain processes. He said that it goes back more to what Larry Derr said about a residual power in the government to do certain things by passing an ordinance. He said that it is only when the function pertains to regional planning or the provision of a service that is already being provided by a local government that there is a particular process that is used.

Larry Derr said that is not correct. He said that there is everything that the government has the power to do, whether it is to adopt regulation on a phosphate ban or whether it is to say that all of the solid waste must be brought to our dump. Out of that, regional planning can be carved out, which would be section nine. Next to it is everything minus planning which is section 10.

Tim Sercombe said that the processes are not the same.

Larry Derr said that is correct which is why they are in a separate paragraph. He said that out of section nine comes things that are done now and empowered is one part and things not done now, which would have processes for how to add, would be a different part. If the everything has been properly described in adequately generic terms, there should be no gaps.

Tim Sercombe said that, with a process, it gives people a chance to vote on it; otherwise there is no allowance for a vote. If the matter pertains to regional planning you do it one way. If it pertains to local services by local government, you do it another way. If it pertains to everything else, you do it another way. This way there is no process as has been described, except for when you get into the regional framework plan. Then there is an ambiguity on the catch-all stuff: do they need to be in a regional framework plan as policy authorized, before they can be done as a function. There is a great ambiguity about that.

Larry Derr said he doesn't understand why Tim Sercombe is unwilling to follow the outline.

Tim Sercombe said that it isn't that he is unwilling to follow the outline, it is that the Committee has described, in terms of the assumption of functions, only special processes for performing the functions that relate to regional planning or performing the functions that relate to assumption of a local government service. There are a couple of side processes that aren't generic.

Larry Derr said that Tim Sercombe is making an assumption that may be justified by what he sees on paper, but not justified by the intent of the Committee.

Tim Sercombe asked what the process is for taking on a function that is not a local government service function and is not a regional planning function.

Janet Whitfield said it would be by advice of the RPAC.

Tim Sercombe said, therefore, it would be by ordinance.

Chair Myers said it would be a vote of the council, upon consultation with the RPAC.

Frank Josselson said that it would not necessarily require an ordinance.

Larry Derr said that the outline does not require an ordinance to be passed.

Frank Josselson said the Committee wanted to stay away from that. There was some specific discussion about it.

Janet Whitfield asked why the Committee would want to stay away from requiring an ordinance.

Chair Myers said it could be done by resolution.

Janet Whitfield asked if a whole new function could be taken on by resolution.

Frank Josselson said that state statutes provide that certain things are to be done by ordinance and resolution.

Larry Derr said the Committee described a process that takes into account everything, outside of the planning area, that this government has the authority to do under the Constitution. The Committee

said that there are certain conditions that have to be met before undertaking the function. They are different, depending upon whether a local government is already doing it or has the power to do it.

Chair Myers said it isn't the power to do it, but whether the local government is actually doing it.

Larry Derr said the distinguishing factor is to which branch the process goes.

Tim Sercombe said that he is concluding that there is no particular process prescribed for everything else.

Larry Derr asked where it says that in the outline.

Tim Sercombe said that it doesn't. He said he is trying to find out what the Committee is saying about the process, other than to get the advice of the RPAC. The Committee isn't talking about regional planning or local government service currently being done. Is that it?

Frank Josselson said that is it.

Janet Whitfield said the Committee voted that any planning would require approval of the RPAC. On page 2 of the outline it says that "undertaking or deleting planning functions of metropolitan concern...." Does that include all planning?

Larry Derr said that it would be all planning of metropolitan concern.

Janet Whitfield said this government would only be doing things of metropolitan concern. So if it is doing operational planning for the services it provides, that is of metropolitan concern and would require RPAC approval.

Frank Josselson said that he doesn't think that is what the Committee had in mind. And that isn't when this issue came up. This issue came up in a discussion with the Regional Framework Plan, in adding or subtracting from a list of functions that were enumerated, to be in the box called the regional framework plan.

Tim Sercombe said he thought, when reading the outline, in referring to the planning function it is referring to planning and service functions. That was a particular process that required either RPAC approval or a vote. When you're dealing with regional planning, you go through the regional framework planning process. And there are separate processes for that.

Frank Josselson said the problem is that Tim Sercombe is reading the outline as the work of the Committee, and it isn't.

Tim Sercombe asked, without regard to the outline, if the Committee is intending to have things in the regional framework plan go through a separate process apart from the provisions that are stated governing the regional framework plan. If not that, is the Committee intending to make a distinction between the provision of local planning services--requiring assumption by council action and majority approval of the RPAC--and region planning? You are not going to go through that process necessarily. There are some things that can be done automatically, some things that can be done with the advice of RPAC, and some things that require RPAC majority or the electorate. That is the way the outline reads. If those aren't the distinctions the subcommittee believes the full Committee has, he said he needs to know what they are.

Larry Derr said that the planning in the original framework plan and Future Vision thoughts carries

with it the requirement that local governments conform with it and be consistent with it. If the regional government wants to plan for something that only affects what it is doing, then it doesn't need that enforcement measure. That could be the point of demarkation that goes into the framework plan, rather than saying that one kind of plan has to be in the framework plan and one kind doesn't. If you are only planning for your own functions, then it doesn't have to go into the framework plan, because you don't need that enforcement authority. If you want the enforcement authority over others, then the others who will have that imposed upon them get the protections that are built into the Framework Plan process. Previously, Tim Sercombe had said that is a way to do it, but he, Larry Derr, had said that it could be an end run. The regional government could take on something that does affect everyone else and not have to go through that process. But if it doesn't affect everyone else, they shouldn't have to go through that process.

Tim Sercombe said that is right. And there are separate controls for the function assumptions. He said he is worried about intermixing of controls between the regional framework plan and the function assumption part of it. It is cleaner if you talk about the regional framework plan as something to use to adopt policy that affects actions of other governments.

Larry Derr said it makes sense--without a lot of time to think about it--as a way to break this deadlock. It is a realistic problem that Tim Sercombe is raising. How do you know--after the charter is written and adopted--what you have to put into the framework plan in order to be able to do it? Instead of trying to figure that out, for instance, if you want to enforce it against local government, that is where it has to go.

Frank Josselson said that there are things in the regional framework plan that don't necessarily affect local governments. For one thing, mass transit planning.

Tim Sercombe asked if Frank Josselson is talking about mass transit planning in terms of operation of a mass transit system or what local governments have to do in order fulfill the plan, or both. In a previous discussion about mass transit, subcommittee members said the charter would not have the council trying to figure out how to operate the system. Surely, the Committee wouldn't try to figure that out in the regional framework plan.

Larry Derr said there is a category that affects the region to a degree that it ought to be in the regional plan, but might be able to dodge the regional plan because it doesn't directly affect the local government.

Tim Sercombe said that just because something is not part of the Regional Framework Plan doesn't mean that Metro wouldn't have a plan for it. It can't be assumed that this is the only planning to be done by the region. This is a process that the Committee is saying that certain kinds of policies have to be done exclusively this way. It is not saying that this is the exclusive means of policy adoption.

Larry Derr said that is true. But the Committee does expect it to be the exclusive means of policy adoption for things that affect future growth and liveability in the region.

Tim Sercombe asked what are the things besides those that affect how local governments do their planning and business. It can be: policy applies to Metro, the region; policy applies to individuals, such as you shall not litter; or policy applies to governments. The Committee needs to figure out if policies that apply to individuals, and that sort of stuff, are going to be dealt with in the regional framework plan. If so, that implies a different adoption process and amendment process. It could also be policies that apply to local government and policies that apply to Metro. He said he isn't sure why the Committee would want policies that apply to persons or policies that apply to Metro as part of the regional framework plan. He said that he thinks the function of the regional framework plan is to

coordinate or to seek uniformity on a regional basis where it affects a number of different things. Any particular functional plan would seem to have that coordinative, uniformity or expectations-setting sort of function. The reason for having it on a region basis in that context--where it affects local governments--is that there should be a different process than for just planning for Metro, which per se applies regionwide, and where the process is council adoption.

Larry Derr said that it is broader than that.

Chair Myers said, in the regional framework plan, there is the Urban Growth Boundary, which is a Metro function.

Larry Derr said that it is really a hybrid.

Tim Sercombe said that he was talking about policies that apply to Metro, about how it does its business, as opposed to, say, land use comprehensive planning.

Larry Derr suggested mass transit as an example. Where you put major mass transit lines is going to be a key issue in directing future growth. But it could be couched in such terms that it only affects the service provider of mass transit, at least in a regulatory fashion. So it would not be something that would have to be in a plan where the line of demarkation is that it only affects local governments. Yet it is a key element of future growth management planning for the region and part of the concept of what should be in the regional plan.

Tim Sercombe said that one way would be to not accept his initial premise and not say that this part of the charter defines the exclusive way to set urban policy.

Larry Derr said that sentence doesn't work. It is a exclusive way to set policies for local government.

Tim Sercombe said that it can be the exclusive way to set policies for local governments and it can include other policies as well. To the extent that it does more than that, it may have affect on Metro operations. But it wouldn't be the exclusive way of making those policies.

Ken Gervais, Metro staff, said you don't get much when you say 'affecting local governments.' Tri-Met says it's a local government. Counties and cities think Metro setting solid waste rates affects them.

Tim Sercombe said he is talking about affecting the content of comprehensive plans or their land use regulations.

Ken Gervais said that right now Metro is very specific. If the organization wants to affect comprehensive plans, Metro must adopt a functional plan. There is a very specific, clear way of affecting comprehensive plans.

Larry Derr said that is the way Tim Sercombe was going with the language in the draft, except if that is where he has stopped, it isn't broad enough.

Tim Sercombe asked if the subcommittee agrees that the charter should say that the exclusive way to adopt regional policies, intended to affect content of local comprehensive plans, is through the regional framework planning process. The regional framework plan shall include other policies in specified areas.

Frank Josselson said that Tim Sercombe's statement that things affecting local comprehensive plans and regulations are in the regional framework plan doesn't include a grant of authority. That's an

effect of the regional framework plan, as opposed to a provision of the regional framework plan.

Larry Derr said that, in a sense, it is both. On the one hand the Committee says that once you get into the framework plan, local plans have to conform. But the Committee also says--taking it a step forward--it is the only way to take action that would directly affect local plans.

Tim Sercombe said that is saying that if a regional government is going to act in a certain way it has to do it through a certain process.

Larry Derr said it doesn't solve the problem of, if you want more in a plan, where does the Committee draw the line on Metro's own authority to put something into it versus what it can do by policy making outside a plan.

Tim Sercombe said he doesn't think the Committee draws that line. The Committee says this is the exclusive way for making policy affecting other local governments, and that it may set policies in other areas. You don't say that Metro has to act through their regional framework plan in order to set policies and have that be exclusive. Otherwise you can't draw any lines that are meaningful.

Larry Derr said that there is another category with that. What about people, affecting the population generally?

Tim Sercombe said he isn't sure those distinctions can be drawn easily. It is not just the subject matter limitation talked about in the regional framework plan, but it is also the process of adding to it, and other things.

Larry Derr said the real problem is the question of whether there can be broad-reaching policies for which Metro is the only governmental agency affected and that rises to the level it should be in this regional framework plan. He said there are policies that fall within the category of subject matter in the regional framework plan. If that is the case, you just say that any policies related to this subject matter has to be in this plan. The other extreme would be to say that the only things that can be in this plan are things that affect local government. You don't want to do that. Tim Sercombe has highlighted the problem that has been there all along, which is that things are going to come up that Metro will want to do, that it probably doesn't need to do through a comprehensive plan, but arguably has subject matter that touches on the list, but at a lower level.

Tim Sercombe said suppose Metro wanted to operate a new recycling facility--something that isn't currently being recycled.

Frank Josselson said that clearly falls within the solid waste area.

Larry Derr said if there were some nice way to get on paper the difference between policy plans and functional plans--where functional plans are implementation planning devices and policy plans are at a broader level--that's the concept that the Committee is trying to work with.

Tim Sercombe asked why, in a charter, you would want to say that a local government--when it is operating in an area where it has authority and it is assigned a function through a process--has to have a plan before it can adopt policy, as opposed to when it adopts policy, plans have to be made consistent with it.

Larry Derr said the Committee has imposed an additional requirement that would not normally be there for some kinds of planning, namely, going to the RPAC. If Metro eventually gets authority to perform an additional governmental function, and then it wants to plan for the execution of that

operation, it doesn't have to go back to the RPAC for approval. But if it wants to do something differently than is in the plan, if it wants to change the plan, then those changes must run through RPAC. The intention was that the things that go into the plan are of a higher level of regional, long-range impact than the things that don't go into the plan. The thought that went into it was that you hand over a great deal of authority and you fund it and make sure the it gets carried out by the government. To get the vote of local governments, you give them a role. That role isn't necessarily appropriate when you're down to the level of, say, deciding how to operate the landfill site, or even necessarily where to put it.

Tim Sercombe said the discussion is about what has to be in the framework plan before Metro is to do something. The subcommittee is saying that the exclusive way for Metro to control other local governments is if it has policies in the framework plan that authorize it.

Larry Derr said if the policy is in there, Metro is bound to do it in conformance with the framework plan.

Tim Sercombe said that one thing Metro does is adopt policies to be applied to local governments. It has the authority in the regional framework plan to do that.

Chair Myers said Metro doesn't have the authority if it is a service delivery issue.

Larry Derr said that the empowerment to perform some other function does not come from the framework plan, but from other processes.

Tim Sercombe asked, if Metro wants to perform some other function, does it have to have a plan for doing that, adopted through the regional framework plan.

Larry Derr said if a function is in the regional framework plan, then whether Metro or anybody else is performing the function, it has to conform to the regional framework plan.

Tim Sercombe concluded that if Metro is providing an exclusive regionwide service, it doesn't need to establish policies applicable to that provision in the regional framework plan.

If the framework planning process results in affecting some Metro function, then the policies have to be consistent with the framework plan.

Larry Derr said the subcommittee may be creating more of a problem than it needs to. All the outline has done is list the categories of things that have to be addressed in the framework plan. The plan isn't being drafted in this charter. The drafters of the plan could well say that certain things could be addressed by not saying anything about them, because they are going to be taken care of in other ways. Then, since the only restriction on service implementation that the framework plan would have is that if it is in the plan you would have to conform with it, if they have decided as a matter of policy through framework plan adoption to address something by leaving it out, they are home free. The charter should list the categories that need to be addressed, but not predetermine how they are addressed.

Tim Sercombe said that it also provides that the only way to adopt policies that affect the content of comprehensive plans and local plans is through this process. That is, it is cardinal.

Frank Josselson said it is certainly accurate to say that if it affects comprehensive planning regulations, it has to be part of the framework plan.

Larry Derr said that Tim Sercombe's concern is whether the charter is hamstringing the government,

saying that you will never know if it touches any of these items on the framework plan, whether you have to deal with it through the framework plan or not. When the framework plan is adopted it is going to say what you do and don't do.

Frank Josselson said that is exactly right. That is the reason that there should only be section 9 and section 10.

Ken Gervais asked, if Metro adopted a regional disaster management plan, that doesn't affect land use, but tells the city of Portland they have to locate some heavy equipment to the west side, would that be outside the framework plan.

Frank Josselson said not really, because disaster planning is part of the framework plan.

Larry Derr said if the result of the process--where presumably Portland would have a great deal of input--is to have in the framework plan that Portland has to relocate a great deal of equipment, they are bound by it. More likely, the framework plan is not going to speak to that degree of detail on regional disasters. Once it is adopted and doesn't say anything about it, Portland may put their equipment anywhere they want to.

Ken Gervais asked, if Metro developed a regional disaster plan someplace else, aside from the process, could it do it however it wanted.

Larry Derr said provided that the framework plan didn't preclude it and had addressed it.

Frank Josselson said that Isaac Regenstreif, former Charter Committee member, had proposed that the regional framework plan address disasters, education, economic opportunity and development. The Committee was persuaded that those things had nothing to do with the regional framework plan. Disaster planning is a vestige of the proposals made by Isaac that tends to confuse one in terms of the purpose of the framework plan. But it is nonetheless there and has to be addressed somehow. The Committee creates problems for itself by trying to anticipate what the plan is going to say or how it is going to be done.

Tim Sercombe asked, beyond the framework plan's effect on the content of other policies--that is, the policies that local government's adopt, their land use regulations and comprehensive plans--what other legal effect does it have.

Frank Josselson said, for example, it may well say there shall be no land additions in urban reserve areas.

Larry Derr said it could say thou shalt not spit on the sidewalk. You regulate directly to the person, you regulate local governments, or you regulate your own governmental function. It could do all three.

Tim Sercombe asked if the plan would in that case say that local governments will adopt ordinances that regulate the spitting on sidewalks. The intent is that the provision would be adopted by ordinance, and actually prescribe individual things such as penalties. That would be part of the plan.

Larry Derr said it would include anything within the authority of the regional government, put in there to implement directly or indirectly, and which is decided to be valid in the process.

Tim Sercombe concluded that the RPAC approves or disapproves on the function area, at the front end, but after that there is no other check on the content on substantive relationships, except in a

consultive role.

Frank Josselson said where the Committee has said "matters addressed in the regional framework plan," it might be better to add "growth management aspects of:" and then list the functions. Tim Sercombe asked what that means.

Larry Derr said it doesn't make any difference what it means from the standpoint of regulation, because the regulation is going to be in the form of what gets into the plan ultimately. But it says there is not going to be a regional plan that says where and how big each reservoir for water storage is going to be. The regional plan looks at how to provide for water and how to direct growth for the future. This isn't an attempt to limit the plan. The limitation on the plan is going to be the process. The Committee is limiting the categories of consideration in the plan, but not the scope of legislative action, restriction and direction. The process will do that. The process of who is elected to the council, the process of who is on the RPAC, etc.

Frank Josselson said it does no violence to what the Committee has done to call the regional framework plan the regional growth management plan. It may be more consistent in terms of preventing the kinds of debate being held. Unfortunately, the Committee wasn't drafting a charter, it was trying to work out concepts. The concept is: *Section 9. "Regional Growth Management." Subparagraph (a) "Future Vision". Subparagraph (b) "Regional Growth Management" or "Regional Framework Plan". Subparagraph (c) "How to delete or add to the list of regional planning functions in the Regional Framework Plan."*

Tim Sercombe said he is trying to figure out which things have to be in the plan and is the process the exclusive process for the government to do certain things.

Larry Derr said the answer is nothing has to be in there.

Tim Sercombe concluded that the only exclusive process is when you're dealing with affecting comprehensive plans and land use regulations. If Metro wanted to manage greenspaces through this process, and it decided that it included regional parks, it would adopt ordinances on the behavior of people in parks--that are regional greenspaces--and it could do that by passing an ordinance, that it wouldn't have to go through this process. It wouldn't have to consult the RPAC before adopting an ordinance governing behavior in regional parks.

Larry Derr said after the framework plan is adopted, during the adoption process, there is a directive in the charter to address regional greenspaces. After the framework plan is adopted, if the council decides it wants to adopt an ordinance that has some policy ramifications, in respect to greenspaces, they would go back and look at the framework plan.

Chair Myers said it would have to be tested against the plan.

Larry Derr said the council would look at the plan as whether it prohibits certain things, or requires an amendment to empower an activity, or does it leave it open to be taken on. It is no different than any other framework plan which has other implementing ordinances that follow from it.

Tim Sercombe offered, as an example, that regional greenspaces would be addressed in the regional framework plan and it sets some policy on that, such as Metro will run the greenspaces in a good manner. Or it is silent on the operation of regional parks. But later they say they want to pass an ordinance and set up policy on how to run regional parks. Do they need to consult with RPAC and make that again part of the regional framework plan before they can do that?

Frank Josselson said, if the question is whether regional parks are within the purview of the regional framework plan, the answer is yes.

Tim Sercombe said he isn't asking that. He said he is assuming that Metro has adopted a regional framework plan component that says greenspaces. One of the components says that Metro shall acquire greenspaces and manage them as regional parks. And now that the parks have been bought, Metro wants to pass an ordinance that regulates private behavior in the parks and that sets out priority of use of the parks. Would that ordinance require the consultation of the RPAC before it is adopted?

Larry Derr said the question is whether an ordinance could be enacted only through an amendment to the framework plan. He said you would look at what the framework plan says about it.

Tim Sercombe asked what if the framework plan doesn't say anything about it. What if it said that Metro shall manage the greenspaces acquired as regional parks?

Larry Derr said that is a delegation and a directive.

Tim Sercombe asked what if it is silent on that issue?

Larry Derr said that if the framework plan is literally silent, if it says that Metro has considered greenspaces and chosen not to include any policies about them in the framework plan, then it is wide open.

Tim Sercombe said, but suppose it points to a priority for acquisition of greenspace with a certain amount of dollars in the bond authorization. And it provides that Metro is going to work cooperatively with other cities, in terms of protecting the area around its jurisdiction.

Larry Derr said that would be as far as it chose to go and that it has chosen not to regulate beyond that level. Then Metro would do the regulation by ordinance or resolution outside the framework plan. Where there is a problem is if it said that Metro can acquire greenspaces in one corner of the region but not the other, and later Metro decides they want to put something in the other corner. So they have to go back amend the plan.

Tim Sercombe summarized that only if something is inconsistent with an expressed provision of the framework plan would it affect the policy making ability of the local and regional government to run their operations.

Ken Gervais said there is another review process affecting the service delivery ability of local governments. If Metro links together a series of parks and decides they have to be free for game to move in there, and Metro tells the city of Gresham they can't put up a fence over four-feet high because the deer can't clear it, Metro would have to go through one of the RPAC processes to get the approval of local governments. It wouldn't go through the framework plan.

Larry Derr said probably not. There could be a question as to whether it is framework plan issue or another function issue.

Ken Gervais asked if the determining question is whether it impacts the comprehensive plan.

Tim Sercombe said that raises another important classification issue. Is the Committee saying that, if an issue is addressed in the framework plan by subject area, and has effect beyond comprehensive plans and land use regulations, it can have the effect of authorizing Metro to adopt regulations that

control private behavior, other actions of local government, and financial commitment actions of local governments? If that is the effect of the regional framework plan, and if only an RPAC approval is authorizing the function--say if RPAC is authorizing greenspaces--does that mean that through the framework plan the council could adopt policies that say the city of Lake Oswego shall maintain no less than 30 percent of its geographic area as open space because of the value of trees in that city? How this works as a land use planning thing, and how it governs plans is easiest enough, because there is a model under state law. How it works in other ways is not very apparent. Whether or not it controls policy making in other areas of local government land use and private behavior--and if it does, will it become the exclusive way to do that in that area--is very amorphous. The provisions have to be well thought out if they are going to be in the charter. Otherwise, there will be decades of fights about whether the process is one way or the other. That is the risk of putting some level of detail, as this does, in the charter. Committee members have said they don't want to allocate what services are in the regional framework plan process. But this process, if it means more than land use planning, could mean that if RPAC says that water sources and storage are of metropolitan concern, they could ask for a plan from Metro. But suppose Metro should come back with a notion that they should own Portland's water supply and adopts an ordinance that says that. He said he isn't sure how far the process goes.

Larry Derr asked, if the regional government is legislating in a way that affects local government land use documents through the framework plan, is there a way that the legislation would affect people directly or local government actions other than through their land use planning documents, that would be pure regulation that would not affect some other function of government.

Tim Sercombe said it might be local garbage pickups. No government currently is collecting garbage. Everybody is franchising it out. Suppose Metro passes an ordinance that says everyone has to recycle, and specifies how it is to be done.

Larry Derr said he wouldn't have any difficulty putting that into the other function box, which is outside the framework plan.

Tim Sercombe asked if the "other function box" includes local government services.

Frank Josselson said he would put it into the "other function box." He said if he were a member of the regional governing body, and the RPAC came to him and said they would like that to be in the regional framework plan, he would then reconsider the earlier determination. It is hard to put too fine of a point on this stuff, and you have to depend to some extent on the processes and the existence of a standing committee to work out the details. There are going to be problems, and you can't anticipate or solve them all.

Larry Derr said that the best way to deal with the problems is to have a thoughtful framework plan that does what plans in the past have not done very well--many of them were drafted before anybody knew they were law--which is to say that this is in and that's out.

Frank Josselson said that one of the things the Committee did consciously try to avoid is doing the planning by itself, trying to anticipate what the regional government ought to include in the plan and what not to include under various subject matters. But that should be left to Metro and the RPAC to figure out. But the Committee has some things that it knows that the regional government should look at for sure. As Larry Derr correctly points out, if disaster planning is being carried out by some federal agency, it would be sufficient for the framework plan to say it is being done by a federal agency and what they are doing is perfectly adequate. On the other hand, if, in the regional framework plan the council wants to get into the question of garbage pickup and curbside recycling, it is something they should be able to do, subject to RPAC approval.

Larry Derr said the framework plan on regional disasters could go one step further. It could say that the federal process is working fine currently. To the extent that additional things may need to be done, it should be done by the council outside of the regional planning process.

Frank Josselson said that is right. This is a matter of suspending disbelief and suspending determination to make or anticipate the policy that might to be made.

Tim Sercombe said he isn't worried about subject area. He said he is worried about whether or not the process described in the charter is the exclusive process for the government to do certain things. Secondly, what kinds of things can the government do through this process, categorically in terms of adopting regulations that affect private behavior and non-land use policies of local government?

Larry Derr said that it is no different than it is today. When you say, "must plan for," and "must implement in accordance with plan," the question of what degree of detail do you have to plan before you can implement is always going to be there.

Tim Sercombe said that model is a model that is talking about implementing a plan through adjudicative case-by-case decisions, and through general regulations that deal with land use decisions.

Larry Derr said no. That is the model for most of the service functions of Metro. Metro must plan for solid waste management and then implement its functions pursuant to the plan.

Ken Gervais said that solid waste is the only area. Metro has no functional plan for its operation of the Zoo or the MERC. There is separate state legislation that requires Metro to have a plan for solid waste.

Larry Derr said there is nothing in the draft charter that says Metro has to have a plan for the Zoo. But there is an example in operation today, about which people could take issue, and argue whether a plan authorizes a government to do certain things. Does the plan have to authorize a government to do certain things?

Chair Myers said he would like to include the revenue section in the next meeting of the Drafting Subcommittee, where they can also look at structure. He announced that the next meetings of the subcommittee would be June 2 at 5 p.m., and June 4 at 8 a.m.

Chair Myers adjourned the meeting at 12:40 p.m.

Respectfully submitted,



Kimi Iboshi
Committee Clerk

Reviewed by,



Janet Whitfield
Committee Administrator