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BOUNDARY COMMISSION SUBCOMMITTEE REPORT

To the Metro Charter Committee

Date: April 9, 1992

Boundary Subcommittee Members:

Charlie Hales, Chair
Ron Cease
Larry Derr
Jon Egge
Frank Josselson
Mary Tobias

Also present:

Bob Shoemaker

The Boundary Commission Subcommittee met on April 7, 1992, and has made the following recommendations to the Metro Charter Committee:

1. The charter will direct the regional governing body to review the process for resolving boundary changes and disputes within the metropolitan region and to adopt any changes to the current process deemed necessary for the region.
2. Advice and consultation of the RPAC will be required.
3. The process will be developed in conjunction with the Regional Framework Plan, as well as with LCDC development of statewide rules relating to the coordination of service provision in the region.
4. Until a new boundary process is adopted, the duties of the Local Government Boundary Commission will remain as currently mandated.
5. Voter approval of the Charter will serve as elector authorization to transfer the Boundary Commission function to Metro, as provided in ORS 268.320

Minutes of the Boundary Commission Subcommittee are attached.

MINUTES OF THE BOUNDARY COMMISSION SUBCOMMITTEE
OF THE METRO CHARTER COMMITTEE

April 7, 1992

Metro Center, Council Chamber

Subcommittee Members Present: Charlie Hales (Chair), Ron Cease, Larry Derr, Jon Egge, Frank Josselson, Mary Tobias

Subcommittee Members Absent: None

Chair Hales called the special meeting to order at 3:15 p.m.

Chair Hales said that the discussion should be as informal as possible and include invited people to help explore the issue. Then the Subcommittee can deal with it more formally toward the end of the meeting. When the Charter Committee first started work on the Boundary Commission issue, he said he was pretty enamored with his proposal (attached). After more discussion, however, he said he has a question mark about what, if any, should be the disposition of the Boundary Commission within Metro's structure.

Mary Tobias asked, since she had missed full Committee discussions of the Boundary Commission, what areas had been covered.

Chair Hales said that a discussion held at Larry Derr's office was about the Hales proposal and a counter proposal, that Larry Derr had proposed which was to sunset the Boundary Commission within the Metro structure, after a two-year period.

Larry Derr said that Chair Hales' proposal basically brings the Boundary Commission under the umbrella of Metro, but its operations would be largely the same. There would be a requirement that it specifically recognize the Regional Framework Plan. He said what he suggested at the full Committee meeting was that, rather than try to figure out a program for dealing with the issue, be sure that it is one of the first items Metro addresses under the Charter. That was the idea of the two-year sunset provision, which would say that the Boundary Commission, as currently functioning, would continue unchanged. That period of time would give Metro time to decide what to do. If they did nothing, it would disappear. Some people, particularly Bob Shoemaker, expressed a real concern that it might be creating a decision by default. If no one could figure out what to do about it, then it would go away. They feel it should be conscious decision. The suggestion put on the table tries to take into account the fact that times have changed since the creation of the Boundary Commission. At that time, there was no regional plan, no regional government or agency. There was a proliferation of districts going on and cities fighting about boundary situations. Primarily, it was concern about special districts more than about cities.

Ron Cease said it was concern about both. There haven't been cities created, but there have been an immense number of annexations and city boundary changes.

Larry Derr said the Boundary Commission was created to fill a void. The thinking is that in the 20 years or so that have gone by some other things have come into place. The regional government is here. Regional planning is ongoing. The charter is in a stage of putting a strong step forward to do even more of than regional planning. The Boundary Commission needs to be looked at anew, rather than as how to continue it. The bottom line is that the function it really performs is essentially a political one, because the planning process is required to generate urban service agreements that

assure any place within the UGB can be served with all necessary urban services. That process may not be totally complete, but the statutory mandate is there for it to exist. In a debate between competing jurisdictions, and creating new ones, there will be a debate with existing jurisdictions about who will provide the service. It is not an issue of who can provide the service, because that decision either has been made or should be made by the planning process. Rather, it is who is preferred to do it. The thinking for that is a political decision that the various agencies and citizenry are involved in. It is not a scientific process. It is not something where a set of standards are lined up against the facts, which leads you to one conclusion. The framework that is set up for the Boundary Commission really is creating a false sense of what is being accomplished. If it is a political decision the Boundary Commission should be a place to go for a final resolution of the dispute. That sounds more like arbitration. So, why not have a dispute resolution process? That gets into the question of whether it would be a panel of arbitrators, and who should appoint them. They should probably not be appointed by a political jurisdiction. It should be a pure decision and not tainted by who got their people on the arbitration board. Maybe you could go outside the region to something like LCDC's dispute resolution program or to the presiding judge of the circuit court who has the authority to appoint arbitrators. Maybe there would be requirements of background or knowledge of the people who serve on the panel. That would be a way to both resolve the dispute and it would be a hammer over the heads of competing jurisdictions. Ask them whether they want to work their disputes out by compromise or would they rather take their chances at the lottery of arbitration. There would probably be more dispute resolution done at that stage as a result. The UGB is a planning tool and is now, and should remain, something that the regional government deals with. If the Boundary Commission function continues with its current authority, it shouldn't be at odds with the regional government. Currently, where that could happen is if the regional government wants to change its own boundary. That ought to be something that should take preeminence over the Boundary Commission or the arbitration dispute resolution. The key elements would be that the regional government continues to deal with its UGB issues; that it also has authority over its own boundaries, as permissible by state law; and that the current Boundary Commission function be replaced by some form of arbitration panel that would be selected on an ad hoc basis to deal with a particular dispute.

Ron Cease said that everything is a political process, including the planning process. He said that with some boundary changes there is a conflict between one or more units of government. In other cases there is a proposal for, say, an annexation, and it may be that area residents are arguing whether a boundary should be approved. In that instance, it isn't a conflict between units of government. In some districts there are withdrawals and dissolutions of districts. He asked about the nature of boundary changes today, versus what they used to be, and how that more clearly relates to the planning function.

Ken Martin, Executive Officer of the Portland Metropolitan Area Local Government Boundary Commission, said that there is confusion about how much the Boundary Commission is involved in planning issues. In the early days there was quite a bit of involvement because there was no regional or land use planning. Then the LCDC process came along and local governments began to develop plans. State law requires, within the Boundary Commission statute, that they make no decision that would contravene local plans. The major emphasis of the Commission is not in the planning field, but rather in services and governmental structure. Larry Derr is incorrect in assuming that the land use planning process has gotten sophisticated enough to tell us who is going to serve what areas at one point in time. The only requirement currently in the LCDC process is one that requires there be subregional and regional kinds of plans about certain services. Those plans are only for major facilities. They don't say who is going to lay the pipes where. They only deal with the regional aspects of four services--sewer, water, storm drainage and transportation. The requirement does not deal with any of the retail aspects of those services, nor does it deal with any of the other urban services. So, the area isn't to that point in the planning process where you can say the plans already lay that out and you don't need the Boundary Commission to figure that out. If the area got to that point, you wouldn't

need the Commission to perform that function. There is now a massive set of proposals that some of the LCDC subcommittees are currently working on to try to legislate how areas will be serviced. The Boundary Commission provides a forum for all the parties, so that everyone comes in as an equal partner. The citizens don't feel that a unit of government making a proposal is in an advantageous position. They are there in front of an impartial body, equally. A lot of the neighborhood groups and general citizenry find that a very important function. The practical aspect is that you need a way to process boundary changes. The Commission has provided over time a pretty efficient way to do that for this region. The Commission processes 120-175 boundary changes per year. The per-proposal cost of doing that is far less than the public cost would be, if every unit was doing its own. On a lot of boundary changes there isn't intergovernmental conflict. There is a person needing a septic tank or something to be annexed for. In situations where there aren't conflicts, you still need a way to get those processed or annexed.

Larry Derr said that everyone is consciously trying to avoid duplication of services. The process described by Ken Martin happens in other places without a boundary commission. Is the process one that is totally in lieu of what the affected local jurisdiction would do or are local governments still doing some part of a review of a boundary change? For annexation to the cities, the city has to make a recommendation.

Ken Martin said not necessarily. There are some cities that choose on their own to do a separate review of boundary changes. Hillsboro and Canby both have a requirement that a boundary change go through their planning commission and city council. Boundary changes are all covered within the boundary commission statute and there is no requirement that a local unit of government do anything unless they happen to be using a method of initiation where they are initiating their own proposal. The process performed by the Boundary Commission is an in-lieu-of process. When the process is finished, an order is issued to the Department of Revenue, the Secretary of State's election's department, and so on. Within those various departments that have to make the ultimate changes, and reflect those on their elections records, it was a nightmare when they were getting those from all the different units of government. They had no uniformity in what they got--inadequate legal descriptions, inadequate maps, etc. The Boundary Commission has made that a uniform process.

Charlie Hales asked Ken Martin what the size of the Boundary Commission's staff is.

Ken Martin said that it is 4.5 FTE.

Charlie Hales asked if, in processing a boundary application, there are clearly two processes at work. Is there a staff review function and then a political decision?

Ken Martin said that he disagrees with the assertion that a decision is political.

Charlie Hales said that it should be, rather, a policy decision.

Ken Martin said that there is a decision by the Commission that is a separate process that must have a public hearing and so on. Then there is a staff review process. There is an exception-- an allowance for an expedited administrative procedure which can be requested on a very non-controversial proposal.

Charlie Hales asked what percentage of the cases have significant public testimony.

Ken Martin said that for testimony where there is opposition to a proposal, it is probably 25 percent. There is a hearing on all the proposals. Some may not have testimony or only proponent testimony. It is not unusual, though, for a hearing that goes until late at night. They meet every fourth Thursday.

Or more often if needed.

Mary Tobias asked if more than 25 percent of the cases fitting the definition of a contested case.

Ken Martin said 25 percent is for those with significant testimony. The Boundary Commission is a contested case proceeding in some ways and not in others. That's a legal issue.

But saying that there is disagreement on a proposal, about 25 percent have disagreement.

Ray Bartel, Chairman of the Local Government Boundary Commission, said that if there are 16 items on the agenda, maybe once every three months there would be one or two hearings with significant testimony on both sides of the issue. There may be 25 percent with someone taking a position on both sides. But in terms of ones that are vigorously protested, it's much less than that--5-10 percent.

Mary Tobias asked out of the cases handled in a year, how many are jurisdiction to jurisdiction, in terms of one supporting and one opposing.

Ken Martin said not that many. The proposals include both cities and special districts. Some of those are going to be annexations, some withdrawals, and so on. On occasion, there might be a piece of territory that one city is annexing, which another city is interested in. That isn't all that common anymore, given that the land use plans do identify the areas of interest. But when there is a conflict, it can be big. The area between Beaverton and Portland, and Beaverton and Hillsboro have a lot of disagreement. If there is opposition, rather than government to government, it is usually either neighbors, or a citizens' group or some other interest groups raising issues about a proposal. Often they will raise issues that are significant. One of the services the Boundary Commission performs is to get all those issues out on the table and get them resolved before the annexation.

Ron Cease said that this is a common process that works within the region, applies equally throughout, but in most cases there isn't high controversy. This is a process that has been taken away, essentially from local governments. There are some examples of governments that cross county lines. How many units of governments cross the boundaries of Metro?

Ken Martin said that it would be about 40 units of government that are both inside and out of Metro's boundaries. Metro's boundaries didn't follow any other political jurisdiction, and as a consequence, it cuts across a lot of fire and water district.

Ray Bartel said that the Commission is also dealing with jurisdictions that are outside the UGB. The issue dealt with mostly out there is, for example, annexation of water lines that are contiguous. Those issues don't have anything to do with the planning within the UGB. In terms of having a political purpose, or not, and whether the Commission is handling arbitration, the Commission also looks at serviceability. There was an area of West Linn where there were continual annexation proposals to annex territories in an area where they were considering the placement of a new water tower. That was being held up by problems within the city's ability to produce the tower. There was extremely low water pressure. If it was up to the city of West Linn, or to the water provider, they would have just taken those areas in.

Ron Cease said that there are times when the Boundary Commission makes a judgement that nobody wants.

Ray Bartel said that is correct. It is also a judgement made in the public interest.

Burton Weast, Executive Director of the Special Districts Association, said that the Special Districts are all over the map about the Boundary Commission. A lot of it is based on whether they get what

they want or not. He said that about two years ago he wrote a letter to the water districts, asking how many of them want to get rid of the Boundary Commission. About half said if there weren't a Commission, there may be some problems. The Commission has sided with the water districts at times in disputes between districts as well as disputes between cities and districts or neighborhoods. He said that most of the controversy is between a service provider and the neighborhood, not between a district and a city. There are some things that districts agree on, concerning the Boundary Commission. There is a general belief that there needs to be some sort of process that takes regional considerations in when a new unit of government is created, and when a government is dissolved. When a government is created, agreement is needed about the impact on other governments. The turf is already staked out. There needs to be process about the implications of that creation of a unit of government. It can be the creation of something like a park district that will cover numerous districts and cities, and maybe has property tax implications. With the era of Measure 5, you could get rid of the Boundary Commission, but there needs to be some process that deals with the regional implication of what happens when you create new government. On the dissolving side, criticism that districts commonly level at the Boundary Commission is that there isn't enough attention paid to the impacts on the remainder of the district that is left or on the financial implications on the residents. Special Districts very strongly believe there should be someone or some process that makes sure, that when dissolutions occur, there be a fair day in court to resolve the issues. From expensive districts, water and sewer, instead of the balkanization of the area, you need to think more regionally about service provision. The Boundary Commission isn't really active and aggressive enough. They are more responding to applications, rather than being party assisting in the regionalization of services.

Ron Cease said that, on the legislative side, the criticism is reversed. The fact the Commission is a regional body is what condemns them to begin with. The legislative complaint would be that they want to look at it in terms of local authority.

Burton Weast said that is a factor. The Special Districts' criticism is beyond that. Not only is the Boundary Commission not involved in that as much as the Special Districts would like them to be, the Commission isn't out there actively working to help the districts, where regional agencies have been proposed or needed. The final criticism is that there is a real bias toward cities. That is an attitude that should have changed in about 1975. It is not the position of the Special Districts Association that every district that exists today should always exist. In fact, it's just the contrary. There should be a situation where it is who can give the consumer the big bang for the bucks of expensive services in a day of shortages. The Boundary Commission doesn't seem to be helping in that role. On the positive side, the Boundary Commission commonly handles a lot of neighborhood disputes that the districts would have to handle themselves. They handle annexations for less sophisticated districts, particularly for the rural districts. They are a great resource. The staff is very helpful. The Special District Association suggests, relating to the Charter, that it is time to move to the next phase of the Boundary Commission. It is not time, though, to totally eliminate the duties and responsibility they have. LCDC is planning on proposing as a rule--the statute already says it--implementation to require coordination agreements between fire, park and recreation, transportation, water, and sewer districts. These would be signed agreements, that would be required before a city or county could get its plan approved through the periodic review process. They would have to have a signed agreement with a list of things in it, including who serves what, when, annexation agreements on how annexations occur or don't occur. Today these are not on the ground. If you eliminated the Boundary Commission today, there would serious problems about those coordination issues.

Frank Josselson asked if any of the agreements were on the ground yet.

Burton Weast said that none of them are regionwide at this point. But if LCDC adopts this as an administrative rule, over the next two to five years those coordination agreements will be drafted and be pretty universal. The neighborhood dispute, the fight between the water district and the city or

whatever, will go away. The districts do think that it is time to reexamine the Boundary Commission. Within the Metro area and Metro process, the Charter should address the Boundary Commission and how it operates within the region.

Ron Cease said that the Boundary Commission is an agency created by state law, that now has members appointed by Metro and its funding is provided by local fees and charges. But all the statutes are state statutes. In the creation of the commission, what the state said was that the state has a preeminent interest in local government boundaries. In designated parts of the state, the Legislature has taken the responsibility away from local governments, whether they are home rule or not. None of the local governments have control of their boundaries. Counties are a little different. He said is unclear how to integrate the Commission, in terms of its controlling statutes, into Metro-- whether it would have to be triggered that the statutes follow with it, or whatever. He said he has a hard time accepting the notion that Metro, with a home rule charter, would be able to control its boundaries unlike any other local government. He said he has even more trouble understanding how it could control the boundaries of governments not totally within Metro boundaries.

Frank Josselson said that you would never want Metro in that position, given that the Charter he would like adopted would establish a regional/local government partnership. He said he doesn't want the regional portion deciding if Beaverton or Portland is going to serve the Cedar Mill area or whether there is a new city there. That is diametrically opposed to what the Committee has attempted so far. It would be better to leave that function at the Boundary Commission than to be at Metro.

Ron Cease asked if Frank Josselson if he is saying he wants the Boundary Commission to stay as it is.

Frank Josselson said no. From a legal point of view, the Charter has the ability to identify matters of metropolitan concern. It seems that the Charter could call out the functions of the Boundary Commission as being matters of metropolitan concern, and then deal with them. Whether it could lawfully or not may be a constitutional argument. Maybe Mike Huston thinks there is nothing the Charter Committee can do about it. If that is the case, then there are two lawyers who have disagreement. He said he would expect the Charter or the Committee to propose that the Legislature adopt conforming legislation with respect to anything that would be changed. He said he is inclined to think that the Charter can do what it wants to do, one way or the other.

Janet Whitfield said that right now, under statute, Metro could take over the functions of the Boundary Commission. It wouldn't necessarily have to take the Commission with it.

Burton Weast said he thinks that is right. He said, back to having Metro involved in the Boundary Commission, that Special Districts would agree that, since Metro has made the appointments to the Boundary Commission, the districts have been treated more fairly than when the Governor made the appointments.

Ron Cease asked Burton Weast why he thinks that is the case.

Burton said that there are now commissioners from defined areas across the region. There are 12 commissioners from each of the territories. The Council nominates names and refers them to the Metro Executive Officer, who makes the appointments. You don't go up before the Commission now and come from an area where there is no commissioner or someone very familiar with that area. Also, the politics are balanced better. There is no one area dominating. Districts would be very concerned about a Charter that would somehow change the appointment process back to the Governor.

Frank Josselson said that Larry Derr suggested a situation that would be in the middle, between a separate agency and elimination. It is a dispute resolution process where local jurisdictions are unable to agree, with respect to service provision and annexation. Local jurisdictions would be encouraged to

agree to the greatest extent possible. If they cannot, there would be an arbitration process outside the jurisdiction, be it in circuit court or LCDC or somewhere else, where the arbitrator is required to follow the requirements of any urban service agreements and in accord with all land use requirements, be they regional or local.

Burton Weast said he couldn't agree more, because that is exactly the position the Special Districts have taken with the LCDC committee. He said he would urge the Charter Committee to look at what the LCDC subcommittees have adopted and will be going to LCDC this summer. There is a process which both cities and the districts support. There is no disagreement on the LCDC rules. What those rules say is that, if cities, counties and districts do not agree on who serves what and when over the next 20 years, or at least produce an agreement to a process of who serves what area, it would go into arbitration, the state resolution process. If it is not resolved there, LCDC makes the final decision. Special Districts have signed off on that. He said he thinks that process will go a long way to resolving the intergovernmental disputes.

Chair Hales said that if that process is going forward, and if the Charter's Regional Framework Plan is to be taken seriously, and having heard in this meeting that there is a staff analysis function of boundary changes and a policy decision, there isn't much of a case to be made anymore for a separate Boundary Commission. He said he can make a case for a boundary-keeping function that involves staff, now lodged at the Boundary Commission, but should now logically be lodged at Metro. He said he disagrees with Frank Josselson. If there is to be an agency in charge of regional planning, there is not justification for keeping the boundary-keeping function separate from the planning function for the whole region. He said there is an argument for continuing the Boundary Commission within Metro's structure, as a separate body, for a short run while the Framework Plan is formulated and while the LCDC rule-making process is carried forward. It sounds like they are both going to take a couple years. But two years from now, when both documents are done, and when all these local governments are going through periodic review, with respect to both the new LCDC public facilities rule and a Regional Framework Plan, there will still be a boundary-keeping function. But where else should it be but Metro, if this Regional Framework Plan is going to have any validity at all?

Larry Derr asked what Chair Hales meant by boundary-keeping function.

Chair Hales said that it is the process of staff analysis and recommendation to a hearings officer when this or that application comes for a boundary amendment or annexation or dissolution or formation of a unit of government--all the applications that are now considered by the Boundary Commission. He said he doesn't see why those couldn't go to a Metro hearings officer with a recommendation from the planning staff that would be assigned to dealing with boundary issues, and then have the opportunity to appeal that to the Metro governing body, which is a regionally representative body.

Larry Derr asked what judgmental decision is left to be made if the type of agreements are in place, that Burton Weast is describing. There might be a timing judgmental decision, if it is a question of annexation. As to an interjurisdictional dispute, there shouldn't be any decisions to be made, because that has been taken care of in this new process. If the process comes into being, it has built into it the dispute resolution process.

Burton Weast said that LCDC will resolve the disputes, if all this happens.

Larry Derr said that gets it out of the problem where there isn't one of the partners, in this regional/local government partnership, telling one of its other partners how to do it.

Ron Cease said that the Subcommittee is being very idealistic.

Chair Hales said that he is taking seriously Isaac Regenstreif's speech in which he said one of the things the Committee should be doing is consolidation, which was a charge of Metro when it was created in the first place. The Charter is probably not going to do that with respect to Tri-Met, and not with respect to other possibilities of consolidation. The Charter isn't going to take Rick Bauman's suggestion to merge county boards of commissioners into Metro, so is the Charter even going to do this one? If the Charter can't do this one, what can it do?

Mary Tobias said that no one has convinced her that there is urgency to the Charter to be the end-all problem solver, rather than the Charter be a document that sets in motion the solution of the problems. This kind of problem solving is pretty massive, in terms of building enough regional consensus to get to whatever the ultimate answer ought to be. It frequently takes a lot more analysis and a lot more input than there is time to accomplish. The recognition that there is substantial change in the region seems to be something the Charter should speak to, if only in a preamble. The Charter should enable the ongoing incorporation of the change. She said she believes the LCDC change that is currently being proposed will probably fly, because it has been worked on statewide and there is immense amount of agreement among very desperate parties. If the Charter enables the further consideration of these issues, it has done what it should do.

Chair Hales summarized that the Charter could empower the Metro governing body to be affect the absorption the Boundary Commission down the line.

Mary Tobias said that the Charter should speak to dealing with the regional issue, based on the needs of the region and the best resolution of the region. It ought to enable a process. It should say this and other regional issues like it will continually occur and the regional/local government partnership ought to be able to move those things to the regional table and resolve them.

Chair Hales summarized the idea of the assumption of the Boundary Commission function within Metro would be taken through the RPAC like the assumption of another service or function. Upon recommendation of the RPAC and approval by the governing body, the Boundary Commission's functions could be absorbed into Metro in some manner they choose to lay out.

Larry Derr said it could be absorbed or dissolved.

Mary Tobias said the Charter should enable change. Otherwise, it is micro-management. The Charter Committee can only manage in 1992.

Janet Whitfield said, what Ron Cease was saying is, that even though you may take the Boundary Commission over, the statutes to have to be adhered to because the matter is of statewide concern.

Mary Tobias said that is another reason for process. You can't affect all the changes you want with the Charter. The Charter adoption does not necessarily guarantee you that everything will happen statutorily that needs to happen. It cannot force a statutory change. But it can establish process to accomplish the change hand-in-hand with everything else that is going on. Then it would be a living document, one that doesn't orchestrate.

Ron Cease said that there are some people on the Committee who would like to get rid of the Boundary Commission. Others would like to bring it into Metro or to change it. Somebody has to carry out the statutes. It doesn't have to be the Boundary Commission. He said he would be loathe to see it done solely by a hearing officer because you would remove the business of having a group of citizens who do have some expertise. Maybe the best way to deal with it is to hold off and perhaps, following Larry Derr's suggestion, look at a sunset clause. Or the Charter could leave it alone. If that is the case, it would continue as a state agency, though the Charter would probably have to make

provisions for the appointment by Metro.

Larry Derr said that a problem with leaving the Boundary Commission alone is Metro's boundary. It might become an issue as Metro looks at how to deal with growth in the area. Metro might feel strongly that it needs to change its boundary to accommodate where growth is going. If that happens, Metro shouldn't be in a position to appoint a group of people. Metro has already made its own policy decision about what its boundary ought to be, and then it shouldn't have to go to the very Commission that it appointed to get approval.

Ron Cease said that it might be viewed as a conflict of interest. Maybe Metro's boundary changes should be approved by the voters or the Legislature.

Ken Martin said that, currently, Metro's boundary changes are approved by the Boundary Commission. He said he would love to see Metro's boundaries extended to the full three counties. Every once in a while there is a boundary change proposal. Usually, it is a minor adjustment going along with an amendment to the UGB that has been approved. The process now is that any amendment to the UGB automatically annexes the territory to Metro. They don't have to come to the Commission for that.

Ron Cease asked if it is a problem having a jurisdiction making its own judgement on a boundary.

Burton Weast said he doesn't think it is a problem. Metro's boundary process is so elaborate and onerous that it is certainly not done in the dead of night. Nobody's rights are violated. The problem is that, if you ask the districts in Multnomah County if they want to get rid of the Boundary Commission, almost every one will say yes. And then you point out, under the law, that means the Multnomah County commissioners will now take responsibility for the boundary issues and will decide division of assets and so on. Those same special districts will come back and point out that they only have one representative on the east side and the rest of the commissioners are from Portland. There is less violent reaction in Washington and Clackamas Counties, but there is still that reaction that they aren't sure they want the county commissioners making the decisions. He said he would suggest that there is a link between what the Charter does and the Boundary Commission. If the Charter does eliminate the Boundary Commission, there has to be something else put in place.

Bob Shoemaker asked how much of the current boundary function, if contested, would come before LCDC's service coordination process, once it is in place. Jurisdiction-to-jurisdiction would. Would special district versus neighborhood find its way into that process?

Burton Weast said no. The dispute between neighborhoods and jurisdiction will not get in front of LCDC.

Bob Shoemaker said he is trying to figure out where the gaps are. It looks like the important work the Boundary Commission does would fit into what LCDC is developing. Other difficulties, where there is an annexation resisted by a neighborhood, or a dissolution that the neighborhood resists, wouldn't fit with the process. Maybe an arbitration process would be appropriate to deal with those matters when they are contested. When they are not contested, let the process operate so that it is done cleanly. Let there be a hearing with a hearing officer making the pro-forma approval. So the contests are out of the political arena, but there is still a boundary department dealing with the orderly handling of boundary changes within Metro.

Ron Cease said that is similar to having the Commission within Metro. Certain kinds of decisions would be either automatic or appealable to Metro Council. He said he has a hard time when people say they want to remove the politics. The issues are political when you are dealing with people.

Larry Derr said that the point is what political body is called upon to make the political decision. You

don't want it to be one of the players in the dispute and give them the hammer.

Ron Cease said that it is done that way with all planning decisions. A planning commission's decisions are appealable to the governing board. Sometimes the council may override the commission.

Larry Derr said that those decisions are different because the political decision is made when the plan is put in place. When changes or implementations come up, there is a set of rules to go by. While it is a situation where the legislative body made the rules and then becomes the judge to interpret them, it is still a policy decision. If the LCDC rule is implemented, then it will never again be a decision of which agency will ultimately provide the given service in the area. But there can still be a question of whether or not the people who are not yet receiving that service are actually ready and willing to get it. That may be a gap that needs to be filled.

Bob Shoemaker asked if the Boundary Commission can make a fairly object assessment of an application to determine whether the people not being served will be better served in a number of important respects.

Ken Martin said yes is the general answer. He said he is leery, though, of saying 'better served.' The standard is that there be an adequate quantity and quality of service. The Commission doesn't get involved in whether a 2 1/2-minute response time is better than a 3-minute response time, but rather what is the base level that is adequate.

Larry Derr asked what the Commission does when there are two agencies that can provide adequate levels of service. The Commission still has to make a decision.

Ken Martin said that is correct. Normally, in an annexation to a city, which may take territory from a fire district, and the fire district says their rig can respond a 1/2-minute faster than the city, but there are a whole range of services that the city provides. That doesn't mean the annexation will be denied.

Larry Derr asked if that is where the policy, that the cities are the preferred providers, comes from.

Ken Martin said that is why the policy is there. That is correct.

Ron Cease said that the Subcommittee should keep in mind that whenever a city annexes into an area with special districts, it does damage to the special districts. He said he doesn't have sympathy with that. But when you make a district smaller, because a loss of part of its territory, you create problem with the bonded indebtedness. Better statutes and system are needed for dealing with that. He said he doesn't buy the notion, though, that an application should be denied because it might damage the fire district.

Frank Josselson said that the primary function of the Boundary Commission is to decide who is going to serve a group of people. It doesn't generally make the decision as to when the people are going to be served and at what level of service is to be provided. Those kinds of decisions are made by planners. Under Goal 11 they are required to be made by cities and counties in their comprehensive plans. The timing and level of service delivery is a question that must be decided on a planning basis. It is one of the things the Regional Framework Plan would do, among other things. The Boundary Commission decides who is going to provide the service. That is, in virtually every case, a political question that the people are afforded the opportunity by statute to decide, on the very most basic political level. That is by a vote of the people. What is the difference between the Boundary Commission territory and outside it? Outside the area, those political processes that involve the people have full play. Inside the Boundary Commission area, the Commission sits on top of the people. It second-guesses them. An appointed body, with no political constituency, no particular expertise, and

with no standards--because there cannot be, these being political decisions--is substituting its judgement and second guessing the people who have the authority to remonstrate or not remonstrate, to petition or not petition for annexation. Without the Commission, there are all kinds of political safeguards in the existing statutes, with respect to annexations. The only question the Commission answers is who serves. That's a political question. Let the political jurisdictions and cities and counties figure it out.

Ron Cease said that if there hadn't been a Boundary Commission this area would be a vastly different place. Right before the Commission was created, there was incorporation of Maywood Park, Rivergrove, and Johnson City, which were the last cities created. If you look at the nature of those cities, it tells you what would have gone on if there had been no Boundary Commission. It would have been an absolute jungle. In the same way, the fact that there is a Metro organization, which says that the local governments can't do everything the way they want to, some consideration has to be given to looking at the region and how it moves. If you buy the notion that any local group of people, whatever block, city or district it is, can do exactly what they please if they can get there first, then there is an argument.

Ken Martin said that it would be a terrible thing to leave a void, if some new process is created, between now and the time the LCDC rules are adopted. He said he is concerned about trying to design a system, at this moment, to put in the Charter something that is to be working when the rules are adopted. You don't know what conditions are going to be there. The Charter could allow the Council to take over that function, but don't leave a period of time in which there is no idea how boundary changes are to be made. He said he would argue strongly for something more general that clearly establishes, if the Committee wants it, that the Council can take over that function. But don't design it right now. Give them the process to do it.

Chair Hales said he agrees. He said he can't justify staying out of it completely or trying to get it all lined up for the next 20 years. He said that the electors of the district can authorize the transfer of the duties, functions and powers. That doesn't make sense. This is not a proposition to be put before the voters. Most voters don't know there is a Boundary Commission, much less whether it should be transferred to Metro. If this decision is going to be made down the line, the Charter should authorize the regional governing body to transfer and reorganize, at will, the functions of the Boundary Commission, and have that decision go through the same RPAC process that the Charter uses for the transfer of functions now performed by local governments.

Jon Egge said that voters approving the Charter would exercise the section of the law that requires voter approval to transfer the Boundary Commission.

Chair Hales said that the voters in one motion would be authorizing the Charter and authorizing the decision to the Council with the consent of RPAC. He said he would use the phrase 'advice and consent' because the assumption of a local government function would require the RPAC approval or voter approval.

Bob Shoemaker said that 'advice' might be better.

Chair Hales said he would consider it in this case.

Ron Cease said he would consider 'advice' also. Larry Derr's proposal to put a sunset on it might work, too.

Chair Hales said, given that they aren't sure when the LCDC process will be completed, that might not work.

Ron Cease said that waiting for the LCDC rule leaves the Boundary Commission in limbo.

Bob Shoemaker said it leaves the status quo.

Mary Tobias said if the Charter triggers a resolution, that will be enough. If the Charter initiates a process and states that it will occur, no matter how long it will take, the formality will be put in motion.

Ron Cease proposed authorizing Metro to do it, but put a time frame--say, two years after the Charter is adopted--by which they have to make a judgement how to deal with the Commission. Then have them take it to RPAC for advice.

Chair Hales said he likes most of that, except there isn't a particular reason to mandate within a certain time that Metro will have to decide this. If there is going to be an activist Metro Council that is going to adopt a good Framework Plan and want to see it work, and if they see that the assumption and absorption of the boundary function into Metro as a good way to implement that plan, then they will implement this clause. Just forcing them to do it in two years isn't going to force to do the right thing.

Ken Gervais, Metro staff, said that the Charter hasn't mandated the Regional Framework Plan to be done in two years. If the Framework Plan is tied to this decision, two years isn't a consistent time. The Charter provides for the Framework Plan in three years.

Ron Cease said maybe the LCDC rule and the Framework Plan should be linked together.

Jon Egge that the proposal is as much linked to what LCDC is going to do than it is to the Framework Plan. He said he is concerned with respect to 'advice and consent' or just 'advice.' He asked Mary Tobias what her opinion is.

Mary Tobias said that she doesn't think anything will happen to planning in the region the next 10 years without everybody being part of the decision making. It is too complicated and too many things are at stake. There are going to be too many players pretty soon. One is not necessarily better than the other. Metro isn't going to do major planning decisions without knowing where the rest of the players are.

Ron Cease said, if the voters approve the Charter, it sets a certain mandate on the Boundary Commission. It is going to be difficult, but there will be times when enough people say it need to be done. They will go to work on the others to push it. He said he would prefer 'advice of the RPAC.'

Jon Egge said he is a moderate on this issue and agrees.

Frank Josselson said he would prefer to sunset the Boundary Commission and put a time in the Charter in which a decision has to be made. In the absence of that, the decision is less likely to be made.

Mary Tobias asked why.

Frank Josselson said that the political forces to keep any bureaucracy running are like strong nuclear forces. The voters would like to see some consolidation and elimination. He said he knows enough about the Boundary Commission today to make the decision. The Boundary Commission is made to sound like an awfully technical and complex thing. But he thinks he knows enough now to make an intelligent decision that would benefit the public. He said that he realizes that it is tremendously

presumptuous.

Janet Whitfield said that Frank Josselson said that, if the Boundary Commission were to disappear, that the decisions would then go to the people. But Burton Weast said that the decisions would go to the county commissioners.

Frank Josselson said that the decisions would go to the county commissioners, but they do today. If a water district is incorporated into a city, the question of the division of assets goes to the county commissioners.

Jon Egge said that he is concerned about saying 'may.' If there could be something in the proposal that says 'shall,' it would address Frank Josselson's concern that this thing will perpetuate. There is a real possibility that it could happen.

Charlie Hales said the Subcommittee should consider enabling language in which the Charter authorizes the Metro Council, with the advice of the RPAC, to assume the duties of the Boundary Commission. The Council shall take up that decision within one year after the adoption upon periodic review of the Regional Framework Plan.

Jon Egge said he is uncomfortable with that because LCDC is at least as big a player as the Regional Framework Plan.

Burton Weast said he is bothered by 'assumed.' If the Charter has some language that allows the region to decide how it will do boundary changes, the region is going to get together to do that. That may or may not be an assumption of the Boundary Commission by Metro. It may be a totally independent commission. It would be better to say that 'Metro, on behalf of the region, may--or shall--create a boundary commission process.'

Chair Hales said that if the powers of the Boundary Commission are transferred to Metro, Metro can do anything it wants. It can set its own commission, it can do it by a hearings officer, or it can do it by the Metro governing body.

Burton Weast said that Metro might logically decide not to touch intergovernmental issues. Those are decided by the planning agreements. LCDC will fight that out. But there will be a group that deals with individual changes or some system.

Ron Cease said it would be better to let the Boundary Commission to operate the way it is operating until a certain point when Metro has to make a judgement about how it is going to do it.

Bob Shoemaker said, rather than putting in a time certain, have it in reference to other events, such as the development and adoption of the Regional Framework Plan and adoption of statewide rules that pertain boundary disputes. Put in some words like 'shall expeditiously, in relation to these other events, deal with this issue.' If they don't do it, they can be held accountable by those in the region who care about that.

Burton Weast said as long as it isn't 'not later than.' If everyone gets together and get a great idea on how to handle this next week, then they would be able to go to Metro right after the Charter process.

Chair Hales said the wording could be, 'shall, upon the adoption of the Regional Framework Plan and rules issued by LCDC....'

Bob Shoemaker said the wording should be, 'expeditiously and in relationship to....'

Jon Egge said that the point is not 'upon the adoption,' but 'shall, within a certain time of the adoption of the Regional Framework Plan and development of rules....'

Ron Cease said let Metro do this after the adoption of the rules. Don't set any timeframe except 'after the Regional Framework Plan and the LCDC adoption of the rules.'

Bob Shoemaker said that then Metro can't do it before that time. It could be appropriate to do it before then and they should have that leeway, too.

Burton Weast said that local governments, given the opportunity, will get together and talk about the Boundary Commission immediately.

Mary Tobias said that, if the Charter describes the Framework Plan, as envisioned, as well as the Future Vision, this change ought to be part of the whole process. This debate ought to be folded into it. The Charter should say that, 'As part of the regional discussion of the planning vision and the development and adoption of the Framework Plan, the resolution of handling boundary change, and the current mandates, will be part of that process.' It shouldn't sit out on its own.

Ron Cease said that in the meantime the Boundary Commission will operate as it is until that decision is made.

Chair Hales asked if that would mean empowering the regional governing body to make that decision, instead of having to send it to the electors.

Bob Shoemaker said the provision is being sent to the electors with the Charter.

Frank Josselson said Mary Tobias' suggestion would prevent the regional government from doing anything about the Boundary Commission until it adopts the Regional Framework Plan.

Ron Cease said it would become part of the Regional Framework Plan.

Mary Tobias said it probably would, unless the government were to make some decision that they would fold into the Regional Plan.

Larry Derr said this gives some time for LCDC programs to get into place.

Chair Hales said the Committee should look at the language and make sure there is majority support.

Janet Whitfield read, 'As part of the regional discussion of the planning vision and the adoption of the Regional Framework Plan, the resolution of boundary changes, and the mandates involved, will be decided by the Council, with RPAC advice. Until that time the Boundary Commission will stay on as currently mandated by state law.'

Jon Egge said that it is a process, not 'boundary resolutions.'

Chair Hales said that Janet Whitfield will circulate the language among the Subcommittee members.

Ron Cease said that there is a question still of the process issue--whether to use the Commission or a hearings officer. The process will have to conform to state law.

Chair Hales said that there will have to be a requirement that state law be amended.

Ron Cease said he supports the process outline.

Chair Hales adjourned the meeting at 4:45 p.m.

Respectfully submitted,


Janet Whitfield
Committee Administrator

Reviewed by,



Kimi Iboshi
Committee Clerk