

**METRO
CHARTER
COMMITTEE**

P.O. Box 9236 • Portland • Oregon 97207
Phone 503-273-5570 • Fax 503-273-5554

AGENDA

DATE: June 2, 1992
MEETING: Drafting Sub-Committee
DAY: Tuesday
TIME: 5:00 p.m.
PLACE: Metro, Room 440, 2000 SW 1st Avenue, Portland

5:00 Consideration of Charter elements which have been drafted. Discussion of recommendations to be made to the full Committee on additional Charter provisions.

DATE: June 4, 1992
MEETING: Drafting Sub-Committee
DAY: Thursday
TIME: 8:00 a.m.
PLACE: Metro, Room 145, 2000 SW 1st Avenue, Portland

8:00 Consideration of Charter elements which have been drafted. Discussion of recommendations to be made to the full Committee on additional Charter provisions.

MINUTES OF THE DRAFTING SUBCOMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT
CHARTER COMMITTEE

June 2, 1992

Metro Center, Room 440

Subcommittee Members Present: Hardy Myers (Chair), Ron Cease, Larry Derr, Matt Hennessee, Frank Josselson, Ray Phelps, Mary Tobias

Other Committee Members Present: Ned Look

Chair Myers called the subcommittee meeting to order at 5:10 p.m.

1. Subcommittee consideration of charter elements which have been drafted.

Tim Sercombe reviewed the changes made by the subcommittee's instructions from the last meeting. He said that further work may be necessary to comply with that. He said the first change requested by the subcommittee is in section three. He said that he has not been able to find out exactly how the boundaries of Metro are defined currently--if they are defined by ordinance or resolution. At the last subcommittee meeting, the members discussed that the metes and bounds description had been repealed. He said that he added a sentence in section three that requires the keeping of a description of the Region's boundaries and making it available for public inspection as a means of reference as to what the boundaries are. He suggested that the subcommittee keep the current language about it being the boundaries as of November 3, 1992. He said that there were a number of changes in section four suggested by the subcommittee, including deletion of the statement "among other things, matters of metropolitan concern include the planning and management of urban growth and the coordination of the provision of public facilities and services within the Region. 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. The meaning of 'matters of metropolitan concern' is flexible and may evolve over time." He said that, in the next draft, he would take those out and put them, for discussion purposes, in the commentary.

Ron Cease said that he had a question about the name of the organization.

Chair Myers said that is an open question. Tim Sercombe just supplied a name for the purposes of the draft.

Ray Phelps asked why the deletions were made in section four. He said that, as it reads now, it does not say anything.

Janet Whitfield said that the argument was that the Committee had not passed on it.

Ray Phelps said that he does not know what it is saying.

Tim Sercombe said that there are three levels of inquiry proposed by the charter about whether it is appropriate for the region to engage in an activity. The first is it being a matter of metropolitan concern. The next step would be whether the council has assumed the function properly under the charter. There might be further inquiry about the activities relationship to the Regional Framework

Plan. He said that it is not a power conferring section as much as the sections relating to the exercise of functions might be. The council has to make a determination when they assume a new function, even if it is a matter of metropolitan concern. The intent, as originally drafted, was to give some guidance as to the factors that might be relevant in deciding that a matter is of metropolitan concern. He said that he thinks the subcommittee felt that this might be contentious if there was not any Committee consensus on the factors and it would be best to leave it out.

Larry Derr said that it is not an issue of what the subcommittee felt, it is an issue of what the Committee did. He said that the role of the subcommittee is to bring back to the Committee a draft that reflects what the Committee did. He said that the Committee either did or did not decide upon a definition of "metropolitan concern". He said that his recollection is that the Committee did not decide on a definition. If it did not, then it would have no place in the charter draft.

Janet Whitfield said that the Committee only addressed it in taking on additional functions.

Larry Derr asked, if that is the case, why would the language, that has come out, be in a commentary.

Tim Sercombe said that, as they go through the charter, there are lots of things that the Committee has not discussed. He said that he thinks it is appropriate to highlight that.

Larry Derr said that is not one of those. It was discussed at length.

Tim Sercombe asked if the Committee decided not to place something in the charter on it.

Chair Myers said that it could be left out altogether.

Frank Josselson said that he thought the subcommittee decided at the last meeting that a section of this sort was unnecessary because the constitution defines the jurisdiction of the region. The specific sentence that is left is inappropriate in as much as the Committee decided not to define the term "metropolitan concern".

Chair Myers asked that the *Jurisdiction of Region* provision be reworded to say that the region has jurisdiction over matters of metropolitan concern assigned by this charter or acquired by the region in accordance with this charter.

Tim Sercombe said that it could be reworded that way. If there is no desire to supply any content to the meaning of the term, then it may be best just to eliminate the section altogether because the function sections describe how functions are assumed or not. The value for the description to give some guidance to the future councils making the determinations that the charter requires and minimizing the potential for litigation.

Ron Cease said that he recalls that the reason the Committee decided not to do it is because it became almost impossible to come up with a definition that would cover all potential possibilities. He said that the Committee did pass a motion that said at the time that the council put something on the ballot, it would have to declare some sort of findings of why it was of metropolitan concern. He said that there is nothing wrong with having them make a case, but it was in lieu of a definition, in effect, that would apply in all cases. He asked if that provision should be in the charter at all.

Chair Myers said that if it does need to be in the charter, it does not need to be here. He said that if there is a requirement for findings, it should come in the provisions that deal with the acquisition of further authority.

Tim Sercombe said that it is in the charter. He said that the phrasing for metropolitan concern is not phrased in an inclusive definitional context. It is phrased that there are some factors to consider in deciding whether or not something is of metropolitan concern. He said that it assumes removal from the table of litigation that those things designated by state law as authorized functions of a metropolitan service district are matters of metropolitan concern and leave to a separate determination whether or not it is an assumable function. If it is not treated, the whole provision could be eliminated.

Ron Cease asked Tim Sercombe what he would do with those additional functions that they do not currently have.

Tim Sercombe said that the instructions distinguish between whether those functions are currently performed by local government or not. If they are, then it requires that they have RPAC or voter approval.

Ron Cease said that the Committee talked about functions that, with the adoption of the charter, the Region government would be given. He said that the Committee did not do anything in that area, except planning. They are given planning responsibilities not currently in law, but would be given as a result of the charter.

Janet Whitfield said that it is part of the Regional Framework Plan.

Larry Derr said that he thinks the *Jurisdiction of Region* clause, even if it is only the first sentence, should be in the charter so that someone does not have to open the constitution to find out what the scope of authority is. He said that Chair Myers' suggestion enhances the sentence.

Chair Myers said that the first sentence, if it were to stand with nothing more, has a potentially pig-in-a-poke sense to it from a political standpoint. He said that it needed to be contracted somewhat. He said that his own conception is that the Committee views that the authority of this government was going to be what the charter gives it or what it acquires thereafter in accordance with the charter. To the extent that there is state law that gives it more, he said that his conception of the Committee's view is that there would be an effort to get the legislature to recede from that so that the powers of this government will be as defined in the charter.

Ron Cease said that when the Committee talked about functions, they said that there are functions that the legislature could give them in the future.

Chair Myers said that he was not talking about mandates, he was talking about authorization.

Larry Derr said that powers are used as implementing authority, functions are specific activities, and the Committee has limited the number of functions and has provided a process for adding functions--for any function that is authorized, there are implementing powers intended to be all inclusive. He said that jurisdiction is the total scope of all the things that the government can do, presumably described as the sum of all functions. He said that describing jurisdiction in a broad sense and still not having it be a political red flag makes sense because the Committee is not saying that is all the government is going to do in describing its potential functions.

Tim Sercombe said that there will be controversy about whether assuming a particular function, even under the process described in the charter, is over a matter of metropolitan concern. He said that Larry Derr describes the structure accurately--jurisdiction is a very broad concept without much real content and function allocation and assumption has been the focus of the Committee deliberation.

Larry Derr said that the Committee stayed away from a definition because every time they tried to put words on paper, they found that it was more apt to limit than to expand the scope. He said that the Committee's intention was not to limit.

Chair Myers asked if it was agreeable to the subcommittee to have the charter redrafted to add the further reference, regarding matters of metropolitan concern being assigned or authorized by the charter or as thereafter acquired by the charter, to the first sentence.

Frank Josselson said that there was language that the subcommittee specifically discussed at the last meeting--"the region has jurisdiction over matters of metropolitan concern set forth in this charter or is added or deleted pursuant to processes identified in this charter".

Janet Whitfield asked if that statement makes it a special purpose charter as opposed to a general purpose charter.

Tim Sercombe said yes, but it is not a phrase that is used with charters. He said that section five discusses functions that are allowed by the charter as distinguished from those who are allowed under the charter. He said that the section is now descriptive as opposed to those performed by Metro as of the day of the election. He said that he is not confident that the list is an accurate description or the sum of all the current functions. He said that there are some functions that are mandated under the statutes that they may not be doing now. He said that he did not know if it was the Committee's intent to include those functions as allowed by the charter without the need for further process, or to require processes to occur for those functions that are mandated, but are not currently being performed. He listed the ones that appeared to be mandated in general and, specifically for regional functional plans, referred to transportation, greenspaces, waste water management, and storm water management which are the subjects of current regional functional plans. He said that those are the initial functions allowed by the charter and they would require no further processes in terms of RPAC or voter approval for those functions to continue.

Ron Cease asked what the phrase "limited to..." means in reference to anything that the state might mandate.

Tim Sercombe said that it means that the only thing that the region can do are either functions that are allowed by the charter or allowed under the charter. The phrase "under the charter" has more reference to section six which describes processes for assuming particular functions.

Ron Cease asked if it would include anything that the state would mandate.

Chair Myers said no. He said that they are talking about the acquisition of functions outside of a mandated structure. If a function is mandated, it is mandated and is not a matter of acquisition through the processes.

Matt Hennessee said that if something is mandated, it is just done. He asked if it is then in conflict with what the charter says here.

Tim Sercombe said that there is some conflict between the current Committee instructions and the reading of the mandated functions in ORS 268. He said that it is not clear whether the charter would control over those mandated functions. He said that he does not think so, although he has not come to a conclusion. He said that it is more difficult to inquire can the charter prescribe special processes that have to be followed before those mandated functions can be assumed, which is a case in the current requirement that parts of the Regional Framework Plan be approved by RPAC or the voters before they can be assumed. He gave the example of the current state statute requirement that Metro

consider air and water quality acts in its regional planning efforts. He said that is not on the list that the Committee generated. He said that there are some current conflicts between those instructions and what state law mandates and it is not clear to him what happens if there are those conflicts in the charter.

Matt Hennessee asked if it makes sense to put forth a process within the charter for things that are mandated, although the Committee thinks that there is a process already.

Larry Derr said that there is a simpler approach which is to be much more general in the planning area under the statement of those things that will be done because the process was intended to be a constraining process. If it gets too constraining and runs afoul to state law, so be it--someone will point it out.

Janet Whitfield said that the outline says *federally mandated functions*, but it does not talk about state.

Larry Derr said that Tim Sercombe has largely pulled out of the statutes the various phrases that relate to planning in the planning area. He said that he thinks that works well for other functions in the planning area since the Committee has dealt with that in quite a bit of detail within the charter outline. He said that, at this point, the simplest thing might be to speak generically.

Frank Josselson said that he thought the subcommittee, at the last meeting, decided to say that the functions of the region were limited to those assigned to the regional governing body by this charter or subsequently added pursuant to procedures specified in the charter. In subsequent sections, the functions would be specified or enumerated. He said that, when it is done as in the draft, it could be, for example with land use, limiting with respect to subsequent sections of the charter. Unless the Committee wants to be more complete in their description for each of these functions, there is a danger of limiting or creating conflicts that are unnecessary. He said that his personal preference would be to do as discussed in the last meeting--to say simply that this is a government of enumerated functions and that functions may be added pursuant to processes specified.

Chair Myers said that the subcommittee has some discussion about possible redundancy between section four, *jurisdiction of region*, and the introductory language in section five, *exercise of functions*. He thought that they agreed that they were going to say, in section four, that the region has jurisdiction over matters of metropolitan concern assigned by this charter or thereafter acquired in accordance with this charter. He said that it would move straight into a delineation of what the functions are that are being assigned, starting with the growth management function. Those provisions would be the first up with respect to describing the assigned functions of the government. The next provisions would be for adding or deleting to the areas embraced within the framework plan.

Larry Derr said that, in between, there would be the listing and enumeration of the other functions that are assigned.

Chair Myers said that he thought the subcommittee left it, just as a matter of order of sections, with the provisions that describe the governments functions with respect to growth management and then the provisions about how additional subjects within the Regional Framework Plan could be added. Then there would be section that would describe the service kinds of responsibilities, followed by the section describing how additional responsibilities of that kind would be acquired.

Larry Derr said that the subcommittee did not take a vote on it. He said that they generally disagreed on the subtlety of the *by and under* wording.

Tim Sercombe said that, in the instructions, there is a fair degree of ambiguity about whether the Regional Framework Plan is a concept that is a description of the manner for assuming a function or whether it is a way that the regional planning function gets performed. The blending of that issue produces a good degree of ambiguity on the issue of whether there will be some provisions about how you assume functions and the process to do it. He said that there would be some provisions for how the regional planning function is performed and what occurs when that happens. He said that there is some risk, in the first section of the charter, in talking about how regional land use planning occurs before talking about what functions are given to the region and how additional functions are assumed. He said that the intent, in terms of the structure, was that there are certain functions that are allowed directly by the charter. He said that he understood the Committee instructions to be a list of those.

Chair Myers said that it is a question of what comes first in describing the functions of the government. He said that the first function described is the provisions with respect to the Future Vision concept.

Frank Josselson said that he thinks it went so far as to say that the title of the section is "Growth Management", sub-paragraph (a) "Future Vision", sub-paragraph (b) "Regional Framework Plan", sub-paragraph (c) "How to add or delete to the Regional Framework Plan". It would then move on to solid waste, other services, the procedures for adding or deleting those services, Tri-Met, and the procedures for assimilating Tri-Met. He said that was his understanding of the way that the subcommittee went with that on Friday. He said that he thought the instructions for the growth management were very specific. He said that the outline expresses very clearly what the intention of the Committee is.

Tim Sercombe said that the subcommittee instructions were to move the content of growth management planning to a front section, but, as he reads the Committee's instruction, there is an overarching, leaving aside regional planning, control or lack of control on the assumption of functions. Certain functions that are presently performed can continue to be performed and there are particular processes for when the region government does local service functions or does a function that is traditionally performed by a local government. He said, beyond that, the only control on it is that the regional government council must pass an ordinance stating that it is a matter of metropolitan concern. He said that is the architecture of how functions are assumed or not. He said that, in a logical sense, it makes sense, in a charter, to work from the general to the specific and, in the beginning, talk about the jurisdiction, functions and processes for assuming functions. Then, it could be geared toward one function and the particular controls that would be put on the one function. He said that he did not pick up from the subcommittee that they wanted a particular description, section by section, about particular powers within each subject area. He said that the instructions of the full Committee seem to treat it more generically. He said that the full Committee would treat it in the sense that for particular functions, there will be particular processes, but, apart from that, the regional government will be allowed to assume matters of metropolitan concern by ordinance with findings and treat it differently when dealing with services.

Chair Myers said that the subcommittee's view of the Committee's expectations and decisions is that, in the area of the described functions of this government, the first area of functions to be described will be those pertaining to growth management and then a provision as to how the scope of the elements within the regional growth management plan--a new name for the Regional Framework Plan--can be added to. Then, there would be a description of the other functions assigned to this government, such as solid waste and regional facilities. The provision describing how the government may augment its service related responsibilities would be the last area.

Larry Derr said that Tim Sercombe's point about separating the implementation from the description in granting probably makes sense. He said that there is detail on the implementation of the growth management issues, but there is no detail on the implementation of any of the other assigned

functions. If the subcommittee follows Chair Myers' format that they agreed on, then all that would be said is that the growth management task is the Future Vision and the Regional Framework Plan and these are the methods to add to it. It would then move to the other functions and process. After that is done, there could be a section, that follows, on the implementation details of the Future Vision.

Tim Sercombe asked, in the description of the functions which the region can do, apart from going right into growth management, what did Larry Derr suggest.

Larry Derr said that the major heading would be the statement that the subcommittee members discussed Friday about functions of the region being limited to those assigned to the council by this charter and subsequently added pursuant to processes.

Tim Sercombe said that is a jurisdiction issue--limited matters of metropolitan concern as assigned or authorized by this charter.

Larry Derr said that it could be an inclusion in the jurisdiction section.

Chair Myers said that he thought the Committee had already covered it.

Larry Derr said that, from the standpoint of style, having an introduction to tell the reader where you are going probably makes sense. He said that the next section is the first assigned function--growth management. That function would include the Future Vision, the Regional Framework Plan, and provisions for adding to or subtracting from the scope of the Regional Framework Plan. He said that the next section could be in the form of a list within one section, separate sections are not needed. It would include the additional functions which are descriptions of the existing things that the regional government is doing and a process for adding to it.

Tim Sercombe asked if he would not go into all the detail about the Regional Framework Plan and Future Vision at the beginning point.

Larry Derr said that it could be saved for a later section.

Tim Sercombe said that, basically, in section five, it would put into more prominence the adoption of the Future Vision and Regional Framework Plan. It would then follow with the list of the other functions.

Larry Derr said that, after the generic statement that the total jurisdiction and the ultimate potential set of functions of the entity are those of metropolitan concern and those assigned by the legislature, the next sentence could be "and the functions assigned by the charter are set forth in the following sections..." The first following section would be growth management.

Tim Sercombe said that, in section five, he has said that "the functions of the region are limited to those allowed by this charter". He said that "assigned by" could be substituted for "allowed by". He said that the distinction is that there are certain things that are assigned by the charter and certain things that are allowed under the procedure specified in the charter. He said he is hearing that the listing of the Regional Framework Plan and Future Vision should be moved into more prominence by treating it as an allowed function. It would be treated in a separate sentence but would be in another allowed functions of the region in another sentence before getting into the processes for assuming or ending functions.

Larry Derr said that is not what was said Friday or three or four times just a minute ago.

Ron Cease asked if Larry Derr was talking about a separate section for the growth management functions.

Larry Derr said yes.

Ron Cease said that he has no problem with that. He said that it follows the concern that some of the Committee members had that it would be highlighted.

Tim Sercombe said that he understands that the changes are to treat existing and assumed functions in separate sections of the charter and to treat the detail of what a Future Vision statement looks like and a Regional Framework Plan looks like in separate and later sections. He said that, immediately after stating the jurisdiction of the region, there would be a separate section that says that functions assigned or allowed by the charter are the development of the Future Vision and Regional Framework Plan and processes that are treated later on. It would move on to say that other functions allowed by the charter are the list currently stated in section five. It would move on to the generic processes for taking on additional functions.

Larry Derr said that there was one part that was out of order. He said that Tim Sercombe mentioned that since the processes are different for growth management functions and the others, the process following each of those categories would be described. He said that it would go growth management, then process, other functions, then process.

Chair Myers said that it is his understanding that, in this initial section, there would not be any reference to functions like solid waste.

Larry Derr said that there would be three separate sections. Section one is the generic statement, section two deals with the now and future changes for growth management, and section three deals with now and future changes for other functions.

Matt Hennessee said that there seems to be some pretty hard and fast held opinions about what ought to go first and what, in his opinion, is a matter of formatting.

Larry Derr said that is what the subcommittee decided on Friday and asked Tim Sercombe to do. He said that it is not cast in stone and is open to discussion. He said that right now, the subcommittee has been having difficulty getting Tim Sercombe to understand what it is that the subcommittee told him to do Friday.

Ray Phelps asked if the subcommittee is supposed to be formatting it or critiquing it.

Larry Derr said that the subcommittee critiqued it Friday and it has not come back the way they asked which is the problem.

Ray Phelps said that they did not critique it. He said that Larry Derr is trying to outline the draft and write it. He said that he is not interested in doing that. He said that Tim Sercombe is trying to write the draft reflecting the outline and what he heard from the Committee. He said that the subcommittee task, as he understood it, was to see if those words faithfully got transcribed and set down on paper. Now, the subcommittee is chasing commas.

Chair Myers said that there is a legitimate issue raised as to placement, order, and sequence.

Ray Phelps asked in what context is it a legitimate issue. He said that he has been around legislation for a long time and has yet to come to grips with why something has to be positioned in the way that

the subcommittee is arguing about right now.

Chair Myers said that there is a question of what the Committee decided and what they expect. He said that his own view is that the Committee decided, and is expecting, that the responsibilities of this government, with respect to growth management, are going to be described first.

Ray Phelps said that he thought the issue was that growth management was going to dominate the agenda of the government and how it got stated in the draft was a function of that dominance. He said that as a citizen, not a practitioner, if he picked up the article, he would not figure out what it was doing until he was able to read all the way through it. He said that it should not be written for lawyers.

Ron Cease said that it makes sense, if you look at the nature of the organization and what it does. He said that one big function area is planning and another is everything else. He said that it makes sense to put the planning part in a separate section and put the others in another section.

Ray Phelps said that he thinks that was done.

Chair Myers said that they are talking about implementing an approach that was discussed at some length on Friday.

Janet Whitfield said that the process was written and then they went into the Regional Framework Plan and the Future Vision. Sequentially, the process came first and then the Regional Framework Plan. She said that she had earlier questioned how the process related to the Regional Framework Plan and was told that the process does relate.

Mary Tobias said that the one thing she thought that the Committee had done, very specifically, was to create two precise sets of functions. One set being planning, including growth management and the second set of functions being service delivery. She said that she has always had trouble figuring out how the two were separate, but she thought that the sense of the Committee all the way through was that there were two and that they were two different processes, although they are slimly distinguished one from the other. She said that, beginning with the text of explanation, she could not tell what she was reading about in section five and six until she got to the last sentence of section six which said that the planning function would come under section seven. She said the one question that held through the entire section was whether the Committee felt that it ought to be a service function with the planning function addressed. She said that the same conclusion could not be reached as a non-participant in the entire debate.

Chair Myers said that what Mary Tobias is saying is essentially what some of the others are saying about, in part, the organizational question.

Mary Tobias said that she did not think that the organization is that unreal for what the Committee is talking about. First it talks about functions, but she could not see the breakout for service. She said that planning is very carefully delineated with the concept of service delivery being a separate issue. She said that it is not broken out as clearly.

Chair Myers said that he thought things were left at the last meeting that planning--growth management--responsibilities were going to set forth and described, then the procedure by which the areas covered by the regional growth management plan could be changed according to the procedure the Committee adopted. There would then be a delineation of the other functions of the government and the procedure by which those could be augmented.

Mary Tobias said that she does not see service functions as conceived by the Committee in the text at the moment. It gets real muddled. She said that it does not really matter which one is first. The intent has to be there. If they are both addressed, it is not going to make a big difference which one comes first in the text.

Chair Myers said that he does not want to spend a lot of time on the order of the sections. He said that is a judgement the whole Committee can accept or reverse. The deeper point is whether the subcommittee agrees that they ought to be segregated so there would be a description, whether it is first or second, in relation to service functions, a description of the growth management responsibilities and how that has changed, in terms of the procedure, and a description of the service functions and how those are added to.

Ron Cease said that it is easier to understand and read if they are separated out.

Tim Sercombe said that the preferred order would be that a function of the region is to do regional planning and then go into the detail of that--what regional planning is authorized and how other things are added on to the regional planning responsibilities. It would then talk about other functions. It would list the various things allowed, then talk about how anything else is added on to those other functions that are not regional planning and the processes for doing that.

Matt Hennessee asked if he understood correctly that the text of what Tim Sercombe just talked about is everything that he just got done outlining.

Chair Myers said that, with revisions, there is text already in the charter. He said that the subcommittee is talking about rearrangement. He said that his conception was that there was going to be some limited introductory language with respect to the performance of the Future Vision and Regional Framework Plan. Then, those would be set out in operative detail. After the introductory language, the *general growth management guidelines* section will be next followed by the Regional Framework Plan, and then there will be the description of how the elements of that plan can be added to. There would then be a description--a single section with sub-parts--that picks up the other service related functions the charter is assigning which is basically the solid waste and the facilities. There would then be a section on how additional functions can be added.

Ron Cease said that it would make more sense and would be easier to read if there is an exercise of the planning functions followed by a brief description of the exercise of other functions. So that, the two major function areas are right up front. It would then proceed to detail, in the sections that follow, planning, other functions, and how to assume additional functions. The two major functions should be separated. If all the planning stuff is then followed, you will not get to the other functions until half way through the charter. He said that it should not be done that way. He said that they should be separated out in terms of the general introduction, exercise of planning functions, exercise of other functions, and then proceed in detail regarding the other functions.

Chair Myers said that it brings, into the first section, the description of the service function.

Matt Hennessee said that, at the beginning of the charter, one ought to be able to find, in summary form, what the government is all about and then start seeing the detail of what the government is all about.

Ron Cease said that, otherwise, you end up essentially two charters and it makes it confusing.

Larry Derr suggested that Tim Sercombe do exactly what Chair Myers described, except that, for growth management, it is a generic description that serves as a placeholder because that is the one

instance where there is some implementing detail. The implementing detail could be cross-referenced.

Ron Cease said that anyone looking at the charter gets the basic indication of the functions in the first couple of pages with detail to follow.

Janet Whitfield said that Chair Myers was saying Future Vision, Regional Framework Plan, process, then services and process.

Ray Phelps said that is exactly what the subcommittee wants, with the one wrinkle that Janet Whitfield described it in two parts, generically.

Chair Myers said that, in summary, section five will have an initial summary of the planning functions and a listing of the other functions. The elaborated description of the responsibilities relating to growth management will follow.

Larry Derr said that the elaboration of growth management should be all the way at the end of the discussion of functions.

Tim Sercombe said that it could follow the same format.

Larry Derr said that, in section one and two, the reader can see all the functions.

Chair Myers said that there would then be the detailed provisions regarding growth management.

Larry Derr said that if they are going to be separated anyway, they should be moved behind the service functions.

Chair Myers said that is what he said. The section will have a preliminary description of the planning responsibilities and a listing of the service responsibilities.

Ron Cease said that it does not matter exactly what follows as long as there are two separate paragraphs which lay it out.

Tim Sercombe said that he is not certain what the subcommittee consensus is. He said that, as a drafter, he would recommend to do as Chair Myers suggested and pull out the planning as a separate function, describe it generically, and list the other allowed functions. He said that it makes sense, from a drafter's perspective, to treat generically the addition of functions first before getting into a description of how the regional planning function is done. He said he recommends that because he thinks that there is now some confusion over the Regional Framework Plan and whether it is a description over what functions are authorized by the government and distinguished from how it exercises regional comprehensive planning. He said that changing the order may affect that issue.

Larry Derr said that the order Tim Sercombe just described is what he thought they were agreeing on.

Ron Cease asked if the section on *approval of assumption or termination of particular functions* should come after the planning and service descriptions.

Chair Myers said that is what Tim Sercombe will do under the description. He said that section five would include a preliminary description of the growth management responsibilities, which could be drafted in terms of a directive that speaks about doing the two different things set forth in section x and y of the charter, and a listing of the other functions of the government. He said that it does not matter whether or not it is sub-parts of the same section or two separate sections, as long as it comes

before getting into any elaborated description of what the two growth management responsibilities entail.

Larry Derr said that if 5a is general growth management description and 5b is other functions assigned, then 6a would be process for adding or deleting growth management and 6b would be process for adding and deleting other functions.

Chair Myers asked if that would come before describing the growth management in detail.

Larry Derr said yes.

Tim Sercombe said that there is a logical and conceptual difference. He said that it includes the enactment and adoption of regional functional plans, the coordination of land use planning, and the adoption of regional land use goals and objects. He said that it is all part of the Regional Framework Plan concept. The regional planning concept deals with how it is that one performs a particular functions. He said that it does not really deal with what functions are appropriate for the regional government. He said that there is a logical difference between that.

Mary Tobias said that something Tim Sercombe said earlier, about doing regional comprehensive planning, was not the opinion of the Committee. She said that this is not to be comprehensive planning. She said that it is only coordinating planning.

Tim Sercombe said that he meant Regional Framework Planning.

Ron Cease said that he would prefer that the current section five become two completely different sections, but not sub-sections. One would be the planning function and the other would be other functions.

Chair Myers agreed.

Frank Josselson asked if the descriptions were general and if more specific stuff would follow.

Chair Myers said that is true for growth management, but not for the others. Chair Myers asked Tim Sercombe to, at that point, insert the procedures with which to add to the areas of regional growth.

Larry Derr said that he liked the way it started out--section five is growth management, section six is other functions, and section seven is the processes for adding and subtracting.

Ron Cease asked if it would make more sense to leave the issue of additional functions to immediately follow the sections on planning and other functions with the detailed discussion of planning.

Chair Myers said that is how he would logically do it. He said that it should conclude with how to add functions.

Larry Derr said that section seven would then be the details of growth management and section eight is the process for adding and subtracting.

Chair Myers said that there will probably be two sections for the assumption of additional authority. He said that one will be for adding Regional Framework Planning areas and the second one will be the sub-parts of adding to the service functions.

Janet Whitfield reviewed the different sections--section five is the preliminary planning description,

section six is a list of the other functions, section seven is the description of growth management, section eight is the process for growth management, and section nine is the process for other functions.

Chair Myers said that the process part will deal with the planning elements and a second process will be for adding services. He said those would be different sections.

Tim Sercombe asked if parts of *regional planning and coordination*, which deals with guidelines for the Regional Framework Plan, can be broken out into a separate section that deals with how to adopt or amend the Regional Framework Plan subjects. He said that would follow the other substantive part and would go on to how to add on to functions.

Chair Myers said that the sections five and six will be an introductory description of planning responsibilities and a listing of the other functions. The next sections are going to be the description of the growth management responsibilities followed by the Regional Framework Plan.

Matt Hennessee asked if the Regional Framework Plan is part of section seven.

Tim Sercombe said that it is.

Chair Myers said that Tim Sercombe is going to describe how the planning, which has been preliminarily described, will be carried out. There will then be one section which is the scope of the Regional Framework Plan and a section that describes how to add to the other service responsibilities.

Ron Cease said, in regards to the additional planning functions or other functions, it would make more sense to put them at the end with the issue of changing the charter.

Mary Tobias said no because it does not require that kind of a change. She said that it only requires a change in process.

Chair Myers said that, in this overall segment of the charter, there should be a description of the starting assignments and functions that can be added to. He asked the subcommittee to look at the specific provision of *regional planning and coordination*.

Tim Sercombe said that, supposing that the regional government wants to acquire property for the acquisition of water rights so that it could be sold to a region water supplier and the regional government determines that it is of metropolitan concern and that there are not water rights presently. He said that he understands the Committee instructions, the regional government would do so, if no other local governments are presently doing it, by passing an ordinance that it is of metropolitan concern. He said that he has a question of how that relates to the Regional Framework Plan and whether or not it has to assume the function of planning for water supply in order to do that activity or if passing the ordinance authorizes it to do that activity.

Larry Derr said that it is the latter. He said that nothing the Committee has done has said that they have to plan for something through the Regional Framework Plan before it can be done as a service function. If it has been planned for, the service function must conform to the plan.

Ron Cease asked if they could do anything by declaring it a regional concern. He asked if it had to be taken to the voters.

Chair Myers said that it does not need to be taken to the voters if it is not being done by a unit of local government.

Larry Derr said that the draft, in section five, states that "the ordinance may also be subject to section six of this charter". He said that he had the impression that Tim Sercombe felt that there might be a category of future functions that were future, and not enumerated, and did not involve one or the other of the processes for validating them before they could be added functions. He said that he did not think that was the Committee's intent.

Tim Sercombe said that the description in the instructions talk about the process, for assuming a service function that is currently being provided by a local government, which requires RPAC or voter approval. It also discusses a process for planning functions which requires RPAC or voter approval.

Larry Derr said that there is also a process for things not being done by local government.

Tim Sercombe said that the only process for that is the ordinance.

Janet Whitfield said that it require consultation of the RPAC.

Larry Derr said that it is still a process.

Tim Sercombe said that the charter states that anytime that they take on any sort of thing, they need to get RPAC's consultation. He said that section six currently only deals with those processes which require RPAC or voter approval.

Larry Derr said that the processes would be separated out so that the RPAC consultation process would be put someplace else.

Tim Sercombe said that the beginning paragraph of section six says that if it is related to traditional local governmental services, it is required to be approved by the voters or RPAC. He said that the section goes on to state that "before adoption of an ordinance assuming the functions of a boundary commission or any local service function, other than the traditional local government services, the region council shall obtain the recommendation of the RPAC". He said that was from the Committee's instructions, but the subcommittee may choose to say "or any other function" instead of local function. He said that the instructions only talked about getting the recommendation of RPAC when it relates to a service function.

Frank Josselson asked what Tim Sercombe means by assuming local functions.

Tim Sercombe said that he was trying to use the language that was in the instructions. He said that the outline states that "undertaking service functions of metropolitan concern that are not currently being performed by a local government". He said that service functions are distinguished from those that are being performed by a local government, which require RPAC approval or voter approval. He said that the example of acquiring water rights for a potential sale to a government that then operates the water system in the area might be a function that is not a service function and there might be categories of those type of things that might not be a service function. He said that he does not think that all the functions of the government can be divided into planning functions and service functions. He said that the only process that the Committee has described as being particular is when it relates to local government planning or service functions.

Larry Derr said that the first paragraph of section six describes those things that require the approval of the voters or RPAC. The second paragraph are those things which only require the consultation of RPAC.

Tim Sercombe said that was correct. He said that the second paragraph also describes particular

processes or actors, such as mass transit.

Larry Derr asked, regarding the statement "the ordinance may also be subject to section six of this chapter", what functions could be assumed that are not subject to section six.

Tim Sercombe said non-service functions that are not planning.

Larry Derr said that he is trying to figure out what area the Committee missed because they were not intending to miss any area.

Tim Sercombe said that the list also includes federally mandated functions that are not in the Regional Framework Planning process. He said that there may be state mandated functions that do not fit into the planning model.

Larry Derr said that the federally mandated functions was on the planning list, not the service list.

Tim Sercombe said that the universe of what the regional government might do may not be entirely consumed by service functions to government or individuals and planning functions. He said that other things, such as the acquisition of property rights for sale to governments, would fall in the gap.

Janet Whitfield asked if something like marketing would be considered a service or is it something else.

Tim Sercombe said that he did not consider it a service. He said that anytime the government got involved with the provision of goods, it would not be a service.

Larry Derr said that the issue is whether the subcommittee wants to do what Tim Sercombe has done--take care of dealing with the gap by ordinance--or whether the subcommittee wants to fill the gap. He said that he thought the impression of the Committee was that there was not a gap. He said that the underlying philosophy of it was that the Committee wanted to have each process be an oversight over the ability of the regional government launching into new areas spending public funds irrespective of whether it is called a service or not.

Tim Sercombe said that those processes are divided into two--one process that requires voter or RPAC approval and the other process requiring RPAC consultation.

Larry Derr said that the identification may not be broad enough to cover everything.

Tim Sercombe said that if the subcommittee wants to make it all inclusive, they could change the statement "shall also be subject to section six" to make it a "may" statement. The statement "before adoption of an ordinance assuming the functions of a boundary commission or any local service function, other than traditional local government services, the region council shall obtain the recommendation of the regional policy advisory committee" will also need to be changed to be consistent.

Frank Josselson said that the statement "an ordinance assuming functions relating to the provision of traditional local government services, including making local land use and land division decisions and designating land uses on comprehensive plan maps, shall not be effective unless the assumption of the function is approved contemporaneously by the voters of the Region or a majority of the members of the RPAC" is an incorrect statement of the Committee. He said that the Committee decided that the regional government was not to provide any local government services or do any local planning under any circumstances. The regional government may do regional things, but, if local governments are in the course of doing those things, their, or the voters, approval has to be secured before the function is

undertaken. He said that the draft says that the regional government is to do regional things and leave local governments free to do local things.

Larry Derr said that the way to get to it is to say that an ordinance assuming function relating to a provision of a service currently being performed by one or more local governments.

Frank Josselson said that if Tim Sercombe took the language straight out of the outline, he would be doing what the Committee decided. He said that Tim Sercombe has embellished the outline and gotten to something that will enrage the local governments.

Tim Sercombe asked if the intent was that the regional government could never do local planning functions, even if authorized by a vote or RPAC.

Larry Derr said that is correct. He said that the regional government can only do things of regional concern and a local planning function is not of regional concern. He said that the issue was that if the regional government was going to take on a function that a local government was already providing, it would have closer scrutiny than if taking on some function a local government is not already providing. He said that the precondition is that it must be within the authority of the regional government. He said that the process is not one of prohibition. It is one of addition.

Tim Sercombe said that it is in the statement that says before they do traditional local government services, which includes planning services, it must be approved by the voters or a majority of the RPAC.

Larry Derr said that the idea of traditional local services, including land, sprang out of Tim Sercombe's head, not the Committee work. It carries baggage that will create a problem.

Tim Sercombe said that when the outline talks about adding or deleting planning functions, it is only talking about regional framework issues and not local government services as to exclude planning services.

Chair Myers said that it is a battle that does not need to be fought because it does not need to be mentioned.

Matt Hennessee asked if he understood correctly that the statement be amended to exclude the local government services and taking out the local land use and comprehensive plan reference.

Mary Tobias said that someone coming into the process, if a charter had been written using the language from the outline decisions, would come to the same conclusion Tim Sercombe did regarding the *city and county (local) plans*. The level of detail put in outline definitely puts the reader down the path of the regional government having a tremendous amount of sway over the local planning process. She said that the introduction of the text leads you that way. She said that it is understandable that someone using the outline language would come to the same conclusion.

Matt Hennessee said that he can appreciate Mary Tobias' comments. He said that understands Frank Josselson's and Larry Derr's point is fair.

Mary Tobias said that it may be a fair point, but the Committee has said that if this is the intent of the Committee, and the Committee has said this is the intent.

Chair Myers said that he does not read *city and county (local) plans* as an authorization for the regional government to directly take over.

Tim Sercombe said that the authorization, and this section of the charter, addresses the *undertaking or deleting planning functions of metropolitan concern* section of the outline. It uses the same processes as used in undertaking service functions, in terms of the approving authority. He said that he interpreted planning functions to mean local planning functions. Regional planning functions would be dealt with in the regional plan. He said that there is a separate part that talks about planning and other service functions that are done. He said that he made mention of it because it was mentioned in the outline. He said that if it is too politically sensitive, it can be omitted, but the effective would be the same--that planning is a local government service function and can be done if it follows this process.

Larry Derr said that planning was a shorthand for the planning functions. He said that it could be all encompassing, to the extent that it could be justified as a regional concern, and could dip into something that is traditionally local. He said that the Committee started out with processes for addition that were ultimately different than what was adopted. He said that the processes were different, at one point in the discussion, for adding to the content of the Regional Framework Plan and for adding functions presently being provided by local government, but they ended up being the same. He said that they should both be discussed in the first section.

Tim Sercombe suggested that any reference to planning be eliminated. He said that planning is either a local service function or a regional function. He said that the description for taking on additional regional planning functions is different than RPAC approval or the voters. He said that there is a category of stuff that can be done only with RPAC consideration.

Larry Derr said that is not true. He said that, almost by definition, regional planning is something not being done by local government. He said that the concept was that they may not have the all inclusive list of what kind of regional planning the government might at some time want to get into, which is why there is a process for adding. He said that he agrees that planning could be called a service as well as anything else, but calling it a service provided by local government will not necessarily capture it.

Tim Sercombe said that there would be a separate sentence describing how planning functions can be assumed that is apart from the description of how regional planning functions can be assumed.

Larry Derr asked why.

Tim Sercombe said that, in the part where it discusses the regional planning functions, it treats it differently. It says here are some that you may do and here are some that you may do in the future, upon determination of the council. In order to undertake those functions, you do not need to have RPAC approval or vote of the people. It is done under a particular process. He said that it is entirely descriptive of all the stuff done on a regional planning basis. He said that is described out later on in the charter.

Larry Derr said that if the issue is covered separately, that is fine. He said that the outline shows that Tim Sercombe was correct in that there was a category of federally mandated functions which is something that did not take a process.

Tim Sercombe said that he would change the "shall" phrase back to "may".

Chair Myers said that, in terms of the organizational changes, the subcommittee would be expecting that all of the discussion regarding the adding of functions will be pulled out and dealt with in separate sections, first with how to augment the scope of the Regional Framework Plan and then how to add to the other functions.

Janet Whitfield said that the charter states that the functions allowed under the charter would be authorized by a non-emergency ordinance. She said that she could not find a reference to the non-emergency clause for functions in the outline. The Committee only voted on a non-emergency clause for finance provisions.

Ray Phelps said that there was discussion regarding the opportunity for referendum.

Ron Cease said that the opportunity for referendum must occur.

Janet Whitfield said that was for finance. She said that there has not been a vote for a non-emergency clause for functions.

Matt Hennessee said that the Committee may have not voted on it. He said that he thought that the Committee had implicitly stated that they did not want to be ram rodding anything through.

Janet Whitfield said that everything on the outline has been checked back with the minutes.

Matt Hennessee suggested that it was something that the Committee ought to come back to.

Larry Derr said that it could be marked as a note to the charter and not included in the charter.

Chair Myers said that it should not be included, but is an issue to be specifically raised.

Tim Sercombe said that the issue comes back in the ordinance section of the charter.

Ray Phelps said that if the ordinance can be referred by petition, then it has to be a non-emergency clause.

Tim Sercombe said that both would have to be changed.

Ron Cease said that the Tri-Met provisions in the charter are not what the Committee did. The Committee was much more specific than that.

Chair Myers said that the Tri-Met provision must be a prescriptive provision that requires the council to create a board of directors.

Tim Sercombe asked if that board of directors would have control over the function.

Chair Myers said that the Committee did not discuss, in detail, the responsibilities of the board. He said that they discussed to what extent it is practical.

Tim Sercombe said that the phrase in the charter regarding to the extent practical was referring to the identity of the persons.

Ray Phelps said that it is really the governing board, not body. He said that governing board would better describe the Committee's intention of bringing the board over.

Chair Myers said that the problem started with Tim Sercombe's interpretation that, literally, the Tri-Met board continue. He said that the way around that is to say that they must create a board. He said that instead of talking about retaining the services of the governing body, the charter might provide that the members of the prior board be the initial membership of that Metro body.

Ray Phelps said that the initial membership would stay until the end of their already appointed term.

Janet Whitfield said that Larry Derr made the first motion which said that the board would be brought over. She said that when he was asked to clarify, he said that the intervening board would be brought over.

Ray Phelps said that the intent of the Committee was to bring over the existing board for continuation and transition.

Chair Myers said that the Committee mandated a board, but did not delineate the responsibilities of the board.

Tim Sercombe asked if the charter could state that the board shall retain, to the extent practical, the services of the members of the existing governing body. Then, the charter could say, in the boards and commissions section, that there would be a board to administer mass transit.

Matt Hennessee said that he gets very afraid of the Committee getting too far pulled into the Tri-Met discussion.

Chair Myers said that all he is trying to do is to make sure that the draft reflects the Committee decisions.

Ron Cease said that the Committee decided if Metro takes over Tri-Met, it is required to have a board and the members of the current board will be carried over until the end of their current term. The functions and the boards relationship to the council have not been dealt with.

Matt Hennessee said that his inference was made because he thought the subcommittee was getting pulled into describing that.

Chair Myers said that is for further work. He said that the subcommittee is talking about an provision which states that the council shall by ordinance provide for a board of directors. Implicitly, it is talking about the same number of members. The members of the transit district's board at the time of the takeover will be the initial membership of the board for the balance of their respective terms.

Tim Sercombe said that it could be expressed in two different places. In this section, it could state that the members carry forward the services. In the boards and commission provision in the draft, it could talk about their being a board for the administration of mass transit.

Chair Myers said that he has no opinion on placement. He said that he is only concerned about the substance.

Larry Derr said that, in order to not have any misunderstanding about the statement "the functions allowed under this charter are activities related to matters of metropolitan concern", he assumed that the "by and under" concept would not be included.

Chair Myers said that the paragraph Larry Derr is referring to is coming out.

Tim Sercombe agreed that the paragraph should come out, but there is a use for the "by and under" concept. It appears later in the charter in terms of adopting ordinances related to functions assumed under the charter and whether they require an emergency clause.

Larry Derr said that the distinction is necessary, but the "by and under" concept is too subtle for

anyone on a quick reading.

Chair Myers said that it should be dealt with in the concept of specific provisions.

Frank Josselson asked that the provisions dealing with the "by and under" concept be brought to the subcommittee's attention.

Larry Derr said that it needs to be clarified so that it can be easily understood to mean authorize versus potentially authorize. He said that he does not think that the paragraph is necessary.

Chair Myers said that all of the second half of section five, *exercise of functions*, is either going out or will be relocated. Section five will just serve as the first description of the planning functions.

Mary Tobias said that the section dealing with the Boundary Commission sets up a process that the Committee did not set up. She said that the Committee said that the charter should call out an analysis of the Boundary Commission vis-a-vis the regional government. The Committee wanted to call out an analysis of the existing Boundary Commission and determine whether or not that condition remains static or ought to be changed. The Committee is not determining the outcome.

Frank Josselson said that the outline accurately describes what the Committee decided.

Mary Tobias said that the Committee decided that they are not in a position to decide whether it is broken or not, but the debate should not continue in perpetuity. It should be put to bed over time which is why the process was called out.

Tim Sercombe said that the outline says that "it shall review the process for resolving boundary changes and disputes and adopt any changes to the current process being necessary for the region with the consultation of RPAC". Until that is done, the structure and duties of the Boundary Commission remain as currently mandated.

Mary Tobias said that the meaning of "process" brings on debate.

Frank Josselson suggested that Tim Sercombe review the Boundary Commission subcommittee report that the Committee adopted.

Mary Tobias said that the meaning of "process" in the Committee outline is used to mean that the charter should call for the regional government to set up a mechanism to look at what is happening now with the Boundary Commission.

Tim Sercombe asked if that could be part of the Regional Framework Plan.

Frank Josselson said no.

Mary Tobias said that it is called out separately. It is set out because there is a perception that there is an issue, but the Committee does not have the time to deal with the issue.

Frank Josselson said that a study would be done to determine if what the Boundary Commission is doing is appropriate and then Metro will implement that policy.

Ray Phelps asked if it would be by ordinance.

Larry Derr said yes, it is pre-authorized.

Ray Phelps said that the adoption of the charter pre-authorizes the council to move any time they want.

Tim Sercombe said that he does not believe that works. Voter approval of the charter would not serve, by statute, as taking over the Boundary Commission function. The statute talks about a proposition referred to the voters by the governing body of the district which is the Metro council and not the Charter Committee. It also requires approval of the specific proposition and not something that is part of things in the context of the charter.

Mary Tobias said that the legal issue is probably valid, but the idea of a separate study is important.

Ray Phelps asked if there is no pre-authorization, why put it in the charter.

Mary Tobias said it should be in the charter to mandate it happen.

Frank Josselson said that he understood the subcommittee instruction to be to reduce the outline to an understandable document and not to be making legal or policy decisions. He said that, on Friday, the subcommittee discussed with Tim Sercombe to record those decisions whether he thought they were legal or not. If he thought that they were illegal, he could put a footnote. He said that Tim Sercombe should record the decision with the confidence that the Committee had considered the issue, to the extent of talking with Dan Cooper and lawyers on the Committee, and that the charter would request conforming legislation. He asked that Tim Sercombe put on blinders and be a scribe in that respect and footnote those things that are a questionable legality.

Tim Sercombe said that he had not understood the comment to be an instruction of the full subcommittee.

Chair Myers said that the subcommittee has to translate into the charter a draft of the decision of the Committee. If there are significant legal questions around specific decisions of the Committee, they should be flagged and discussed as a committee.

Ray Phelps said that the words should reflect what the Committee's desire was at the time the Committee acted to do it. He said that it should be included in the charter with a flag to revisit it based on that issue.

Mary Tobias said that Tim Sercombe's footnote states that the charter is not referred by the governing body of the district. She said that she had presumed that the Committee will not actually move the charter to the ballot, but Metro will move it to the ballot.

Ray Phelps said that it is self-executing. The Charter Committee will move it to the ballot.

Chair Myers said that Tim Sercombe will translate the provisions of the Boundary Commission, as decided by the Committee, into the draft and then the Committee will discuss the specific issues that Tim Sercombe has raised.

Tim Sercombe said that the Boundary Commission would probably be a separate section.

Frank Josselson said that the closer to the outline, the better. The further the charter strays from the outline, the more trouble to get into. He said that it is distasteful for a lawyer to ever be regarded as a scribe, but that is what the Committee has hired--someone to take the outline and put it into understandable charter language. To the extent that Tim Sercombe would like comment, he can footnote anything he wishes. He said that he regards Tim Sercombe as a scribe.

Tim Sercombe said that there is some language in the outline instructions, about fees being imposed and collected, transfer of real property, and the ability to sue and have a seal, that was not included because it is subsumed within the general powers. He said that things were left out if they were subsumed by the general powers grant or if they are redundant.

Ray Phelps said that he is not only looking for the scribing, but he is also looking for analysis.

Chair Myers said that the draft should reflect the decisions of the Committee. He said that Tim Sercombe has also been hired as a lawyer, but it is a question of how his services are used as a lawyer. He said that Tim Sercombe is being used as a lawyer to translate what the Committee has done and to identify and be ready to discuss questions that the Committee ought to consider as to whether it will sign off on a decision that has been made or to modify it.

Frank Josselson said that Tim Sercombe should address legal questions.

Chair Myers said that Tim Sercombe's concern about the pre-authorization is a legal issue.

Frank Josselson said that Tim Sercombe's important responsibility is to draft a charter that immortalized the decisions of the Committee.

Ned Look said that he disagrees with Frank Josselson's interpretation of Tim Sercombe's role. He said that he would like to have the full benefit of Tim Sercombe's knowledge and would like to know the areas of concern. He said that he is concerned that many of the Committee votes were very close and some of the votes might have gone differently because of different understandings of the issues and the absence of members. He said that the Committee will want to revisit many of the decisions they made.

Chair Myers said that Tim Sercombe is just being asked not to make a judgement himself as to whether something should be changed.

Ned Look said that he wants to know the areas where Tim Sercombe has concerns. He said that many members probably have concerns on some of the issues that they decided. He said that the Committee may want to revisit certain issues.

Tim Sercombe said that he has not tried to leave anything out. He said that he has changed the language where appropriate, but has not changed the content.

Chair Myers asked the subcommittee to move to *regional planning and coordination*.

Frank Josselson said that the provisions do not follow the outline. He said that the statement "no later than May 1, 1994, the region council shall adopt general growth management guidelines for the area, which may be entitled, 'The Future Vision'" is inaccurate. The Future Vision is not a guideline at all, it is a pure plan. He said that the provision suggests that it has some regulatory functions. He said that the Committee word-smithed the definition of "Future Vision" over the course of three or four meetings. The language in the outline is the exact language of the Committee. He said that the draft charter language does not resemble what he recalls of the Committee deliberations, minutes, or outline.

Mary Tobias said that she does not see any substantive difference. She said that the text under subsection two, *general growth management guidelines*, captures, in broader terms that have more longevity, the entire concept of the vision in the outline. The concept is worded so that it will live longer than the outline language. She said that it is guidelines and not a plan. She said that it is

written to keep in sense with a charter.

Frank Josselson said that what the Committee worked out was delicately worked out over a period of four or five months. It is the result of a lot of compromises. He asked what was wrong with using the Committee's language.

Mary Tobias said that there is no substantive difference.

Frank Josselson said that the Future Vision is not described as containing guidelines. It is pure planning tool.

Larry Derr said that it is a conceptual statement.

Frank Josselson said that he would title it "Future Vision" and have sub-point "a" be "the Future Vision is a conceptual statement that indicates population levels and settlement patterns that the region and adjacent areas can accommodate within the carrying capacity of the land, water, and air resources, and that achieves a desired quality of life".

Larry Derr said that the subcommittee has no authority to vary from that.

Ray Phelps said that the draft charter translates to the outline. He said that the Committee may understand what the outline means, but the common citizen will probably not understand.

Matt Hennessee and Mary Tobias agreed.

Chair Myers said that some of the problem is the use of "guidelines".

Ron Cease said that "guidelines" was argued by the Committee and does suggest something that was not the intent of the Committee. He suggested not using the term.

Tim Sercombe said that the term "guideline" is a term of art in land use planning and means non-regulatory.

Chair Myers said that it would be better to follow more closely to the outline. If the full Committee wants to modify it, they can. If there is concern about "guidelines", the term "Future Vision" can be referred to.

Tim Sercombe said that, when he wrote it, he tried to stay with the same phrases. He asked if the same sentence structure should be used as expressed in the outline.

Matt Hennessee said that the charter language is much easier to read and "Future Vision" could substituted for "guidelines". He said that it better represents what is in a charter.

Frank Josselson said that it is not what he voted on. He said the outline sets forth a myriad of compromises that resulted in agreements as to the growth management provisions.

Chair Myers said that this is one of the pieces of the outline where there was a lot of discussion around specific wording. He said that there are a lot of places in the outline where there is much more flex to capture the Committee deliberations. Whether the language, viewed in the context of the actual draft, is something that the full Committee wants is another issue.

Janet Whitfield asked if Tim Sercombe's language would be engrossed in the draft so that the

Committee members would be able to see it.

Larry Derr said that it is not a legal issue. It is an editorial change. He said that, looking at it briefly, it is good, but, when comparing it the outline, it could have a different spin to it.

Mary Tobias said that if Tim Sercombe is being instructed by the Committee to go back to the Committee's outline, she would like to have the suggested text included in a footnote for comparison purposes. She said that there are some valid reasons for moving away from the Committee's outline into a broader context. It goes with the idea of a broader grant and keeps the charter from becoming dated over time. She asked that it be included as a suggested alternative.

Matt Hennessee asked that it be carried as a separate issue to get back to the concern about the role of counsel relative to legal issues and not editorial issues.

Frank Josselson suggested that the Committee's own narrative of the growth management aspects of the charter be included as another alternative.

Ron Cease said that this is an area where there are a lot of nuances and Tim Sercombe has missed some of that. He said that there is a problem with "guidelines".

Larry Derr said that a solution is to have it available as an alternative. He said that would stay true to the mission of legal advise and not editorializing.

Chair Myers asked if the Committee members have a problem with the draft text for the Regional Framework Plan.

Mary Tobias asked if the subcommittee is going to address any of Tim Sercombe's comments on the Future Vision. She said that the issues of the advisory committee's functions and revisions to the vision in the manner of original development need to be addressed. She said that the subcommittee has not responded to his concerns. She said that she does not think that the public process needs to be mandated. She said that the Committee did want the Future Vision to be revised specifically in the manner of original development.

Tim Sercombe said that the only process for the development was the use of the advisory committee. He asked if the Committee's intent was that other things that happened to be used the first time be required to be used beyond that.

Mary Tobias said that when the Future Vision is revised every 15 years, a new advisory committee will be constituted to do that in the same manner that it was originally done.

Tim Sercombe asked if there was any other process required for both the adoption and revision besides the advisory committee.

Ray Phelps said that there would be the data and public participation. He said that there was a concern that the prospect of public participation would be foreclosed.

Tim Sercombe said that is the intent of the statement "the commission will consider available data and public input".

Mary Tobias asked if the Future Vision must be adopted by the governing body.

Chair Myers said yes.

Mary Tobias said that it is adopted, but is not regulatory.

Ray Phelps asked about the Metro council adoption process.

Chair Myers said that they either adopt it and amend it.

Janet Whitfield said that the Committee decided not to address the amendments. She said that the Committee decided just to say that the council will adopt it.

Frank Josselson said that was a hang-up. The resolution was that the council could amend it.

Larry Derr said that the Committee uses the word "address" rather than "include" in the preface to the subject matter going into the Regional Framework Plan. He said that "include" suggests that the area must be planned for and "address" suggests that you could choose not to plan for those areas. He said that the concept was that the regional government should thoughtfully consider all of the areas, but how they chose to deal with them would be up to the regional government.

Ray Phelps said that it was also a concern that the government somehow be enabled not to go out and spend money on something that was of no consequence. If they address it by saying that it does not mean much, then they would not have to include it.

Tim Sercombe asked if they shall do it or if it may include only those things.

Larry Derr said that it shall address which means may include, but may include does not cover shall address.

Ray Phelps said that there was an earlier question about costing a lot of money to do daily planning that was of no consequence or was being done substantially by another organization.

Ron Cease said that he is not sure that the government should get off that easy by saying that another government is doing it.

Tim Sercombe asked if it has to have those issues in it, but it may choose how in-depth it treats it or is there an option to not include something.

Larry Derr said that the inclusions could be a statement that it is planned for elsewhere and it is not needed, but the sense of it was to have flexibility.

Ray Phelps asked if is somewhat internally contradictory with the RPAC advice before including additional matters in the Regional Framework Plan.

Tim Sercombe said it is an ambiguity in the instructions. He said that the instructions say two things- that you shall treat these things, but before determining whether or not to treat them, consider other issues.

Larry Derr said that is the distinction he thought the Committee was drawing. In going through the planning process, you have to take note of each of these subject areas. Before including them in the framework plan, the advice of RPAC and economic effects must be considered.

Tim Sercombe said that it is an option to include them or not.

Ray Phelps said that they will be addressed, considered in the process.

Chair Myers said that the outline says that "the governing body will determine the aspects of the matters below that are of metropolitan concern and that will benefit from regional planning".

Tim Sercombe said that the instructions are headed with "matters addressed" in the plan itself. He said that there is an ambiguity in that it seems to suggest that if there is not money, then it does not need to be included.

Larry Derr said that including it in the plan could be the result of the planning inquiry that explains why it is not necessary to do more than a certain level. That would be inclusion in the plan. He said that it is a policy issue. He said that maybe it should be footnoted as a thought that should be expressed if the majority of the Committee decides that refinement is what they meant.

Tim Sercombe said that issue is raised in his comments.

Ron Cease said that some people on the Committee want the regional government to do more planning functions, but "address" is a weasel word.

Chair Myers said that hedge exists when talking about benefits from regional planning.

Larry Derr said that Tim Sercombe footnoted the conflict where the Committee said "shall include" but then said "before including" these things have to be done which suggests that they might not be included. He said that is an internal conflict that has to be resolved.

Tim Sercombe said that the subcommittee talked on Friday that this is the exclusive process for creating policies that affect local comprehensive plans. He said that there is some ambiguity about what to do with functional plans that are currently adopted or hanging out there that are not included in the Regional Framework Plan because of economics or because it is a non-mandatory territory. He gave the example of storm water management not being on the list and would require a vote of the people or majority of RPAC to go into the regional plan. He said that some of those plans may still have regulatory power in terms of what comprehensive plans have to conform with under the treatment under state law.

Larry Derr asked where it is in the draft charter.

Tim Sercombe said that, in the beginning, he tries to state what the regional framework does. Subsection one, *regional planning activities*, of section seven, *regional planning and coordination*, says that the current comprehensive plans or regulations remain in effect until changed or repealed by ordinance and provides the means for adoption of certain policies.

Larry Derr suggested that the two sentences dealing with the current comprehensive plans or regulations remaining in effect and the means for adoption of certain policies should be deleted because the concept has not been reached in the Committee. The sentences read, "this section prescribes the exclusive means for the adoption by the region council of certain policies. 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 the subcommittee agreed that it was consistent with the Committee's thinking, but given the fact that it raises more issues and that the Committee did not propose it, it should come out of the draft. It could be footnoted as a possibility if the Committee wanted to get into it. The concern Tim Sercombe had with these sentences was whether the Regional Framework Plan should be the only vehicle by which the regional government can dictate changes or conformity in local planning documents.

Tim Sercombe said that is what is implied by the outline.

Larry Derr said that the Committee did not think about that, but it is not a bad idea. He said that the Regional Framework Plan does dictate conformity, but it does not go as far to say that there is no other way that the regional government can do something that would require conformity. If that is done, because it is given greater clout, the Committee has to be more careful about defining what is in it and what is out. He said that his suggestion was that since it is a neat thought, and there are enough hard issues anyway, the issue be side-stepped.

Tim Sercombe said that it is a critical issue. The function of the charter, in terms of deciding what authority a local government has and the procedures that it uses, is very critical. In putting this in the charter, he said that he had assumed that it said that this is the process and these are the subject areas to do regional planning on. A different process or different subject matter will not be used. It needs to be clear as to whether or not it is or is not the case. Otherwise, it will be litigated and be expensive to resolve. He said that there are examples of on going planning that Metro is doing which are not referred to in this outline. State law also requires things to be done as part of their regional planning functions that are not in the process. He said that it is a basic question about whether or not this section of the charter is intended to prescribe the process by which those sorts of things are done.

Larry Derr asked that Tim Sercombe capture those thoughts in a footnote. He said that it is an important point, but it goes beyond what the Committee decided.

Chair Myers said that it will be flagged as an issue that will be decided.

Tim Sercombe said that, in regards to how the function assumptions interrelated with the regional planning functions, the outline talks about the region being empowered to adopt or regulate police powers. He said that he interpreted that to mean regulations affecting private conduct. He suggested that the Committee keep that kind of function in mind when trying to think whether it is a service function or a planning function, how the local government assumes those kinds of powers and is the Regional Framework Plan the process by which it does that sort of stuff or if it is the other stuff, such as passing an ordinance regulating what people put in their washing machines. He said that the outlines states that it can be a regional plan for the siting and operation of public exposition, recreation, cultural, and convention facilities. It leaves out entertainment, other spectator facilities and a couple other subject areas that are otherwise allowed as service functions of the charter. He asked if it was intended that way.

Mary Tobias said that it is one of those areas where draft language has not been put before the Committee to find inconsistencies. She said that the Committee wants to be consistent.

Ron Cease said that it raises the policy question of why advice needs to be sought to plan for a function that they have the authority to provide and is already being provided by the regional government.

Tim Sercombe said that the subcommittee discussed that issue and whether this process is just intended to affect other local governments in terms of what they do, their comprehensive plans and land use regulations or if it is intended to prescribe that it could do planning in these areas that affect how Metro does its business, but it did not have to in order for Metro to do its business.

Larry Derr said that to the extent that something appears in the Regional Framework Plan, Metro needs to be bound by it just as much as local government. Metro does not necessarily have to put something into the Regional Framework Plan as a subject before it can engage in that service. The extent to which it covers the issue in the Regional Framework Plan is going to be a judgmental issue in

the plan drafting and adoption process.

Ron Cease said that it does get to parts of the question of what "advice" means. He said that if there is a strong RPAC, and there is someone who is strong on the RPAC, and they are given the authority to advise on something that the organization already has authority to do, there is an air of mischief making and there is not a need for it. He said that he does not remember requiring advice of RPAC for inclusion in the Regional Framework Plan after the charter provided the authority for the planning of the function.

Frank Josselson agreed that he did not remember doing that as a Committee and it is a source of potential mischief.

Tim Sercombe said that he was interpreting the concept as things that apply to other local governments.

Ron Cease said that there are some real questions as to what it means in operational terms.

Mary Tobias said that it was not intended for operation, it is pure planning.

Ray Phelps said that the issue ought to be flagged.

Mary Tobias asked if the intent of this section of the Regional Framework Plan is that when there are things that are listed under the *matters addressed* that need to be considered, the portion of the planning process having metropolitan significance is raised to the regional table for consideration before the responsibility for either the planning or the service delivery were to be carried out by any government. The intent was to be sure that the issues get raised to the regional table and that everyone be part of the research segment of determining metropolitan significance before the regional government acts to take it or not take it.

Ray Phelps said that the provision regarding the governing body adoption of the Regional Framework Plan with the advice of RPAC reinforces RPAC's involvement.

Mary Tobias said that RPAC is called for, but it is with the concept of determining whether or not there is metropolitan significance to any portion of the planning function.

Tim Sercombe said that this process is purely related to planning. It is different for the actual doing of a service function. He said that they are two separate things and the service function does not need to be addressed through this process for Metro to do it. It is addressed through RPAC majority or voter approval as a separate proposition. It does not have to be brought through this process.

Mary Tobias said that the planning section does.

Ray Phelps said that it needs to be drafted faithfully to the outline.

Ron Cease said that it is nebulous in a sense, but if there is Regional Framework authority and land use planning authority in these areas, then, as the plan is put together, making it subject to local governments raises a possible concern.

Mary Tobias said that they do not have land use authority.

Chair Myers said that it is an issue that will have to be explored. He said that, going back to Tim Sercombe's original point about parallelism with the regional facilities, it should be footnoted and

discussed with the full Committee.

Mary Tobias said that she had a concern about the sentence "the regional council shall also consider the costs of including the matter in the Regional Framework Plan". She said that the language talks about available funding. She said that there are a lot of mandates from government that come without available funding and this government should not be in the position of mandating itself to do something that it can not pay for. The outline says that "the determination will include prioritizing matters as necessary in relation to available funding". She said that the two are very different. She said that the cost can be considered and still say that it will be done, but it is different to consider the available funding and make a decision.

Tim Sercombe asked if it was not only the costs, but also the available funding.

Mary Tobias said yes.

Tim Sercombe said that this is one area where there is the question of whether to include them and/or how much to talk about them. He said that it needs to be broader than the draft. He said that he has a problem with the statement that the "determination will describe the respective planning roles". He said that it is in the context of whether to address something in the plan or not. He said that he did not know if the plan itself would describe the respective planning roles and regulate that, or whether or not it was a factor in deciding to address the issue in the plan.

Ray Phelps said that it looks like tasks are being assigned to planning functions.

Frank Josselson said that it is recognition that each of these involves regional and local components and the regional government is to decide who is to do what.

Tim Sercombe said that the outline states "the following matters to the extent determined through the process described below". He said that he did not know if the provision that followed was just the process used to decide whether to address something or not or if it described a content of the matter once it is addressed. It is unclear that way. He said that he assumed it was a process to decide whether to address it and it was not something that mandated what you decided once it was addressed.

Chair Myers said that he understood the factors to bear on the determination on whether to address it in the plan and then how to address it.

Larry Derr said that it is more than just up or down. It is how and to what extent.

Ron Cease said that opens the door to the question of whether or not they can say at any time that they do not have the money, which is the easy way out. He said that there was substantial support on the Committee to make sure that the regional government did more regional planning and to look at the larger planning issue. He said that he is nervous to give them all kinds of gates to walk away from it which is what some of these things do.

Frank Josselson said that he did not remember that in relation to available funding.

Larry Derr said that dealt with prioritizing. It was not simply is it in or out.

Mary Tobias said that all of the issues can be in or out depending on how the regional government and the RPAC feel about them. These are optional if they are or are not deemed to be of metropolitan concern through this process.

Larry Derr said that it deals with those portions within these subject matter areas that are of regional concern. He said that the assumption was that they made the list because some element was of regional concern.

Tim Sercombe said that the most extreme example from the text, if the process includes whether and how it is addressed, would be that with just the consultation with RPAC, the regional government could put into the Regional Framework Plan a regional role for deciding the significant land use development that required Metro's hearings officer to approve those sitings to the exclusion of local governments. There would not need to be an approval by RPAC or the voters, there would just be consultation with RPAC.

Ray Phelps asked that the ambiguity of the scope of the reference to the RPAC role vis a vis the administrative role of Metro be noted.

Chair Myers asked the Committee to move onto section eight, *general power grant*.

Ron Cease said that there is a "by and under" phrase in the grant of powers.

Chair Myers said that the section could be reworded similar to the language in the beginning of the charter, such as allowed by or acquired under.

Frank Josselson said that the language decided on by the subcommittee last time was "when carrying out the functions assigned by the charter, or subsequently added pursuant to the procedures set forth in the charter, the region has all powers that the laws of the United States and the State of Oregon now or in the future could allow the region".

Ron Cease asked if this is police power.

Chair Myers said no. It is the necessary and proper clause.

Frank Josselson said that he thought the subcommittee decided that this provision would go back toward the end of the document after all functions, finance, and structure. If it is upfront, it creates a lot of concerns about granting too much power to this government.

Chair Myers said that, at the last meeting, the provision was before the allocation of specific functions. He said that he thought it was important to move it behind that. He said that he did not remember the sense of the subcommittee being to move it all the way to the end.

Tim Sercombe said that this is the end of the functions and powers discussion. The charter next moves on to the limitation on taxing powers before moving into the structure of the government.

Frank Josselson suggested consolidating sections eight, *general grant of power* and nine, *construction of powers*, because, unless they are consolidated, when saying that the powers specified in the charter are not exclusive and their specification is not intended to limit authority, people may not make the connection between those powers and the power referred to in section eight. He said that it may be confusing.

Tim Sercombe said that there are different legal issues going on with each of the sections. He recommended that the sections be kept separate and not worry about how a lay reader would interpret it, but how a judge would think when looking at the charter and its constraining powers. He said that one is the grant of powers. The other is that if a power is mentioned, it is not intended to be exclusive or limit authority. When dealing with powers, not functions, there is a liberal construction to be

employed here.

Chair Myers asked if section nine is needed if section eight exists.

Tim Sercombe said that it is standard to treat the two issues separately in charters. If the two were combined, they might have the same effect as if they were two separate subject areas.

Larry Derr said that if they are more directed toward the judge than the lay reader, in the case of litigation, the judge ought to draw the distinction if they were in the same provision.

Ray Phelps said that, when talking about the "by and under" phrase, under has always worked. He asked why "under" cannot be used.

Tim Sercombe said that people did not like "by and under" in the function description because it was not descriptive enough.

Matt Hennessee asked if the subcommittee is going to leave section eight and nine as is or if they will be combined.

The subcommittee agreed to combine section eight and nine into one provision.

Frank Josselson asked what is said in section nine that is not said in section eight.

Tim Sercombe said that section eight relates to the type of powers that are allowed to the entity. Section nine talks about the construction of powers that are specified in the charter. It says that when mentioning a power in the charter, the saying of "to say one thing is to exclude the other" does not apply. It is not intended to limit the authority by specifying the powers stated in the charter.

Chair Myers asked which power is specifically stated in the charter.

Tim Sercombe said that there are lots of things in the charter that talk about what the regional government does in terms of the content of framework plans to talking about imposing taxes. He said that is a constructional rule that is typically placed in charters to say that if mentioned that this tax is imposed, that does not mean that other taxes cannot be imposed. It is intended to be very descriptive about what happens when talking about that tax.

Frank Josselson said that, if by the word "power", it means taxing function, regulatory function, or planning function, then this language creates problems for him. He said that he thought the term "power" meant implementation of the granted functions, a necessary and proper kind of clause.

Tim Sercombe said that is its intent. He said that if it says that before a plan is adopted, the advice of a commission must be sought, does that mean that Metro cannot seek the advice of any other commission before adopting the plan? The legal principle is that no, it does not mean that. It means that Metro can seek the advice of that commission, and if they want to seek the advice of others, that is fine. It is not intended as a limitation on what the region government does. There is a clear distinction between functions and powers. It is important that the charter contain language that talks about a general powers grant and the principle that to say one thing is not to exclude others in terms of the means to accomplish ends assigned in the charter.

Frank Josselson said that he approves of the provision to the extent that it is a necessary and proper clause. He said that, to the extent that it goes beyond that, he does not approve of it.

Matt Hennessee said that one approach would be, as the two are combined, to take out, in section nine, "the region may exercise fully all the powers possible under this charter" and the rest could be left in.

Larry Derr said that, when combined, they would be largely redundant.

Frank Josselson said that he cannot imagine granting broader authority than "all powers that the laws of the United States and the State of Oregon now or in the future could allow the region". He said that the question is what are the powers that the provision talks about. He said that "by or under" is a term that creates a lot of confusion. He said that he thought the subcommittee decided to say, "when carrying out the functions assigned by the charter, or subsequently added pursuant to processes set forth in the charter, the region has all powers".

Chair Myers said that the change will be made.

Tim Sercombe said that the provision is talking about when exercising the authority over the functions under the charter, it has the full powers available to governmental entities under the constitution and laws of the state to carry out those functions. He said that provides so that it is not necessary to state in the charter that it can condemn or convey property, can sue, create a commission, etc. It is real important to include a provision like this, unless all of those provisions are spelled out in the charter. He said that section nine is a constructional rule about things that are stated in the charter. It is not a powers grant. It is a construction of powers that is in the charter and is not intended to add to the quantity of powers conferred by section eight, but says that those powers specified in the charter are not to be construed narrowly to the extent that the charter talks about them.

Chair Myers said that Tim Sercombe should combine the two provisions. He said that there is a sense that the section nine could be more limited.

Frank Josselson said that it must be clear that the term "powers" refers to implementing authority with respect to functions. It is not talking about expanding functions.

Larry Derr said that, when combining the two provisions, it could tie section nine back into powers implementing functions.

Frank Josselson said that the term "exercising authority over" is not as descriptive as the words "carrying out the functions or implementing the functions".

Tim Sercombe said that the language is parallel to the language in the charter being written by Dan Cooper and John Junkin.

Chair Myers said that this is one where the Committee is trying to put on a political hat--thinking about how to get to a certain point legally, but in as politically palatable way as possible.

Matt Hennessee asked, in section nine, if the statement "the powers in this charter shall be construed liberally" was pulled out. He said that he views that as a problem.

Chair Myers said that the provision was left in.

Tim Sercombe said that this section is not power conferring.

Chair Myers asked the subcommittee to turn to section 10, *limitation on taxing powers*.

Tim Sercombe said that section 10 refers to the taxation provision in the outline. He said that the first sentence requires the approval of the electors of the region before certain ordinances imposing, or providing an exception from, taxes occur. The list of taxes in the outline requiring a vote of the people included income and sales tax. He asked how broadly those taxes were intended to be. He said that some sales taxes are taxes on purchases, such as transient room tax, utility tax collected by the utility, or other transaction taxes. There are specific sales taxes, such as on a ticket to the zoo. He asked if that is intended to be a sales tax because it is the sale of admission or a room.

Chair Myers said not within the context of this provision. It is a general sales tax. It is not intended to sweep under this provision every kind of excise tax.

Tim Sercombe said that he has a similar question on income tax and whether it includes gross receipts tax, or if that is the intent of the language "business income tax". He said that some sort of business and occupation tax gets calculated on the basis of gross receipts is a common local government tax, or if that is in the meaning of business income tax. Tim Sercombe said that he had a question about the requirement of voter approval and tax revenue limitation. He asked when the government imposes a charge for provisions of goods or services, and makes a profit, is that intended to be captured within the meaning of taxes for either purpose of voter approval or tax revenue limitation.

Ron Cease said that he thought the charter was going to have a specific listing of those taxes that the regional government can do by ordinance. He asked if that was going to be done.

Chair Myers said that the Committee did not agree to list them in the charter.

Tim Sercombe said that part of the outline talks about the continued authority to use certain taxes and fees.

Mary Tobias said that the outline says that they can "enact all revenue-raising devices currently permitted for Metro's use by Oregon statutes, but not now used by Metro". She said that she assumes that the next section says that if they use personal and business income tax, payroll tax other than as now imposed by Tri-Met, property tax, and sales tax, they have to go to a vote.

Ron Cease said that it raises Tim Sercombe's question about what they actually mean specifically so that it is clear what is excluded, what can be done by ordinance, and what cannot.

Janet Whitfield said that there was a discussion in the full Committee about fees and charges. She said that she remembers Ray Phelps saying that fees and charges are not taxes.

Tim Sercombe said that the language in the charter for purposed of excluding a requirement of a vote for certain kinds of taxes says for purposes of the voting requirements, taxes shall not include any charge for the provision of goods, services or property, franchise fees or any assessment. That does not define what taxes are, but it excludes those things. The intent, with the exclusion of goods, services, or property, was to not allow getting into arguments about whether or not taxes include profits, transactions for their services, or goods provided that are then used for general purposes of the government. Taxes are charges that are imposed non-consensually. He asked if there was any discussion about the overall meaning of tax for purposes of better describing a particular tax that has to be voted upon or for purposes of limitation on tax revenue.

Ron Cease said that there was not any discussion regarding the specific meaning of tax.

Chair Myers said that the exclusion, for purposes of what has to be voted on by the people, is correct. The Committee did not intend for those particular forms of exaction to be considered within the ambit

of the mandatory voting.

Tim Sercombe said that he tried to exclude the things that are typically excluded from taxes.

Ron Cease said that the terms are pretty open ended and undefined.

Tim Sercombe said that there is a considerable amount of litigation about what is a property tax.

Frank Josselson suggested the editorial change of "the council shall not impose any income, payroll, property, sales, purchases, gross receipts tax without a vote of the people". He said that his wording says that the council shall not adopt such a tax without the vote of the people in a direct way.

Ron Cease said that Frank Josselson's suggestion does not get at the issue of tax definitions.

Chair Myers said that it was not intended to get at the definition question.

Ron Cease said that it is clear what the Committee intended, but there are not definitions.

Ray Phelps said that the Committee chose not to define them. He said that they can be defined with litigation, ordinance, and other vehicles. The Committee wanted the charter to be more of a continuum document.

Larry Derr said that it is like metropolitan concern--if it is defined, it would be more limiting and it should be expansive.

Ron Cease asked if the determination of what is a sales tax, payroll tax, etc. should be left to the council.

Ray Phelps said yes.

Chair Myers said that it would be a matter of law.

Ray Phelps said that there will be a lot of controlling elements and it should not be cluttered up with another definition that may contradict or in some way not be relevant at some point in the near point.

Chair Myers said that, unless the issue is framed in terms of "these terms as defined by ordinance", the council's definition or interpretation of them is going to be subject to challenge as being inconsistent with the charter.

Tim Sercombe suggested that it may be too complex to define the terms. The Committee may want to get the major exclusions from the categories and say that it "shall not include these things". He said that would eliminate some of the controversy over whether or not assessments of property taxes are included.

Ray Phelps said that Frank Josselson's wording covers Tim Sercombe's suggestion.

Frank Josselson said that his suggestion only covers the first sentence.

Tim Sercombe said that the first sentence comes from ORS 203 which has a similar requirement for counties to put to the voters a tax before they adopt it. He said that he used the same language as the statute so that the case law can be used with this charter also. He said that non-home rule counties have to put any sort of tax measure to the vote of the people. He said that he used the term

"or providing an exception" to also require popular approval because Metro could approve a tax and then create a big exception which is something that should be voted upon. He said that he needs assistance with the limitation on certain tax revenues. He said that one of the problems is that it is a limitation on indeterminate tax revenues. If close to the limit, you will not know if you go past the limit or not until the close of the fiscal year, the adoption of the budget for the following fiscal year, and the accounting for the previous fiscal year. In a practical sense, there are some problems with being able to estimate accurately the amount of revenues as it gets close to the cap and whether or not one can account for the reconciliation process to use, if any, when exceeding the imposed tax revenue limitation. He suggested that, in the next fiscal year, it would have the effect of reducing the tax revenue limitation for the next fiscal year if it was exceeded the previous year. He said that if it is missed by more than 20%, it will have the effect of lowering the tax revenue limitation for the next fiscal year further by the amount of inflation increase allotted for that year. He said that it would prevent the government, either accidentally or deliberately, to get more revenues than allowed under the tax base. If there is no real penalty or reconciliation process, then people get sloppy.

Ron Cease said that it is an issue, but it will not come true for a while. He said that Tim Sercombe's language is as good as any. He said that there is an actual dollar amount base for the property tax and they could compute the actual dollar amount responsibility for each household.

Tim Sercombe said that is the dollar base system where the government says it is going to impose a tax. He said that, with this provision, the government would say that it is going to pass a 3% transient room tax and there is no way of knowing if the hotel revenues are going to be up and how much money is going to come in. They will either over-guess or under-guess.

Ray Phelps said that the base year should probably be changed to the year preceding. The 90-91 fiscal year ending balance would be used as the basis for projecting what the revenue should be for 92-93 fiscal year. The basis would be a fiscal year that is absolutely correct and it would be limited to that number as a safety factor.

Larry Derr said that the problem is not so much not knowing what the limit is, but the problem is not knowing what the income is going to be.

Ray Phelps said that when the previous year's income is used, there is an assurance that would not create the kind of problems that Tim Sercombe is anticipating.

Matt Hennessee said that it would be a baseline that would not be exceeded.

Ray Phelps said that if an income is used that is known to be fact, which is last year, and it is used as the basis for the calculation of this value for this fiscal year, then it is not very likely that the problem of exceeding the collection will arise.

Janet Whitfield asked if it would be done every year or only for the baseline cap and then the cost of living is built on it.

Ron Cease said that the base figure does not change, except for the cost of living.

Chair Myers said that there is still the possibility of not knowing if the government will collect more in the fiscal year than allowed.

Frank Josselson said that there is nothing in the charter that expressly authorizes the council to impose a tax. He suggested adding a sentence that says "except as provided in subparagraph one, the council may impose taxes by ordinance."

Tim Sercombe said that it would be included in the general powers grant.

Frank Josselson said that really scares him. He said that if that is one of the powers contemplated by the general powers grant, he worries what other functions of the government might be called powers.

Ron Cease said that one of the things that should be made clear is that they have the power to levy a tax, even within the limit, but only by ordinance so that it is subject to referendum.

Frank Josselson said that the assertion that the power to tax is implied by the general powers clause leads to the question of what other powers are in the general powers clause.

Tim Sercombe said that the other powers include the power to condemn property, power to commence litigation, power sue and be sued, and power to employ agents. He said that all the powers are ways that the government does its job.

Frank Josselson asked if the power to impose user fees is included.

Tim Sercombe said yes.

Frank Josselson asked if the power to impose enterprise fees, such as the solid waste tipping fees, is included.

Tim Sercombe said yes.

Frank Josselson suggested that the Committee have the legislative history of what are encompassed within the general powers. He asked that Tim Sercombe provide the Committee a list of all the powers that are encompassed within the general powers clause.

Tim Sercombe said that he did not know if that could be done. He said that he could do some of the major ones, but the intent is to say that a general powers grant talks about all the powers that are available to governments under the Constitution and laws of the state can be used to implement the functions assigned under the charter. Depending on the detail, the list could be several thousand different things.

Frank Josselson said that his concern would be elevated if there was an expressed grant of taxing authority, because it would say that the specific provision would control over the general power granted elsewhere in the charter.

Chair Myers asked how the specific provision would be narrower, putting aside the limitations.

Frank Josselson said that it would say that "except as provided in section 10, subparagraph one, the council may impose any tax by ordinance subject to referendum". The general powers clause could then be left.

Tim Sercombe said that, in the section regarding ordinances, there is a requirement that certain ordinances be done without an emergency clause, including the taxation provisions. He said that he could add in that a tax has to be adopted by an ordinance, which would be the only real way to adopt it. It would not be power conferring.

Frank Josselson suggested saying that the governing body's power to tax is limited to the powers set forth in section 10 of the ordinance.

Tim Sercombe said that section 10 just talks about referring certain taxes for a vote.

Mary Tobias asked if Tim Sercombe omitted addressing the revenue raising devices currently imposed by Metro that may be continued under the charter because they come under the general grant. She asked if the same was true for the authority to enact all revenue raising devices currently permitted for Metro's use by the statutes, but are not currently being used. She asked if the taxes requiring a vote of the people is spelled out because of the vote requirement.

Tim Sercombe said yes.

Chair Myers said that Frank Josselson's change does not get at the concern of the general grant provision being the source of the taxing power.

Frank Josselson said that it would not be narrower, but it would make him feel better in terms of the tax power because the government would have no power to tax beyond that set forth in section 10.

Larry Derr said that section 10 says that they can do anything they want.

Frank Josselson said that section 10 provides specific limitations.

Chair Myers said that it is not a source of any authority.

Mary Tobias said that the recommendation of the finance subcommittee did limit by saying that it they could only continue to impose the ad valorem tax at the current limit for the current purpose. They could also continue the per capita tax for planning.

Ron Cease said that the ad valorem tax limit is not a limit because they would have to go back to the voters anyway.

Janet Whitfield said that the limit at the current level for the property tax went down.

Ray Phelps said that it is just for the transition.

Frank Josselson said that the only property tax that Metro imposes is the property tax for the zoo.

Janet Whitfield said that the subcommittee did vote on whether to limit or prohibit Metro from going beyond its current rate, but they voted it down.

Ron Cease asked if Metro has a tax base for the Zoo.

Ray Phelps said that it is a tax base for operating uses.

Ron Cease said that if there is a tax base, which they are allowed to increase by the cost of living, that provision would prohibit them from doing that.

Tim Sercombe asked if the Zoo tax was a rate tax or a dollar tax.

Janet Whitfield said that it is 15 cents per \$1000.

Ron Cease said that it was not the intent of the Committee to prevent it from increasing by the cost of living.

Tim Sercombe said that there is an issue about whether the cost of living increase in the tax base would be included in the revenue limitation. He asked, under the taxes that are excluded unless approved by the voters, when there is an automatic increase, is it captured within the tax revenue limit or not.

Ray Phelps asked if it was Ron Cease's idea was to cap the discretionary revenues and not the revenues adopted by the voters.

Ron Cease said yes, only those things that they could do by ordinance.

Tim Sercombe asked if the voters approve a tax base by \$12 million, and it grows automatically under section 11, is an increment of growth included in the tax revenue limitation because it is not really voter approved.

Ray Phelps said that he thought it did.

Chair Myers asked the members to move to section 11, *limitations on authority to contract* and section 12, *regulatory powers*.

Tim Sercombe said that section 11 comes from the outline and section 12 does not. Section 12 is suggested for purposes of distinction.

Ray Phelps said that section 11 is Jon Egge's and he wanted to be able to contract with private companies as opposed to governments. He said that the statement in the provision "who are not employees of the region" does not preclude intergovernmental agreements. He said that Jon Egge really wanted to have the capability for this government to contract for services. It is private contracting. The provision was to give the government the direction and/or mandate to not limit itself to only doing business with itself. The idea was to contract with people.

Tim Sercombe said that is what section 11 is intended to be.

Ray Phelps said that, by saying "employees of the region", the government could say that they will not employ with the region, but would with the city of Portland. He said that is not what Jon Egge wanted. Non-government people should have the ability to contract with Metro.

Janet Whitfield said that Metro counsel gave a decision that it was illegal.

Chair Myers said that he thought that Jon Egge was talking about it in the context of Tri-Met's collective bargaining issue and as a dis-incentive for Tri-Met employees to lobby for take-over to prevent the government, in a collective bargaining context, from agreeing not to sub-contract work outside of the bargaining unit.

Matt Hennessee said that Jon Egge used Tri-Met as an example.

Ray Phelps said that he will let Jon Egge bring it up at the full Committee meeting.

Tim Sercombe said that section 12 talks about regulatory powers. He said that it applies to regulations affecting private persons and what they do and not the content of comprehensive plans necessarily. He said that it states the relationship between regulations of the region and regulations of cities or counties or districts and that they might conflict. It sets out constructional rules which state that no regulation shall affect the structure of procedures of another government unless that affect is required by state or federal law. It states the conflict resolution rule for when a regulation of the

region conflicts with another local government regulation. It controls if it clearly intends to do so and if the regulation pertains to a function of the region authorized by the voters. He said that it is included for discussion purposes.

Chair Myers said that the section is needed.

Mary Tobias said that the section sets up some immediate conflict with some of the earlier procedures and processes in the charter. There is already a conflict in some of the planning, and perhaps some of the service functions, in terms of whether or not the charter is calling for more land use control which could be deemed interference in a local government. She said that it needs to be looked at in terms of putting into action the earlier provisions of the charter to see if the Committee is setting up an immediate conflict.

Tim Sercombe said that the intent is just to talk about regulations of the region that tell private people what they can do and what they cannot do. The earlier sections pertained to policies that may allocate service or policies that dictate what local governments do in land use planning processes.

Mary Tobias said that is the intent of the earlier sections. She said that she has been concerned consistently from the beginning that the Committee may do a lot of things that are great in theory, but when dealing with them in real life, the charter will have set up situations that will lead to conflict instead of resolving conflict. She said that it is time to start looking at those from the prospect of the implementors. She said that the Committee should start to deal with those issues now if they are solvable.

Tim Sercombe said that by putting some rule in the charter and having it voted on and approved, it will make it more likely that rule will prevail to resolve conflicts.

Mary Tobias asked if the first sentence in the preamble, "the principle mission of the government created by this charter is to manage urban growth and coordinate the provision of public facilities and services in the region", is intended to imply that this government will coordinate the provision of all public facilities and services.

Chair Myers said that issue was dealt with in another section and similar language was deleted because it was not reflective of the thinking about what the Committee decided. He said that the subcommittee has bypassed the preamble to this point. He said that it will probably be left off the draft to give the Committee more time to think about it and come to an agreement on it.

Chair Myers adjourned the meeting at 9:20 p.m.

Respectfully submitted,



Kimi Iboshi
Committee Clerk