

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

November 26, 1985

Councilors Present: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kelley, Myers, Oleson, Van Bergen, Waker and Bonner

Also Present: Rick Gustafson, Executive Officer

Staff Present: Don Carlson, Eleanore Baxendale, Dan Durig, Rich McConaghy, Norm Wietting, Doug Drennen, Chuck Geyer, Kay Rich, Randy Boose, Don Cox, Andy Cotugno, Jill Hinckley, Neal McFarlane, Vickie Rocker, Phillip Fell, Ray Barker

Presiding Officer Bonner called the meeting to order at 5:30 p.m.

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

FY 1984-85 Audit. Don Carlson introduced Don Cox who presented an overview of the audit. Mr. Cox said Metro had received an unqualified opinion for the year. He also reported the auditors had concurred with accounting procedure changes related to landfill closure costs. Mr. Cox invited Councilors to attend the next regular Management Committee meeting, at which time specific questions regarding the audit and accounting procedures could be addressed to the staff and the audit team.

Government Finance Research Center Report. Mr. Carlson reported Metro had contracted the services of the Government Finance Research Center to assess Metro's capital financing potential, its ability to issue bonds, and to provide recommendations on how the agency's financial position could be strengthened. The Center had also been asked to comment on possible impacts of proposed federal tax reforms. Mr. Carlson then introduced John Peterson and James Joseph from the Center who presented findings and recommendations from the study. Mr. Carlson said a summary of these recommendations had been mailed to the Council in memo form, dated November 19.

Mr. Joseph presented a highlight of findings which recommended Metro develop a comprehensive annual financial report and a more formal capital improvement process and program to provide a clearer picture of financial needs over the next five years. Mr. Joseph stressed

Metro's current financial picture was very good and these proposed measure would serve to enhance that situation. He then discussed the proposed capital improvement process in more detail.

John Peterson reported on proposed federal tax reforms and how they could effect the various financing alternatives available to Metro. Mr. Peterson stressed that no proposal had yet emerged as probable. Generally, he said, the direction seemed to be that of loosening restrictions. Market expects believed there would be an overall drop in the supply of tax exempt securities by 30 to 40 percent, he reported, and the new law could draw a major distinction between governmental and non-governmental purposes. Non-governmental bonds, unless for exempted purposes, could become a taxable security which could make financing facilities more expensive, he explained.

At the Presiding Officer's request, Mr. Peterson and Mr. Joseph agreed to answer questions of the Council at the end of the meeting.

6. CONSENT AGENDA

Motion: Councilor Kirkpatrick moved, seconded by Councilor Waker, to approve the Consent Agenda.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kelley, Myers, Oleson, Van Bergen, Waker and Bonner

Absent: Councilor Kafoury

The motion carried and the following items were approved:

- 6.1 Acceptance of Preliminary Priorities for Inclusion of Projects in the ODOT Six-Year Highway Improvement Program (the preliminary priorities were accepted); and
- 6.2 Waiver of Section 8(f) of the Personnel Rules Governing Appointments: the Solid Waste Facilities Supervisor (the waiver was ratified).

7. TAX MEASURE PUBLIC HEARING AND DISCUSSION

Ted Calouri, State Representative from the Beaverton area, testified Metro should view funding and ballot measure issues from the viewpoint of a general purpose regional government with certain limited responsibilities. He did not advocate separating special services from the overall ballot measure. If the issues were separated, he

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said, the public would not understand all of Metro's responsibilities. He also recommended Metro vigorously seek a tax base. If it became necessary to seek approval for a tax levy, Representative Calouri recommended it be a combined levy.

Ronda Kennedy, representing the Friends of the Washington Park Zoo (FOZ) Board of Directors, read a letter previously submitted to the Council. Ms. Kennedy recommended Metro seek a tax base levy for all Zoo operations and a three-year serial levy for General Government services. The FOZ recommended the Zoo tax base levy be placed on the May 1986 ballot in order to continue Zoo funding without interruption and to ensure the best chance of its passage.

Rod Monroe, State Senator, said his recommendations were based on the premise that Metro was needed. He testified the Zoo was not in jeopardy and therefore, he urged the Council combine the Zoo and General Government measures on the first ballot attempt. He thought the first attempt should be in the form of a levy in order to ensure its best chance of passage. This effort would improve Metro's image with the Legislature and with voters, he said. He looked forward to a time in the near future when a tax base would be feasible. If this attempt failed, however, Senator Monroe said at least Metro would be in a better position to approach the Legislature and ask for additional funding.

In response to Councilor Oleson's question about adding new services, Senator Monroe suggested Metro take on projects to improve its popularity. For example, he said, many people were frustrated about what to do with yard debris as a result of the backyard burning ban. If Metro could design a program to solve this problem, its popularity with the voters would be greatly increased.

Frank Roberts, State Senator, reported he had attended a meeting with all East County legislators to discuss Metro funding alternatives. He said it was the consensus of those attending that meeting that Zoo and General Government services should be separate on the ballot and that initially, Metro should seek a tax base proposal for the Zoo. At the same time, Metro could place a serial levy for General Government services on the ballot. One of both of these measures could be repeated at the general election if necessary, he explained. He said to separate the two issues would provide more credibility to the proposal.

Jim Simmons, State Senator, testified Metro had proven the need for its existence by successfully performing regional planning and coordinating functions, thus saving taxpayers money. A tax base would be necessary to ensure the continuance of these functions. Because the Zoo was Metro's most popular function, Senator Simmons advised combining Zoo and General Government functions on the ballot.

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Joyce Cohen, State Senator, advised focusing on the opinions of Metro's voters rather than being too sensitive to the opinions of Legislators. She also testified it would be difficult to seek voter approval for planning functions because the public would not understand why such functions were needed. In order to justify a general purpose tax base vote, Senator Cohen said Metro would have to supply more direct services to the public.

Ron Cease, State Representative, testified the Council's obligation was to look after the financial stability of the entire Metro agency and suggested the Council tie the Zoo and General Government functions together to submit a combined tax levy to the voters. To separate out functions and place them before the voters piecemeal would not be good business, he said. Representative Cease also suggested Metro be more aggressive in using the Zoo to enhance the Zoo's image such as changing its name from the "Washington Park Zoo" to the "Metro Zoo."

Dick Springer, State Representative, advocated a combined tax base. This, he said, would be the most responsible position to take before the voters and the Legislature. He also suggested Metro bring into the public debate the issue of government responsibility for Tri-Met.

Lyn Dingler commended Metro on conducting the series of public meetings to discuss funding issues. This type of activity would go a long way to enhance Metro's image, he said. Mr. Dingler felt strongly Metro should combine its popular service, the Zoo, with its less popular services to gain voter approval. More effort should be spent to demonstrate to the public that Metro operated that popular service, he said. He supported a combined serial levy and thought a combined tax base could be attempted in the future. A spring ballot measure would require an aggressive campaign by each Councilor, he said.

Roger Martin testified he was not appearing before the Council in his capacity as Metro's lobbyist. Mr. Martin said he had long been a strong supporter of the Zoo. Because the Zoo was very dependent on property taxes for its existence, he urged the Council follow the Friends of the Zoo recommendation and seek a separate Zoo tax base and General Government serial levy this spring.

Presiding Officer Bonner thanked those who testified and explained on January 9 the Council would adopt a formal position on funding issues. An Ordinance setting out ballot titles would be heard January 23 and February 13, he said.

8. ORDERS AND ORDINANCES

8.1 Consideration of Ordinance No. 85-192, for the Purpose of Amending Ordinance No. 79-77 to Reference Additional Findings In Support of the Urban Growth Boundary (Second Reading)

The Clerk read the Ordinance a second time by title only and the Presiding Officer invited members of the public to comment on the suggested amendments to the Ordinance.

In order to give the public time to review the amendments, the Presiding Officer set the item back on the agenda for consideration later in the meeting.

NOTE: The following discussion occurred immediately after consideration of Agenda Item No. 8.3. For recording purposes, it will be noted below.

Bob Stacey, representing 1000 Friends of Oregon, thanked the Council for allowing him time to review the amended findings. Mr. Stacey testified the amendments, although not the ones he would have written, raised no new issues of fact or policy.

Motion: The motion to adopt the Ordinance was made by Councilors Kafoury and Waker at the meeting of November 14, 1985

Motion to Amend: Councilor Kirkpatrick, seconded by Councilor Hansen, moved to adopt the amendments to the Augmented Findings as submitted in the staff report.

In response to Councilor Gardner's question, Ms. Hinckley said although the amendments were not the ones she would have written, she did think they were helpful.

Presiding Officer Bonner announced he would accept testimony from parties wishing to speak about the amendments. There was no testimony.

Vote on motion to amend: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kelley, Oleson, Van Bergen and Bonner

Absent: Councilors Kafoury, Myers and Waker

The motion carried.

Vote on main motion as amended: The vote resulted in:

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Ayes: Councilors Cooper, DeJardin, Gardner, Hansen,
Kirkpatrick, Kelley, Oleson, Van Bergen and Bonner

Absent: Councilors Kafoury, Myers and Waker

The motion carried and Ordinance No. 85-192 was adopted as amended.

Presiding Officer Bonner called a recess at 8:25 p.m.. The Council reconvened at 8:35 p.m.

8.2 Consideration of Ordinance No. 85-193, Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 85-4: Foster Property (First Reading and Public Hearing)

The Clerk read the Ordinance by title only.

Motion: Councilor Kelley moved the Ordinance be adopted and Councilor DeJardin seconded the motion.

Ms. Hinckley introduced Chris Thomas, hearings officer for the contested case. Mr. Thomas recommended approval of the Foster petition to add 12 acres to the Urban Growth Boundary.

There was no testimony on the ordinance and Presiding Officer Bonner passed the Ordinance to a second reading.

8.3 Consideration of Order No. 85-5, in the Matter of Contested Case No. 84-2, a Petition for an Urban Growth Boundary Locational Adjustment by Portland General Electric, et al

Councilor Waker excused himself from considering this Order due to a conflict of interest.

Mr. Thomas reviewed the case as outlined in the meeting agenda materials. He noted the petition met all applicable standards except for Code Section 3.01.040(d)(3). The petitioners, he said, had not demonstrated the difference between the UGB as proposed and as existing was sufficient to justify the 50-acre addition. Mr. Thomas noted if it were not for that Code Section, he would have recommended approval of the petition. However, Mr. Thomas said he did not consider it a significant factor that if the petition were approved, the Tigard School District, landowner in the area, could realize substantial increases in property values.

The Presiding Officer said he would accept public testimony from those who had filed or who wished to rebut written exceptions to the hearings officer's findings.

Robert Ball, an attorney practicing at 101 S.W. Main, Portland, with the firm of Ball Janik and Novack, said he wished to present the applicants' view of the legal and practical context of this matter. Mr. Ball said the main factor to consider was that he and Mr. Thomas agreed on more points than they disagreed, including the applicable criteria and how they should be applied. There was also agreement that if the adjustment were approved, the area would be improved. The only disagreement was the degree to which the area would be improved. Mr. Thomas, he said, had indicated the area would be improved to only a slightly better condition. It was the petitioner's belief the improvements would improve the area to a substantially better condition. Mr. Ball testified Mr. Thomas had interpreted Metro's Ordinance too literally by reading into it a precise scale by which to judge how superior an adjustment would make the UGB in relation to the existing UGB. Mr. Ball pointed out such a literal interpretation would make it impossible for the Council to review applications of various acreage. Finally, he maintained even though the burden of proof was more difficult for an application of greater acreage, in this case it would be easier to prove because development had already occurred. This application was one to increase development density, he said.

David Frederickson, an economic development specialist for Portland General Electric, located at 121 S.W. Salmon Street, Portland, reviewed the history of the process whereby PGE sought a locational adjustment of the UGB, pointing out the logical nature of the petition.

Al Benkendorf, planning consultant, practicing at 522 S.W. 5th Avenue, Portland, discussed the extensive development of urban services in the area which he said demonstrated overwhelmingly why the petition should be approved. He also reported that sewer services would reduce sewer LID costs by approximately \$137,000 to land owners already within the UGB. Mr. Benkendorf said the hearings officer had downplayed that fact when in fact it was a substantial sum. He also reported full development and urban densities would contribute about \$300,000 for Beef Bend Road and 131st Street improvements based on the County's new fee for trip ordinance. If development occurred at rural densities, the fees would yield about \$25,000 to \$50,000, based on a \$1,000 per unit fee, he said. Mr. Benkendorf pointed out the site was hazard and resource free and the environmental, energy, economic and social consequences were either positive or not significant. Finally, he reported the goal exception regarding retention of agricultural land was approved by Metro as part of its review of the Washington County Plan and was specifically acknowledged by LCDC as part of that Plan. He said the petition documented there were no adjacent agricultural lands.

Deb Fennell, representing the Tigard School District, testified the proposal before the Council would serve the interest of taxpayers and the School District. He strongly recommended a favorable response to the request because it was needed, logical and realistic. He explained the Tigard School District was in the awkward position of owning property on which a school could not be built because of its location outside the UGB. He said the District wanted to sell the property or trade it for a better site on which a school could be built. If the land in question were inside the UGB, the property value would increase by \$300,000 to \$400,000 and provide the District with enough funds to buy another site, he explained. Finally, Mr. Fennell said before the original UGB was formed, the District had little opportunity to offer comment and was not properly informed about the impact of the Boundary. Because the original County plan included the District's site, there seemed to be no cause for concern. He explained after the UGB was established, Metro staff advised the School District a petition for a Boundary adjustment seemed prudent.

Beverly Froude, 12200 S.W. Bull Mountain, Portland, Chairperson for CPO No. 4 Bull Mountain, reported she had previously testified before the hearings officer and had submitted written materials at that time. Ms. Froude said before development could occur, adequate services must be present. She questioned whether transportation services for the area were adequate and said her organization concurred with the hearings officer's recommendation.

Phylis Etling, 13970 S.W. Beef Bend Road, Portland, President of the Urban League Community Club, testified she supported the hearings officer's findings. She was concerned about how higher density would impact the neighborhood and said a better transportation plan must be provided before a change to the UGB was approved.

A discussion followed about the possibility of County road studies and funding to improve Beef Bend Road. Ms. Etling strongly advocated not changing the UGB until improvements were actually in place. Otherwise, she said, high density would occur, the County could easily change its priorities and the Beef Bend Road project would be overlooked, resulting in traffic problems. Mr. Benkendorf, however, thought a locational adjustment of the UGB would improve transportation planning for the road. He again asserted his essential difference was with the hearings officer's position that compliance with the criteria as outlined were not always quantifiable. The criteria were quantifiable, he said, as demonstrated earlier.

Motion: Councilor Cooper moved to increase the Urban Growth Boundary to include the additional 50 acres.
Councilor Van Bergen seconded the motion.

Eleanore Baxendale explained if the Council approved such a motion, it would be appropriate to request staff to return to the Council with another set of findings and an ordinance to implement that decision.

Withdrawal of motion: Councilor Van Bergen withdrew his second of the motion to allow for Councilor Cooper to restate his motion.

Motion: Councilor Cooper moved to reverse the hearings officer's recommendation and to instruct staff to draft findings and an ordinance to implement the Council's decision. Councilor Van Bergen seconded the motion.

Councilor Oleson suggested rather than opposing the hearings officer's recommendation, the Council require the petitioner to offer other land in trade for the land to be designated urban, thus creating no net change in urban acreage. Ms. Hinckley responded such an arrangement could only be accomplished if a new petition were filed and another process followed. The petition now before the Council must be decided on the merits as presented, she said.

Councilor DeJardin said he was not comfortable with Councilor Oleson's proposal because each case had to be evaluated on its own merits.

Councilor Kelley asked whether staff could provide more information on transportation plans in support of the applicant. Ms. Hinckley replied the transportation issue was not one that would effect denial or approval of this petition. If more information were made available, however, the case would have to be remanded back to the hearings officer and additional testimony would have to be received. Councilor Kelley said if transportation issues were given priority in this case, it could effect approval of the petition.

Presiding Officer Bonner explained he was not convinced the petitioners had proven the new boundary was an improvement over the old boundary. In the old days, he said, additions to the UGB were added reluctantly and for good reason. He advised accepting the hearings officer's recommendation.

Councilor Gardner said he agreed with Councilor Oleson. He said the Metro Code was designed to demand a high burden of proof on large parcels of land and he did not think the petitioner had demonstrated adequate proof.

Vote: A vote on the motion resulted in:

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Ayes: Councilors Cooper, DeJardin, Kelley and Van Bergen

Nays: Councilors Gardner, Hansen, Kirkpatrick, Myers, Oleson and Bonner

Abstain: Councilor Waker

Absent: Councilor Kafoury

The motion to reverse the hearings officer's recommendation failed.

Councilor Oleson restated his position of requiring a land trade of the petitioner in order to maintain the current UGB acreage. Presiding Officer Bonner pointed out the Council had to act on the Order before them and could not consider Councilor Oleson's proposal at this meeting.

Motion: Councilor Kirkpatrick moved to accept the hearings officer's recommendation. Councilor Gardner seconded the motion.

The discussion of Councilor Oleson's proposal continued. Staff maintained their position as previously explained.

Vote: A vote on the motion resulted in:

Ayes: Councilors Gardner, Hansen, Kirkpatrick, Myers and Bonner

Nays: Councilors Cooper, DeJardin, Kelley, Oleson and Van Bergen

Abstain: Councilor Waker

Absent: Councilor Kafoury

The motion failed.

Motion: Councilor Oleson moved the discussion be continued to the next meeting due to the Council's inability to decide the question. Councilor Oleson seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kelley, Myers, Oleson, Van Bergen and Bonner

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Abstain: Councilor Waker

Absent: Councilor Kafoury

The motion carried.

8.4 Consideration of Ordinance No. 85-191, Relating to Solid Waste Disposal Charges and User Fees; Amending Metro Code Sections 5.02.015, 5.02.020, 5.02.045 and 5.02.050; Establishing Metro Code Section 5.02.065 for Collection of a Special Waste Surcharge and Permit Application Fee; and Declaring an Emergency (Second Reading)

The Clerk read the ordinance a second time by title only.

Motion: The motion to adopt the Ordinance was made by Councilors Kirkpatrick and Kelley at the meeting of September 12, 1985.

Rich McConaghy presented the information as outlined in the staff report including staff's proposed amendments to the Ordinance which were designed to address concerns heard at the September 12 hearing. The proposed amendments included:

Amendment 1: Exempted individuals from paying special waste fees when they obtain special waste permits to dispose of asbestos or other special wastes from their own households.

Amendment 2: Authorized the Director of the Solid Waste Department to make agreements for removing the commercial regional transfer charge (RTC) at privately operated transfer stations if certain conditions were met.

Amendment 3: Separated the new fees required by Senate Bill 662 from the Metro base disposal rate by establishing a Rehabilitation and Enhancement fee and a State Landfill Siting Fee. The amendment also adjusted the base disposal rates given in the Ordinance to account for this.

Amendment 4: Declared an emergency so that rate changes may be effective January 1, 1986.

Motion to amend: Councilor Kirkpatrick moved the four amendments, as proposed by staff, be adopted. Councilor Waker seconded the motion.

Vote on the motion to amend: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Kirkpatrick,
Kelley, Myers, Van Bergen, Waker and Bonner

Absent: Councilors Hansen, Kafoury and Oleson

The motion carried and the proposed Ordinance was amended.

Vote on the main motion as amended: A vote resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Kirkpatrick,
Kelley, Myers, Van Bergen, Waker and Bonner

Absent: Councilors Hansen, Kafoury and Oleson

The motion carried and the Ordinance was adopted as amended.

Doug Drennen announced staff planned to mail notices about the changes brought about by passage of this Ordinance to all effected parties immediately.

9. RESOLUTIONS

9.1 Consideration of Resolution No. 85-606, for the Purpose of Submitting the Regional Waste Treatment Management Plan for Recertification

Neal McFarlane announced staff would be preparing major amendments to the Plan in the next few months. The proposed action now before the Council was a required annual process.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Van Bergen, to adopt Resolution No. 85-606.

Sherry Patterson, 18926 S.W. Earlwood Avenue, Lake Oswego, testified she resided in an unincorporated area included in the unified sewage agency area. She stated she had requested a notice of the October 25 meeting and received none and therefore, could not testify at that meeting. Ms. Patterson also testified she secured a verbatim tape of that meeting which contained numerous erroneous statements. She wanted the record to show the city of Lake Oswego had attempted to expand its urban service boundary - a two-step text and map amendment process. Ms. Petterson appealed the map amendment to the Land Use Board of Appeals (LUBA) and as a result, the City tabled the map amendment. She testified Lake Oswego sent public notice that a hearing was to be held by the Water Resources Committee Board last year at which time they amended the original Plan 208. They received notice of the Metro public hearing, but did not participate. Ms. Patterson requested if changes were going to be

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made to the Plan, opportunities for citizen participation must exist. She presently opposed the amended Plan and stated that if any changes were anticipated, she wanted to participate in that process.

In response to Councilor Kelley's question, Ms. Patterson said she represented the Indian Creek/Indian Springs Committee.

In response to the Presiding Officer's question, Mr. McFarlane explained staff had solicited involvement by circulating notice to local jurisdictions that amendments to the Plan were being considered.

Ms. Patterson requested meeting notices of the Water Services Committee to consider Plan 208 amendments be published in the Lake Oswego Review. After discussion, the Council determined it would be adequate to publish such notices in the Oregonian and that staff notify Ms. Patterson of any such meeting.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Kirkpatrick, Myers, Van Bergen, Waker and Bonner

Abstain: Councilor Kelley


Absent: Councilors Hansen, Kafoury and Oleson

The motion carried and the Resolution was adopted.

Presiding Officer Bonner invited Mr. Joseph and Mr. Peterson, the consultants from the Government Finance Research Center, back before the Council to continue the discussion of Metro financing options and the outlook for tax exempt bonds given new federal tax proposals. The consultants concluded that after January 1, 1986, more would be known about tax proposals and how those proposals would effect the District.

There being no further business, Presiding Officer Bonner adjourned the meeting at 9:25 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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