

MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

MARCH 25, 1982

Members present: Couns. Banzer, Berkman, Bonner, burton, Deines, Etlinger, Kafoury, Kirkpatrick, Oleson, Rhodes and Schedeen.

Members absent: Coun. Williamson.

In attendance: Rick Gustafson, Executive Officer.

Staff present: Richard Brandman, Andy Cotugno, Jill Hinckley, Mike Holstun, Sue Klobertanz, Dan LaGrande, Keith Lawton, Tom O'Connor, Dennis O'Neil, Kay Rich, Sonnie Russell, Ethan Seltzer, Jennifer Sims and Caryl waters.

Visitors present: Rex Bybee, Hank Laun and Don Williams of the Council Special Task Force on Fiscal Management;  
Ann Wiselogle, 6025 SE Woodstock;  
Sherman Coventry, 926 SE Umatilla;  
Bill Barber, 1925 SE Ash;  
Gretchen Bennett, 3649 SE Knapp;  
Elizabeth Lucas, 5615 SE Jenne Lane;  
Lorothy Reese, 5720 SE Jenne Road;  
bonnie brunkow, 5009 SE Circle Avenue;  
Lois Campbell, 5465 SE Circle Avenue;  
Frances Hyson, 16507 SE Mill;  
Bruce & Jan Burmeister, 5926 SE Jenne Road;  
Shyla Ragan, 5808 SE Jenne Road;  
A. E. Stewart, Southeast Times;  
Howard Neufeld, 5916 SE Jenne Road;  
Floyd & Virginia McKechnie, 5349 SE 174th;  
Roberta Lady, 17036 SE McKinley;  
Douglas Fowler, City of Portland;  
Roxanne Nelson, City of Portland;  
Leonard Anderson, 16711 SE McKinley.

The meeting was called to order by Presiding Officer Banzer at 7:30 PM. There were no introductions or written communications to Council.

3. Citizen Communications to Council on Non-agenda Items.

Bill Barber expressed his support for the bike program that Metro is co-sponsoring.

Coun. Bonner invited all those interested in the bike program to attend the April 5 Development Committee meeting where this subject will be discussed.

Sherman Coventry also stated he was in favor of the public education program, as did Ann Wiselogle.

General discussion of the bike program.

Gretchen Bennett read a prepared statement regarding the fiscal problems of

Metro.

4. Councilor Communications.

Presiding Officer Banzer recommended that Council adopt a policy whereby the Councilors may be recorded as "excused" or "unexcused" if absent from a Council meeting.

Couns. Rhodes, Schedeen and Berkman opposed the policy since each feels the responsibility lies with their constituents and not with their peers.

Coun. Bonner stated he felt this policy should be adopted for the record.

Coun. Kafoury asked that such a policy be optional.

Coun. Burton stated that this policy is a result of reacting to the press, with whom Metro will not win anyway.

There was no action taken on the matter.

5. Report from Task Force on Fiscal Management.

Rex Bybee, Chairman of the Task Force, reviewed the report with the Council.

Coun. Burton asked if an outside auditing firm would review the financial situation to assure that Metro will not get into the same situation.

Executive Officer stated that a plan for supplying the Accounting Dept. with temporary assistance to carry out the recommendations of the Task Force would be forthcoming and after their task is completed, the situation will be reevaluated.

General discussion of the position of Chief Financial Officer recommended by the Task Force, as well as other recommendations.

Executive Officer thanked the members of the Task Force for their participation in the process.

There was a brief recess at 9:30 PM and the Council reconvened at 9:45 PM.

8.1 Contested Case No. 81-6, In the Matter of a Petition by the City of Portland for a Locational Adjustment to the Urban Growth Boundary (UGB) to Add Jenne Lynd Acres and Remove Schoppe Acres.

Presiding Officer reviewed the procedures for this case. She stated that the matter has been discussed thoroughly before two hearings conducted by Metro's hearings officer. The hearings officer issued his recommendation and order in December, 1981. Parties were then allowed to file written exceptions to the proposed order and then to argue those exceptions to the Regional Development Committee on January 19, 1982. The Development Committee has adopted a different recommendation from that of the hearings officer. The parties have, therefore, been permitted to file additional written exceptions to the decision of the Development Committee. The hearings' record of both the hearings officer and the Development Committee are before the Council at this time as well as the recommendations resulting from both hearings. The Council must now determine which of the recommendations to adopt or to adopt a third alternative decision

of their own. The Contested Case procedures provide that anyone filing exceptions to either decision be permitted to argue those exceptions to the Council. No new evidence or testimony will be accepted. The parties filing the exceptions should verbally explain why the Council should accept the arguments presented in the written exceptions. Bruce Burmeister had requested up to two hours to present the case for the Jenne Lynd neighbors. Presiding Officer asked Councilor Bonner, Chairman of the Development Committee, for his opinion as to how to proceed with the request for oral argument.

Coun. Bonner stated that the purpose of the meeting tonite is not to allow the Council to hear the same testimony as heard by the Development Committee, but to review the conclusions reached, listen to arguments from both sides on the question of whether or not those conclusions are supported by the testimony which is already in the record, and to decide to accept the Committee's recommendation or some other recommendation. He proposed to give each side one-half hour and those who have not presented any opinion 15 minutes to keep the amount of testimony limited. The proponents should also be allowed five minutes for rebuttal to opponents' testimony.

Presiding Officer stated that written exceptions have been received from the following people:

Roxanne Nelson, representing the petitioner, City of Portland;  
Leonard Nelson, co-petitioner;  
Douglas Fowler, representing Mr. Anderson;  
Bruce Burmeister, representing the Jenne Lynd neighbors.

Presiding Officer stated she, as well as other members of the Council, had received letters from Elizabeth Lucas, Bonnie Brunkow, and Virginia McKechnie regarding this case. The letters were not filed as exceptions and therefore must be considered ex parte contact, communications outside the procedures the Council is reviewing. Presiding Officer asked members of the Council to declare any other ex parte contact at this time.

Coun. Rhodes stated she had visited the site and had worked with people in the neighborhood for several years. However, she stated that this would not prejudice her decision.

Coun. Burton stated he had telephonic contact with a party in the area but this contact would not affect his decision.

Coun. Etlinger stated he had a telephone conversation, visited the area, but these contacts would not affect his decision.

Coun. Bonner stated he had been contacted by telephone and had visited the area several times, but his contacts would not affect his decision.

Presiding Officer stated that letters had been received by the staff from Roberta Lady and Lonnie Russell, but the letters have not been forwarded to the Council. Presiding Officer asked if there were anything that Legal Counsel would like to add.

Mike Holstun stated that counsel for Mr. Anderson had informed him that some time during his testimony, a letter from the Mayor of Portland would be

introduced. Mr. Holstun advised that the letter from the Mayor be placed in the same context as those received by the Council after the close of the hearing, that the Council should feel free to look at the letter and that the opponents should address their exceptions to that letter during their allotted time.

Coun. Bonner asked that Council not accept this letter since it may constitute new evidence and thus lengthen the hearing procedure.

Coun. Kafoury stated that the Council had the opportunity to read other letters which were not exceptions to the hearings' evidence or decisions and that the Mayor's letter should be considered in the same category.

Coun. Etlinger stated that the present procedure for handling contested cases will be changed for next year and that the Council should proceed with the existing procedure and accept the Mayor's letter.

Coun. Bonner then concurred with Couns. Etlinger and Kafoury.

Couns. Oleson and Schedeen arrived at this time. Presiding Officer asked if either had ex parte contacts to declare.

Coun. Oleson stated he had none.

Coun. Schedeen stated she would abstain from voting since some of the opponents and/or proponents felt she may be biased.

Roxanne Nelson, representing the City of Portland, stated her presentation of the City of Portland's position would take approximately 10-15 minutes, then Douglas Fowler (representing Mr. Anderson) would take approximately 5 minutes and the remainder of the time would be reserved for rebuttal, if necessary.

Ms. Nelson briefly reviewed the contested case. She stated that the City's position agrees with the Regional Development Committee's conclusion and that Metro's standards for approval have been met. Schoppe Acres has relatively no urban services and has no potential for development. Urbanization in Jenne Lynd is already partially developed. Schoppe Acres will not provide housing for the metropolitan area and therefore does not meet with the intent of the UGB. Within present County zoning regulations, the Jenne Lynd area could develop to a density of 85 units on septic tanks, rather than sewers available in the City. Nineteen property owners in the area have petitioned the City for annexation and the City Council has determined that a triple majority in favor of annexation exists in 70% of the area. Because of location and parcelization, the area cannot escape urbanization. The Development Committee reviewed the criteria necessary for a favorable decision on this petition, and concluded that all urban services can be provided to the area in an efficient and economical manner:

Jenne Lynd area is in Johnson Creek Interceptor Sanitary Sewer Service area and was included in the design for the laterals adjacent to the area; no additional public capital investments will be required to extend that service.

Approval of the City's petition will prohibit the issuance of septic tank permits in the area since the City will have the ability to

supply sewer service.

The City's 12" water main lies in Jenne Road and services 13 homes in the area, mostly because of failures in private water supplies. Line is immediately available to supply additional development.

An unfavorable decision will render Jenne Road to remain a rural road carrying urban levels of traffic; approval of the City's petition will bring the road into the scope of the Mt. Hood-Powell Butte transportation study.

City policies and regulations provide that adequate storm drainage be provided as determined by the City Engineer. Metro's stormwater management guidelines will be adhered to.

Installation of fire hydrants by the City will enhance fire protection. Fire protection will continue to be provided by Fire District #10 under terms of its contract with the City.

The standards for agriculture were rendered not applicable since the County has determined this area is committed to non-farm use.

Ms. Nelson then addressed the condition placed upon approval of the petition-- that of requiring annexation of the entire area within two years. She stated that the condition is unworkable; if the area is given the urban designation it merits, the Boundary Commission and the City can then manage the phasing of annexation of the remaining parcels as provided by State law. The City, therefore, requests that the condition be dropped.

Douglas Fowler, attorney representing property owners in favor of the UGB change in Jenne Lynd, stated he agreed with the findings of the Development Committee but also requested the condition of annexation of the entire parcel be eliminated. The findings identify the land use deficiencies in the area, but the condition may preclude correction of those deficiencies. It is his opinion that Metro acted without legal authority in imposing that condition; according to state law, the Boundary Commission has the authority for timing and phasing of annexations and services.

Coun. Burton asked Asst. Legal Counsel Holstun for clarification of Mr. Fowler's statement about the legality of Metro's imposing this condition.

Mike Holstun explained that in their exceptions, the proponents have made the argument that Metro is usurping the authority of the Boundary Commission by imposing that condition. It is his opinion and that of the Legal Counsel that the correction of the land use deficiencies is the condition imposed, not the annexation itself.

Mr. Anderson chose not to speak at this time.

Bruce Burmeister, representing the petition's opponents in the Jenne Lynd area, reviewed the list of property owners opposed to the change in the UGB and those in favor of the change.

Mr. Fowler objected to the presentation of the lists as irrelevant to the

exceptions, the ordinance, or to the Committee's recommendations.

Mike Holstun stated it will be acceptable for Mr. Burmeister to continue provided he link up his statements with his exceptions at some time during his presentation. If Mr. Burmeister does not, then Mr. Fowler may feel free to re-state his objection.

Mr. Burmeister continued with a series of maps and overlays illustrating the property owners, resident and non-resident, and the area where triple majority has been attained for annexation to the City. Mr. Burmeister stated that the property owners feel that Mr. Anderson wishes to develop his property at the expense of his neighbors. Mr. Burmeister stated the following exceptions:

- 1) Lack of notification for hearings.
- 2) Faulty tapes at first hearing before hearings officer, making another hearing necessary.
- 3) City and Mr. Anderson presenting much more testimony at the second hearing than the first.
- 4) Hearing held at Development Committee level and decision was postponed until a future meeting; then, no additional testimony was to be taken. However, the City was allowed to file exceptions on the testimony presented at the hearing.

Mr. Burmeister continued that the requirement of a vote for annexation is a favorable decision to the neighbors he represents, but does not agree that the area should be brought into the City for the benefit of Mr. Anderson. Mr. Burmeister insists that the property owners opposed to annexation are the majority, contrary to a letter from Roxanne Nelson. He also stated that with annexation of the area in which a triple majority is reported to be attained will result in an "island" of property surrounded by the City--a condition that may be remedied without consent of property owners. Mr. Burmeister also maintains that the triple majority has not been attained in the area as reported by the City and that there are more than 25 resident property owners who are opposed to the UGB amendment. Mr. Anderson states in his letter that he intends to develop his property (40 acres) with over 200 homes. Mr. Burmeister states this exceeds the capacity of the Johnson Creek Interceptor. He concluded that the residents are in favor of an election for annexation and reminded the Council of the decision of the hearings officer opposing the change in the UGB.

Jan Burmeister stated the concern of the property is the appropriateness of the land use and they do not feel it is efficient or economical to try to urbanize Jenne Lynd because of the flood plain, the railroad right-of-way, the steep hillsides and the hodge-podge development that presently exists.

Coun. Burton asked Mrs. Burmeister to explain her statement about the current properties being incompatible with denser development in the area.

Mrs. Burmeister stated the cost of extending the sewer and water lines from their source in Jenne Road to the existing houses would be an expensive proposition for the property owners.

Coun. Uleson asked if the property owners support the recommendation of the Development Committee.

Mrs. Burmeister stated to the affirmative, providing for an election on the question of annexation, but they would prefer an outright denial.

The Council asked to see the aerial photograph of the area and Mr. Burmeister illustrated the points of interest on the photo.

Presiding Officer stated that those who have filed written exceptions have had the opportunity to present those exceptions orally and those who have not filed written exceptions would now be permitted to make statements about testimony received this evening, not to re-state exceptions made at the previous hearings or to introduce new testimony.

Elizabeth Lucas objected to statements that agricultural considerations are not applicable in this case. She stated that when Multnomah County granted permission for a stable in the area, their decision to zone for it were based on the land's rural and agricultural use. Mrs. Lucas also presented photographs of flooding that has occurred in the area.

Mike Holstun cautioned Mrs. Lucas that the photos would only be permitted to be introduced if they helped her to make her statement of exception; otherwise, the Council should not accept them as part of the record.

Frances Hyson stated she bought the property in the area for use as a agricultural purposes and objected to the Mayor's letter to the Council that was introduced tonite.

Virginia McKechnie stated her objections to development in the area due to the additional traffic that will travel on Jenne Road, which is already a traffic hazard.

Floyd McKechnie stated his objection to drainage problems being increased by additional development in the area. He also objected to taxes being increased for fire and police protection, which will be provided by the same agencies through contracts with the City at a higher cost.

Howard Neufeld challenged some findings of soil studies submitted as evidence in the case. He doesn't feel that the City will be able to provide solutions to the landslide and flooding problems in the area.

Roxanne Nelson summarized her rebuttal with the following statements:

- 1) The two commissioners mentioned by Mr. Burmeister who were concerned about the UGB change did not vote in opposition to the amendment.
- 2) The City did not intentionally "island" any properties.
- 3) There is no procedure provided for an annexation election.
- 4) There are two sewer lines (not only one) serving the area-- one at Circle Avenue and one at 162nd Avenue.
- 5) There will be no change in agencies for fire and police protection.

- 6) Fire hydrants will be installed, thus improving the fire protection in the area.

Ms. Nelson requested Council's withdrawal of the condition requiring annexation of the entire area within two years.

Douglas Fowler reiterated his opinion that approval of the amendment would make corrective measures available for the inefficiencies in service that already exist.

Leonard Anderson pointed out (on the map) locations of storm drains available to the area and stated that if the amendment were denied, he would have no choice but to divide his property and add to the hodge-podge already existing. Sewer connections are available for his 40 acres and an adjoining 50 acres without involving any other property owners.

Coun. Rhodes stated that the annexation decision is not Metro's to make. The question is should or should not this area be urbanized. She agreed that the services are available, but disagreed that the hazards are not important. Coun. Rhodes continued that development in the area will only increase the flood hazard in Johnson Creek. The Metro Stormwater Management Plan requires that any additional floodwater runoff in excess of the 25-year floodwater will require a catch basin. When this provision was communicated to the City of Portland's Engineer, his response was that such a requirement to a 170-acre parcel to solve a regional problem would be unreasonable.

Coun. Rhodes continued, "Because I believe the flooding hazard and the influence of development in the area will prevent the area from urbanizing and furthermore provide a hazard that cannot be ignored, I move to approve Contested Case Order no. 81-6, which supports the hearing's officer recommendation to deny the petition."

Coun. Kafoury seconded the motion. She continued that her concerns were the increased floodwater caused by development as opposed to continued development on septic tanks.

General discussion of stormwater management and septic tanks.

Coun. Bonner stated that it has been determined and is evident that there will be development in this area and he is not assured that the problems being discussed will be solved if a decision is made either way.

General discussion. It was determined that the City's position that either outright denial or the recommendation from the Development Committee requiring annexation of the entire area within two years both result in the same decision--that of denying the petition, since the condition is unworkable.

Mike Holstun advised that it is his opinion that the resolution drawn up to adopt the Development Committee's position is not a final order; but the recommendation for denial would be a final order.

Coun. Etlinger stated he sees no argument that shows a definite net improvement in land. And he does not see that the City needs the area for development.



Coun. Burton stated he feels that the land will be developed, but should be developed where there will be availability of services or we will continue to have poor utilization of land.

Presiding Officer stated her concern is with drainage management and that problem has been exacerbated with development over the years and it is contradictory to the policies adopted for that drainage basin.

The motion passed by the following roll call vote:

YEAS: Rhodes, Kafoury, Banzer, Etlinger  
NAYS: Burton, Oleson, Bonner  
ABSENT: Berkman, Deines, Kirkpatrick, Schedeen, Williamson.

Coun. Kafoury stated that her concern is with septic tanks allowed in the area; she supported the motion because in doing so, perhaps DEQ will soon prohibit septic tanks in the area because of the flooding.

Presiding Officer stated the remainder of the items on the agenda would be carried over to the next regular meeting, April 1, if Council had no objections. It was the consensus of the Council to do so.

Presiding Officer stated she had received a request to pull three items from the consent agenda:

- 6.1 Resolution No. 82-312, Amending the Transportation Improvement Program (TIP) to Incorporate Oregon Department of Transportation's (ODOT) Six-Year highway Improvement Program of Projects in Urbanized Areas.
- 6.4 Resolution No. 82-303, Authorizing the Executive Officer to Review and Approve Metro's Recommendation to the Land Conservation and Development Commission (LCDC) on Requests for Compliance Acknowledgment.
- 6.5 Resolution No. 82-315, Granting a Franchise to Marine Drop Box Corporation for the Purpose of Operating a Solid Waste Processing Facility.

The meeting adjourned at 11:30 PM.

Respectfully submitted,

  
Sue Haynes  
Clerk of the Council