

**MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICES SERVICE**

**REGULAR MEETING OF  
FEBRUARY 24, 1983**

**Councilors Present:** Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

**Councilors Absent:** Councilor Oleson (excused)

**Staff:** Donald Carlson, Warren Iliff, Andy Cotugno, Kay Rich, Dan LaGrande, Jennifer Sims, Joe Cortright, Steven Siegel, and Sue Klobertanz.

**Testifiers:** Frank Josselson, One S.W. Columbia  
Neil W. Jackson, 620 S.W. 5th Avenue  
Ron Anderson, Associated General Contractors  
Don Matsuda, U.S. Small Business Admin.  
James Berry, National Business League  
Patrick Bruun, A&A Plumbing  
James Hill, National Business League  
O.B. Hill, National Business League  
Henry Pelfrey, Dirt & Aggregate Interchange  
William Merritt, 700 N. Hayden Island Drive

A regular meeting of the Council of the Metropolitan Service District was called to order at 7:35 P.M. by Presiding Officer Banzer

**1. Introductions.**

There were no introductions.

**2. Councilor Communications.**

There were no Councilor Communications.

**3. Executive Officer Communications.**

There were no Executive Officer Communications.

**4. Written Communications to Council on Non-Agenda Items.**

There were no written communications to Council on non-agenda items.

5. Citizen Communications to Council on Non-Agenda Items.

There were no citizen communications to Council on non-agenda items.

6 Consent Agenda.

The Consent Agenda consisted of the following items:

- 6.1 Minutes of the meetings of December 21, 1982, January 6, 1983, and January 10, 1983.
- 6.2 Resolution No. 83-389, for the purpose of amending the Transportation Improvement Program (TIP) to include two new projects: Dosch Road (Beaverton-Hillsdale Highway to Patton Road) and N. Vancouver Way (Union Avenue to Marine Drive), and to accelerate the I-5 N. Tigard/S. Tigard Project.
- 6.3 Resolution No. 83-388, for the purpose of amending the Functional Classification System and the Federal Aid Urban System (FAUS).
- 6.4 Resolution No. 83-390, for the purpose of amending the FY 83 and FY 1982 Unified Work Program.
- 6.5 Consideration of contract approval for the fabrication and installation of a cast sculpture for the Swigert Fountain at a cost of \$50,564.
- 6.6 Consideration of contract approval for the construction of the Swigert Fountain at a cost of \$129,700.
- 6.7 Consideration of contract approval for the development of a Master Plan for the Washington Park Zoo at a cost of \$150,000.
- 6.8 Annual Review of Resolution No. 82-308 establishing Budget Control Procedures.

Motion and  
Vote:

Councilor Kirkpatrick moved adoption of the Consent Agenda. Councilor Kafoury seconded the motion.

The vote on the motion to adopt the Consent Agenda resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilor Oleson.

Motion Carried.

7.1 Consideration of an Order in the matter of a petition of Portland General Electric Company, Western Transportation Company, Hayden Island, Inc., and Burlington Northern, Inc., for an amendment to the Regional Urban Growth Boundary. (Contested Case No. 82-2.)

Presiding Officer Banzer stated that under Metro's rules for processing Contested Cases, a hearing was held by a special hearings officer. She said the procedure would be to hear a brief recommendation from the staff and an oral summary by the Hearings Officer of his report. She said inasmuch as the rules provided for any party to the case to file exceptions to the Hearings Officer's report, and no one did, the Council would proceed directly to discussion of the report and a vote.

Councilor Waker stated for the record that his business had done some minor work for PGE in the past but was not currently doing so, and did not feel his past work would prejudice his vote. Councilor Kelley stated that she had talked with Multnomah County staff people regarding the case for the purpose of obtaining factual information.

Steven Siegel, Development Services Director, stated that the case was the first to be processed under the new rules implemented in July 1982. He introduced Frank Josselson, the Hearings Officer for the case.

Joe Cortright, Planner, described the application and summarized the staff report, as contained in the agenda of the meeting.

Mr. Frank Josselson, Wolf, Griffith, Bittner, Abbott & Roberts, One Southwest Columbia, Portland, 97258, Special Hearings Officer for Metro, presented his findings, conclusions and recommendations, as contained in the agenda of the meeting. He stated his findings and conclusions led to a recommendation of including the acreage within the Metro Urban Growth Boundary.

Councilor Kafoury complimented Mr. Josselson on a well-prepared report.

Councilor Williamson asked if notice was given to interested groups. He said it was amazing that with such a large amount of land being included, no one was opposed. Mr. Josselson responded that a large number of groups were notified by certified mail. He said the only opposition to the proposal was by the Audubon Society and their testimony, in his judgement, was not material to the issues that were before the Council.

Motion: Councilor Van Bergen moved adoption of the Order in Contested Case No. 82-2. Councilor Bonner seconded the motion.

Councilor Kafoury commented that although she was typically opposed to amendments to the Urban Growth Boundary, the applicant had made a very strong case for the need for marine industrial land in the area, and therefore she was going to support the order.

Vote: The vote on the motion to adopt the Order, resulted in:

Ayes: Councilors Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilors Banzer and Oleson.

Motion carried.

(Councilor Banzer was absent from the room at the time the vote was taken, but later stated for the record that if she had been present, she would have voted in favor of adopting the Order.)

## 7.2 Consideration of Contract Approval for the construction of the Alaska Tundra Exhibit.

Councilor Kirkpatrick reported that the Council Coordinating Committee had unanimously recommended the award of the contract, in the amount of \$1,482,352.70, to RP&I General Contractors and Roberto Robles & Associates, Inc., a joint

venture, as the low bidder. She said the Committee had discussed Metro's MBE Policy as a separate issue and had asked Mr. Barker to begin research on it.

Motion: Councilor Kirkpatrick moved that the Council accept the low bid of RP&I General Contractors and Roberto Robles & Associates, Inc., a joint venture, in the amount of \$1,482,352.70 for the construction of the Alaska Tundra Exhibit. Councilor Waker seconded the motion.

Mr. Warren Iliff, Zoo Director, presented the staff report, as contained in the agenda of the meeting. He said it was important to note that if the contract was awarded to the joint venture, it would be the largest minority business enterprise contract ever awarded in the State of Oregon. He said the total minority representation was at 55%.

Councilor Kafoury asked Mr. Iliff to describe the process followed with the independent review committee established by the Council to evaluate the bids. Mr. Iliff responded that the review was conducted with three representatives of the minority community. He said the representative of the National Business League had walked out of the meeting but the remaining two representatives had agreed that the goal of the MBE program had been met by the bid of RP&I.

Presiding Officer Banzer stated that she had received a communication from Mr. Charles Crews, President of the National Business League, who requested that the project not be awarded to RP&I. She said she had also had a conversation with Pat O'Brien from the firm of OTKM who had also requested that because of irregularities in the procedures that the contract not be awarded to the joint venture.

Presiding Officer Banzer then asked for public testimony, limiting the testimony to three minutes so everyone would have a chance to be heard.

Mr. Neil W. Jackson, 620 S.W. Fifth Avenue, Suite 1106, Portland, attorney representing the National Business League, submitted written testimony (a copy of the statement is attached to the agenda of the meeting). He stated that the award of the contract should not be made in light of the Council's motion of February 3rd which precluded award of any bid prior to a review of Metro's MBE Policy. He also challenged the qualifications of the joint venture as an MBE under the federal regulations of the Department of Transportation.

Presiding Officer Banzer clarified that the motion of February 3rd exempted the Alaska Tundra Exhibit contract.

Councilor Kafoury asked Mr. Jackson why he did not believe the joint venture qualified under the federal regulations. Mr. Jackson responded that although he did not have access to the joint venture's financial statements, he did have information that suggested to him that perhaps the two companies in the joint venture exceeded the maximum dollar limit set by the SBA requirements, which would not qualify them as an SBA and therefore under the DOT regulations would not qualify them as an MBE.

Mr. Ron Anderson, Oregon-Columbia Chapter, Associated General Contractors of America, 9450 S.W. Commerce Circle, Wilsonville, testified that the AGC believed that the portion of Metro's Minority Business Enterprise Program which established goals for MBE participation was being misinterpreted. He said the overall goal of the program was 10% MBE participation for construction contracts based on expected expenditures and present and anticipated MBE capacity. He said all prime contractors, regardless of ethnicity, were subject to the requirement and that meant that any general contractor/bidder must attempt to achieve at least 10% MBE participation outside his or her own firm. He said the bid documents of the joint venture indicate that they did not achieve 10% subcontracting within the required five days, and therefore the Council had no choice but to reject the bid.

Mr. James Berry, Executive Secretary, National Business League, testified in opposition to the award of the contract to the joint venture. He said since it was unknown that the joint venture was going to bid, he did not have a chance to submit a proposal to them.

Councilor Deines asked if there was a law that required a prospective bidder to inform others they were going to bid a project. Mr. Anderson responded that there was no law requiring such notification.

Mr. Don Matsuda, Assistant District Director for Minority Small Business/Capital Ownership Development of the U.S. Small Business Administration, testified that both companies of the joint venture had been certified as small businesses and as small businesses owned and controlled by eligible socially and economically disadvantaged individuals. He said separately and jointly they met the SBA's criteria as both a small business and a minority business. He said the criteria for eligibility

was that the average annual sales for the last three past fiscal years did not exceed \$12 million and were 51% owned and controlled by individuals or persons determined by the SBA as socially disadvantaged.

Mr. Patrick Bruun, A&A Plumbing, 504 N.E. Graham Street, testified that he had checked the interested prime bidder list for the possibility of obtaining subcontracting work and RP&I was not on the list.

Mr. Kay Rich, Assistant Zoo Director, stated that Mr. Bruun was referring to the plan centers which had lists of active prime contractors for a project. He said on January 31st, there was a list of plan holders printed in the Daily Journal of Commerce and RP&I was on the list, but when the architect sent out the third addendum to the specs, he left RP&I off the list because he thought they were not going to bid. However, he was informed they were going to bid and on Monday, February 7th, the architect telephoned all the plan centers and informed them that RP&I was definitely on the list. He said the lists were a service provided to plan centers.

Mr. James Hill, National Business League, testified in opposition to the award of the contract to the joint venture. He stated that Metro had joined forces with the Associated General Contractors against black people and that the AGC had a national policy with respect to minority business enterprise programs which was to destroy and destabilize black contractors and suppliers. He said black people were not allowed to bid on the Alaska Tundra Exhibit.

Mr. O.B. Hill, First Vice President, National Business League, stated that the League wanted the Council to throw out all the bids related to the Alaska Tundra Project. He showed the Council a telephone record kept at the National Business League Plan Center which indicated that Metro had not called to add RP&I to the interested bidder list. He said one of the requirements of the best good faith effort clause was to advertise for 20 days in trade association newspapers and a minority owned newspaper prior to the submission of the bid. He showed the Council 21 days of newspapers in which only four of the twenty-seven prime contractors advertised in a minority newspaper, the Scanner.

Mr. Don Carlson, Deputy Executive Officer, stated there were two options for meeting the MBE goals: 10% participation by an MBE, or meeting the good faith effort clause and provide all

the things listed in the Executive Order (advertisement and notice to minorities, etc.). He said it was not required that the provisions of both options be met.

Councilor Deines commented that the reason there had been problems with the last two major construction contracts that had been let was because the policies were wishy-washy and stated that the policies needed to be clearer.

Mr. Henry Pelfrey, President of Dirt & Aggregate Interchange, Inc., a minority business enterprise, stated he served on the bid review panel for the Alaska Tundra Exhibit and found that the general contractor had done nothing wrong in his bid. He said the joint venture had more than met the 10% participation goal, with 55% participation. He suggested that Metro should look at the City of Portland, Tri-Met and Port of Portland programs because they were tested programs which worked.

Mr. William E. Merritt, 700 N. Hayden Island Drive, Suite 330, Portland, attorney representing the joint venture of RP&I and Roberto Robles, spoke in support of the award of the contract to his clients. He submitted a letter regarding Metro's MBE program (a copy of the letter is attached to the agenda of the meeting) which he interpreted as supportive of the award of the contract to his clients.

Presiding Officer Banzer stated the motion on the floor was to award the contract to the joint venture and asked if there was Council discussion prior to the vote.

Councilor Etlinger stated he was disturbed with the Metro's MBE policy but felt there was no legal reason to hold Metro liable for the lawsuit that they would get if they didn't award it to the lowest bidder.

Councilor Hansen stated he was going to vote for the award of the contract to the joint venture for three reasons: 1) it was the largest MBE contract award ever in the state; 2) he had read through the entire Metro MBE policy several times and found that one of the prime goals mentioned over and over again throughout the document was to encourage joint ventures between minority business enterprises; and 3) he was concerned about the legal ramifications if there were no grounds to set aside the low bidder on the contract.

Councilor Kafoury stated that she supported the efforts of the joint venture to come up with the 55% participation, but her own sense of fair play said she had to vote no if some

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people felt they had been badly treated. She said she wanted Metro to ultimately have policies where people could walk away feeling that whether or not they were successful, they were treated fairly.

Councilor Kirkpatrick stated that the real question before the Council was whether or not it was a legal bid. She said a memo from General Counsel Jordan, dated February 24, 1983, stated that prime contractors did qualify for the minority status (a copy of the memorandum is attached to the agenda of the meeting). She said Metro's record of minority participation during the past six months had been 23.84% and was something to be proud of. She urged the Council to support the motion.

**Vote:** The vote on the motion to award the contract for the construction of the Alaska Tundra Exhibit to RP&I General Contractors and Roberto Robles, Inc., a joint venture, resulted in:

**Ayes:** Councilors Banzer, Deines, Etlinger, Hansen, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

**Nays:** Councilor Kafoury.

**Absent:** Councilors Bonner and Oleson.

**Motion Carried.**

(Presiding Officer Banzer indicated that although Councilor Bonner had to leave the meeting, he wanted the record to reflect he would have voted in support of the motion.)

**Motion and Vote:** Councilor Kirkpatrick moved that the Council proceed with deliberation of the policies regarding MBE's and to include in that deliberation representatives of the community affected. Councilor Kafoury seconded the motion.

**The vote on the motion resulted in:**

**Ayes:** Councilors Banzer, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

**Nays:** None.

Absent: Councilors Bonner and Oleson.

Motion Carried.

7.3 Consideration FY 84 Local Government Dues Assessment.

Councilor Kirkpatrick reported that the issue had been presented to the Council Coordinating Committee on February 14th. She said staff had recommended, based on their conversations with local jurisdictions, that the 50¢ per capita assessment be continued. She said the Coordinating Committee forwarded the report to the Council without a recommendation.

Motion: Councilor Kirkpatrick moved that the FY 84 Local Government Dues Assessment remain at 50¢ per capita. Councilor Waker seconded the motion.

Councilor Etlinger pointed out that Metro's dues assessment had not been raised for over six years and costs had gone up. He said the additional money which could be raised by increasing the dues to 51¢ could be used for planning a regional jail or doing more for local governments.

Motion to amend: Councilor Etlinger moved to amend the main motion to raise the dues from 50¢ per capita to 51¢ per capita.

The motion to amend failed for lack of a second.

There was no public testimony on this matter.

Vote: The vote on the motion to continue the Local Government Dues Assessment at 50¢ per capita resulted in:

Ayes: Councilors Deines, Hansen, Kafoury, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

Nays: Councilors Etlinger and Banzer.

Absent: Councilors Bonner and Oleson.

Motion carried.

(Presiding Officer Banzer noted that although Councilor Bonner had to leave the meeting, he wanted the record to reflect that he was in support of continuing the dues assessment at 50¢ per capita.)

8. Committee Reports.

Councilor Kafoury reported that she and the vice chair had met with the development staff to discuss the Committee's work program for the year. She said at the March 7th meeting they would begin mid-year program reviews.

Councilor Kirkpatrick reported on the schedule for the budget deliberations by the Coordinating Committee and the citizens appointed to serve with the Committee.

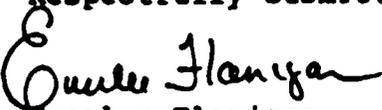
Councilor Hansen reported that the Services Committee had met in February to discuss the R.W. Beck Report and would be meeting on March 8th to review the Committee's work program.

Councilor Williamson reported that all items which had been before JPACT recently had been disposed of by the Council. He stated for the Council's information he had been requested, as Chairman of JPACT, to participate in a presentation before the Transportation Committee in Salem regarding transportation plans for the area and that it had gone well.

Presiding Officer Banzer stated that since there were no pressing items to be considered by Council, the meeting of March 3rd was cancelled.

There being no further business, the meeting was adjourned at 9:09 P.M.

Respectfully submitted,

  
Everlee Flanigan  
Clerk of the Council

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