

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

May 15, 1986

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

Also Present: Rick Gustafson, Executive Officer

Staff Present: Donald Carlson, Eleanore Baxendale, Sonnie Russill, Steve Siegel, Gwen Ware-Barrett, Judy Munro, Doug Drennen, Dennis O'Neil, Dennis Mulvihill, Randy Boose, Neal McFarlane, Jill Hinckley, Vickie Rocker and Steve Rapp

Presiding Officer Waker called the meeting to order at 5:55 p.m.

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

2.1 Update from the Hazardous Waste Task Force

Councilor Frewing, Chairperson, and Dennis O'Neil, Solid Waste Analyst, reported on the work of the Hazardous Waste Task Force to date. Samples of waste disposed in St. Johns Landfill and Clackamas Transfer & Recycling Center had been sampled for quantities of household and other hazardous types of waste. It was found that much of the waste sampled contained small quantities of solvent based paints and cleaners and pesticides. Self-haulers seemed to dispose of the highest quantities of household hazardous wastes. Councilor Frewing and Mr. O'Neil explained that research was continuing and the task force would submit its formal report for Council consideration in July.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Report on the Proposed Convention, Trade, and Spectator (CTS) Facilities

Bob Ridgley, Chairperson of the CTS Committee, and Steve Siegel, staff to the Committee, reported on recent CTS activities. They distributed a memorandum from Steve Siegel dated May 13, 1986, regarding "Committee on Regional Convention, Trade, and Spectator Facilities (CTS) Actions of May 12, 1986. Mr. Ridgley explained on

Metro Council
May 15, 1986
Page 2

May 12 the Committee voted to accept recommendations on a proposed site for the convention and trade show center, and to appoint a commission to oversee a continuing study of the project. Mr. Ridgley commended the Committee for the quality of deliberations concerning a site and for focusing on the overall project rather than a particular site. The Holladay/Union site met all necessary criteria, he reported, would offer visitors an excellent view of Portland from the east side of the Willamette River, would have ample space for future expansion, and would be serviced by light rail transit.

Presiding Officer Waker noted the recommended eastside site would work well with the existing facilities. He commended the Committee's work and noted future activities related to the project that would require the Council's attention and time. Mr. Ridgley then reported a separate committee would be formed to make recommendations on the campaign to finance the facility. The CTS Committee would, at the Council's discretion, remain in force through the next legislative session.

Councilor Gardner said he was very excited about the CTS project and was pleased Metro had been designated to coordinate the work. He said it was logical Metro had been selected because the project was an excellent example of the type of regional service Metro should and could perform.

Motion: Councilor Gardner moved the Council declare its intent to accept primary responsibility for building and operating a convention and trade show center as recommended by the CTS Committee and for which Metro participation was endorsed by Resolution No. 84-530 on January 10, 1985. Councilors Kirkpatrick and DeJardin seconded the motion.

Councilor DeJardin said he also wished to second the motion, explaining this action represented endorsement of building the facility in Multnomah County and the Council's commitment to future developments in Washington and Clackamas counties.

Vote: A vote on the motion resulted in:

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

Absent: Councilor Kafoury

The motion carried.

Metro Council
May 15, 1986
Page 3

Mr. Ridgley commended Mr. Siegel on his extraordinary job serving the CTS Committee. He said Metro had made an important contribution in making Mr. Siegel's services available.

West Transfer and Recycling Center. Doug Drennen, Engineering and Analysis Manager, outlined progress to date on siting the transfer station in Washington County. He reported a letter of offer of fair market value price had been sent to the land owner. The design phase of the project had also begun and staff had met with Washington County planning staff regarding obtaining a conditional use permit. Mr. Drennen said the community would be actively involved in the design process as would the west transfer and recycling center advisory group. Meetings had been set up with the Sunset Corridor Association and other citizen groups to seek input on design aspects of the project. Finally, Mr. Drennen explained staff would be before the Council June 12 to present results of preliminary design meetings and to seek Council input on design. Staff would submit a permit application to Washington County at the end of July, he said.

In response to Presiding Officer's question, Mr. Drennen explained the name of Washington Transfer & Recycling Center had been unofficially changed to west transfer and recycling center in order better define where Metro's facilities were located and to create a stronger Metro identity for facilities. The Council would have future discussions about renaming Metro facilities, he said.

Eleanore Baxendale, General Counsel, updated the Council on lawsuits related to the west transfer and recycling center project. She said that to date these actions had not delayed staff's work in acquiring the property. Three suits were pending: 1) Amos v. Metro which challenged the Council's February 13, 1986, decision to select Site B; 2) a writ of review filed in Washington County Circuit Court which challenged adoption of the Council's Resolution on April 10 to proceed with condemning the above property; and 3) Ritter v. Metro filed before the Land Use Board of Appeals which also challenged the April 10 decision. Ms. Baxendale then answered questions of Councilors Kelley and Gardner regarding details of the legal actions.

Clackamas Transfer & Recycling Center (CTRC). Doug Drennen reviewed the events involving the recent spill of PCBs at CTRC. He explained a truck from KUPL radio station delivered three transformers to the Center which were dropped on the cement floor of the facility. When a substance leaked from the broken transformers, workers attempted to clean it up with mops and absorbant material and they washed down the cement pad. It was then learned the transformers contained PCBs and that the concrete pad and other waste had been contaminated. KUPL, the Department of Environmental Quality (DEQ), and the Environmental Quality Commission (EQC) were immediately

Metro Council
May 15, 1986
Page 4

notified, he reported, and KUPL signed a contract making them responsible for cleaning up the spill. Mr. Drennen said the contaminated material was being stored in transfer trucks and half the stalls were not in use. As a result, disposal volumes were down about 20 percent. Responding to Presiding Officer Waker's question, Mr. Drennen said several employees had been exposed to the PCBs but they were now back at work.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Presiding Officer Waker reported he had received a letter from Susan Quick of Ball, Janik and Novack, requesting the Council delay its consideration of the BenjFran Development Company request for an adjustment to the Urban Growth Boundary to June 12, 1986.

At the Presiding Officer's invitation, Ms. Quick, an attorney representing BenjFran, Kaiser and Riviera Motors in three petitions for UGB amendments, said she would answer questions of the Council about her letter of May 14, 1986. The letter explained it would be extremely difficult to combine all three petitions into a single agenda item due to the complexity and time necessary to make presentations. The letter further explained it was apparent many issues of fact and law were common to the Kaiser and Riviera petitions. For those reasons, Ms. Quick requested Kaiser and Riviera to be considered by the Council on June 12 and BenjFran be heard on June 26.

Jill Hinckley, Land Use Coordinator, noted staff had scheduled the BenjFran, Kaiser and Riviera petitions for one meeting date because when the Council established procedures for hearing petitions a year ago, they had requested petitions be heard together. Staff, however, had no problems with setting the BenjFran petition over to a later date. Ms. Hinckley did explain an extension of Council consideration would mean the deadline for preparing BenjFran's exception would be extended and staff would have to renotify interested parties of the change of dates for Council consideration. Finally, she said, Bob Stacy of 1000 Friends of Oregon, and a BenjFran representative would not be able to attend a July Council meeting should the Council postpone consideration past the June 26 meeting. This, she said, might mean a decision would not be made until August.

In response to Councilor Frewing's question, Ms. Hinckley explained the requested action before the Council was not in the form of an ordinance and would not require two readings.

Motion: Councilor DeJardin moved to continue consideration of the BenjFran petition until June 26, 1986. Councilor Gardner seconded the motion.

Vote: A vote on the motion resulted in:

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

Absent: Councilors Kafoury and Myers

The motion carried.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Jim Johnson, 1110 16th Street, Oregon City, addressed the Council regarding solid waste alternative technology. He said the Council had secret plans to build a garbage burner at the site next to the Clackamas Transfer & Recycling Center (CTRC) and were not discussing these plans in an open, public forum. He said Metro had spent over \$500,000 to maintain the site near CTRC. He also accused staff of being rude and evasive regarding his questions about plans for a garbage burner. Mr. Johnson then discussed the reasons why such a facility should not be built in Oregon City, particularly because of air pollution problems. He asked Councilor DeJardin to make a motion to exclude a garbage burner facility from being built in Clackamas County.

Presiding Officer Waker said Mr. Johnson was presuming matters the Council had not decided and if a decision were made, it would most certainly be in a public forum.

Councilor DeJardin said Metro had no secret, covert plans for building a garbage burner in Clackamas County. He said such a facility was a possible option among several others and no site had been determined.

Jane Green Brewer of Oregon City said many tourists visited her shop and she was ashamed of the garbage dump in Oregon City. She said a garbage burner in the area would further ruin the city and pollute the river and the air. She reminded the Council of the measures related to the facility that were defeated by voters.

6. APPROVAL OF MINUTES

Motion: Councilor Kirkpatrick moved to approve the minutes of April 8 and 10, 1986, and Councilor Hansen seconded the motion.

Vote: A vote on the motion resulted in:

Metro Council
May 15, 1986
Page 6

Ayes: Councilors Cooper, DeJardin, Frewing, Hansen, Kafoury, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilors Gardner and Kelley

The motion carried and the minutes were approved.

7. RESOLUTIONS

7.1 Consideration of Resolution No. 86-643, for the Purpose of Exempting Vehicle Leases from the Public Bidding Procedure for One Year

Judy Munro, Support Services Supervisor, explained that by adopting the Resolution, Metro would save money on car leasing costs. Staff had determined the leased cars could be driven another year without seriously impacting their resale value; selling the cars at this time could result in a loss due to falling gas prices; car prices had increased and payments would be higher if new cars were leased; and extending the contract another year would result in lower payments and a lower termination value. She said if the Council adopted the Resolution, the current contract could be extended from July 1986 to July 1987 and the total contract sum would be increased by \$6,144.

Motion: Councilor Van Bergen moved to adopt the Resolution and Councilor Kelley seconded the motion.

Councilor Frewing asked if it would be possible to renew the contract for one additional year. Ms. Munro said it would be possible with Council approval.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Frewing, Hansen, Kafoury, Kelley, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilor Gardner

The motion carried and the Resolution was adopted.

7.2 Consideration of Resolution No. 86-646, for the Purpose of Amending the Pay and Classification Plans, Authorizing a New Position (Convention, Trade, and Spectator Facilities Director), and Ratifying a Variance to the Personnel Rules

Randy Boose, Personnel Officer, explained the process for classifying

Metro Council
May 15, 1986
Page 7

the CTS Director position and reviewed proposed responsibilities of the position.

Executive Officer Gustafson explained that by adopting the Resolution, the Council would be taking its first step in accepting responsibility for the CTS project.

Councilor Kafoury asked if the position would be ratified by the Council. Mr. Boose said the Council would ratify the position although that provision had been inadvertently omitted from the Resolution.

Motion: Councilor Gardner moved to adopt the Resolution and Councilor DeJardin seconded the motion.

A discussion followed about the recruitment and selection procedure for the position. Councilor Kafoury said she was concerned no women had served on the CTS Committee and encouraged recruitment of women candidates for the position. Councilor Kirkpatrick asked what specific steps to ensure equal opportunity employment would be taken.

Executive Officer Gustafson assured the Council the Personnel Officer was recruiting candidates from all sectors of the community.

Councilor Gardner said he was concerned the short recruitment period would exclude candidates from outside the region. He explained because of the project's importance, it would be desirable to recruit candidates with related experience and those candidates would likely be from outside the area.

Presiding Officer Waker stressed the importance of acting quickly to recruit a candidate. He reviewed major tasks to be accomplished including having a General Obligation bond for the convention and trade show center on the November ballot. He said a delay in recruitment would jeopardize the project.

Motion to Amend: Councilor Myers moved to amend the Resolution to add a provision that the recommended candidate for the CTS Director position be confirmed by the Council. Councilor Kafoury seconded the motion.

Vote on the Motion to Amend: The vote resulted in:

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

The motion carried and the Resolution was amended.

Councilor Gardner requested the position description be revised to broaden the scope of educational requirements. For example, he thought a degree in public administration could be included as an applicable educational background. Mr. Boose agreed to revise the description to include the words "and other appropriate areas" at the end of the paragraph listing desired educational backgrounds.

Vote on Motion to Adopt the Resolution: The vote resulted in:

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

The motion carried and Resolution No. 86-646 was adopted as amended.

8. CONTRACTS

8.1 Consideration of a Contract with the City of Portland to Operate the St. Johns Landfill

Doug Drennen first introduced John Lang and Delyn Kies representing the City of Portland. He then reviewed terms of the new agreement, pointing out changes from the previous agreement which had expired last fall. Provisions of the proposed new contract were discussed in detail in the staff report.

Councilor Frewing asked how the costs of grading the landfill for six years after completion would be funded. Mr. Drennen said those costs would be financed from the post-closure fund.

Referring to contract termination provisions, Councilor Gardner asked why provisions were included if Metro desolved and not for the dissolution of the City. Ms. Baxendale explained the language did not assume the abolition of Metro as a regional government but was included in the event Metro changed to assume new responsibilities.

Motion: Councilor Hansen moved to approve the agreement and Councilor Kirkpatrick seconded the motion.

Ms. Baxendale discussed changes to the contract not included in the version printed in the agenda packet. These changes included:

1. Pages 5, 8 and 10 -- change the words "metropolitan area" to read "Metro's solid waste planning area;"

2. Section 6 -- the criteria for the closure date would also apply to developing Schedule A of the agreement;
3. Page 33 -- if Metro were unable to indemnify the City for certain obligations, the City had the right to not make payments to Metro for gas revenues, for example. A provision would be added that if Metro were to be voluntarily paid, the City would not curtail certain revenues.
4. A Section 30 has been added stating the previous agreement is completely superseded by the new agreement.

Relating to his earlier comment about dissolution, Councilor Gardner asked if Metro ceased to exist in its present form, would the agreement continue. Ms. Baxendale said the agreement would continue to be in force and would transfer to the new entity.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, Frewing, Gardner, Hansen, Kafoury, Kelley, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilor DeJardin

The motion carried and the agreement was approved.

At 7:50 p.m., Presiding Officer Waker called a break. The Council reconvened at 8:00 p.m.

9. ORDERS AND ORDINANCES

9.1 Consideration of Order No. 86-9, in the Matter of Contested Case No. 85-1, a Petition for an Urban Growth Boundary Locational Adjustment by the City of Wilsonville and Earle May

Staff's Introduction and Explanation of Procedures

Jill Hinckley, Land Use Coordinator, explained the petition before the Council was filed jointly by the city of Wilsonville and Earle May to add 46 acres in the northeast corner of the City north of Ellingson Road to the Urban Growth Boundary (UGB). She reported the Hearings Officer recommended the petition be denied. The petitioner filed an exception to the report. She then explained the Hearings Officer and the petitioner would report their positions to the Council solely on the merits of the case as it existed on the available record. Following those presentations, she said the Presiding Officer should ask if there is a motion to approve the petition based on available evidence. If the Council approves the

petition, these proceedings would end. If, however, the Council did not approve the petition, they should consider the petitioner's exceptions regarding the presentation of new evidence, she explained. At the conclusion of hearing those exceptions, the Council could, she said, consider a motion to take new evidence. Finally, she explained that if no affirmative vote were received on any of the possible motions discussed above, the Council would then consider the Hearings Officer's Report and Order No. 86-9 before it. She asked that all parties defer discussion of technical issues regarding the Hearings Officer's Report until that time. She said the Council could reject the Hearings Officer's recommendations and remand the Hearings Officer's Report to staff for preparation of an Ordinance and related findings for later adoption.

Summary of Hearings Officer's Recommendation and Discussion of
Petitioner's Exceptions

Andrew Jordan, Hearings Officer, reviewed his report. He explained that when the five land use standards were applied to the issues of the petitioner's case, the case probably complied with those standards. However, he said complications arose when considering what was termed in the petitioner's exceptions as a variable standard. That standard provided that the greater amount of vacant land in a proposal, the greater the evidence must be on the differences between the suitability between the existing and proposed UGB as demonstrated by the five standards. Mr. Jordan then reviewed the five basic land use standards and discussed the petitioner's application according to those standards. His findings were published in the meeting agenda packet. Mr. Jordan then addressed the exceptions noted by the petitioners:

1. The petitioners objected to the use of the word "necessity" on page 9 of the Hearings Officer's recommendation. Mr. Jordan agreed with that exception and said the report would be changed.
2. The issue of "looping" of water lines and transportation systems was raised by the petitioner. Regarding water lines, Mr. Jordan said the question should be asked whether the approval of the petition was necessary to allow that looping. Mr. Jordan said his recommendation did not find it necessary and the looping of water lines could occur whether or not the application were granted. Regarding transportation, he explained because the adjacent urban land was already developed, looping would not be required to develop the land.

3. The exceptions posed the question of whether the case was one of an ascending burden of proof or a variable standard. Mr. Jordan thought that issue was largely semantic. He said past Hearings Officer's decisions had referred to the matter as an ascending burden of proof and it had been previously identified by Metro's counsel as such.

After a brief discussion on procedures, the Council determined to hear the petitioner's presentation.

Petitioner's Testimony on Exceptions to the Hearings Officer's Report

Larry Derr, representing the city of Wilsonville and Earle May, said he wished to urge the Council that the evidence in the record satisfied each land use test to the degree necessary to meet the ascending standard. He requested that if the Council concurred with the petitioner's position, it adopt a motion agreeing that the application should be approved and refer it to staff for preparation of an ordinance. Mr. Derr then discussed the lengthy petition process and the fact that Washington County's Planning Commission and Board of Commissioners had both unanimously approved the application based on criteria parallel to Metro's.

Mr. Derr showed the Council aerial slides which showed the configuration and relationship of the land to other properties. He described current development projects adjacent to the land including a motel and office complex and the Smith Home Furnishings regional office. Mr. Derr pointed out the property in question would be very compatible with surrounding urban development. He explained that when the UGB was first drawn in 1978, it was planned to include the property within the boundary. That decision was made because the City logically anticipated new development in that part of town. Services, including water and roads, were installed with that fact in mind. He also explained the City had planned to build a water tower on the property because its elevation would provide adequate pressure to surrounding areas. However, he said, at the last minute the property owner had objected to that action and the property was not included. Mr. Derr reported the current property owner, Mr. May, wished to include the property within the UGB. Mr. Derr showed a slide illustrating the current transportation network. He said if the property were annexed, arterial improvements could be completed to Elligson Road along with other road improvements.

Pete Wall, City Manager, City of Wilsonville, introduced other City staff including Greg Meyer, Mayor; Michael Kohoff, Attorney; Larry Blanchard, Public Works Director; and Michael Kronenberg, Planning Director. Mr. Wall discussed the water project and its importance

to the city of Wilsonville. He explained the project was identified in the City's unified capital improvement program. He also pointed out the program had been named by the League of Oregon Cities as the best such program in the state and 90 percent of the plan had been completed. Mr. Wall said the water project was scheduled for construction in early 1987. Addressing the water line looping issue, he said although lines could be installed outside city limits, time delays would result because property would have to be condemned. He hoped delays would not result in lowering the City's insurance rating. He urged the Council to approve the City's petition and to allow for logical, planned growth.

Mr. Derr said the City's frustrations could be summarized by the fact that no party had said there was anything wrong with the requested annexation. He requested the Council approve the petition because such an action met all applicable standards, no victims would result, the action would be consistent with logical growth, would not be legally deficient, and would not set any precedent. Finally, Mr. Derr said he was satisfied that even without introducing new evidence, the petition as documented on the record to date would clearly support annexation.

Councilors' Questions of the Petitioner

Councilor Hansen asked Mr. Derr to explain why the original property owner had asked the property not be included in the UGB. Mr. Derr said the original plan had called for the property to be included in the UGB. However, the original owner objected to the property's inclusion because he did not want to pay City taxes nor make required urban improvements. His request was honored, Mr. Derr said. Previous to that action, the City had already received donation of land for the planned water reservoir and had approved an adjacent subdivision with the anticipation the property would be developed. All plans were made in a logical, responsible manner, he said. In response to the Council's question, Mr. Derr said he did not remember any other property being annexed to compensate for the property not included within the UGB. He asked the Presiding Officer if he remembered any details on the matter.

Presiding Officer Waker explained his engineering firm, Waker & Associates, designed the development including some utilities. He recalled when the proposal was first submitted to the city of Wilsonville, a cul de sac was planned for the property in question. After discussions with the City, it was changed to a stub street, he said. He added that Waker & Associates had always anticipated the property in question would be developed to complete the loop system. He agreed with the applicant it would be safer to have more than one entrance and exit to the development. The Presiding Officer said he couldn't remember exactly where the water reservoir

Metro Council
May 15, 1986
Page 13

was planned to be located. He recalled one was discussed for east up Elligson Road. Finally, he said development was stopped because sufficient water pressure did not exist to serve the area. He noted his comments were his recollections.

Ms. Baxendale, Metro General Counsel, said she was concerned the Presiding Officer was adding his testimony to the record.

Councilor Frewing said he was concerned about a situation where a developer could make assumptions about what might happen in the future and later would make requests based on those earlier assumptions. The Councilor asked if the water tank were sized to be located on the property to the east. Mr. Derr replied the sizing of the water tank had to take into consideration a larger parcel of land. That was one reason for the petitioner's request to annex the land, he said. Mr. Wall added the water system was designed to serve the entire city.

Councilor Kelley asked for clarification on the legal process had the City not decided to request a change in the UGB. Mr. Blanchard, Public Works Director, responded again stated the site had always been intended for use as a reservoir. He said the City would have to go through an extra territorial permit process. Because the area was outside the UGB, the City would request approval for the project from the Washington County Planning Commission. Finally, he said it could be possible that some property would have to be condemned if any property owners objected to water lines on their property. He emphasized the amount of time these various processes would require.

Councilor Kafoury asked Mr. Derr what action the City would have taken in the current property owner had objected to including the property in the UGB. Mr. Derr said the need would still exist except the property owner would be before Metro opposing annexation. In addition, he said, the need for the reservoir now existed which made the City's case more pressing.

Responding to Councilor Gardner's question, Mr. Derr concurred that the development to the west of the property existed before the UGB was established and was included in the UGB in November of 1978.

The Presiding Officer asked for a motion to approve the petitioner's request. No motion was made.

Petitioner's Request for the Council to Receive New Evidence

Ms. Hinckley reviewed procedures for hearing new evidence. She said in order to make a request to hear new evidence the petitioner had

to show 1) there was a reason why that information could not be presented at the time of the original hearing; and 2) the new information would have a material effect on the earlier findings.

Mr. Derr first addressed an issue unrelated to the petitioner's request to hear new evidence. He explained the petitioner had requested a verbatim transcript of the hearings on the case. He pointed out the hearing was lengthy and took place in two segments. He said the applicant felt the need for a written transcript in order to point out particular evidence to the Council with greater impact and emphasis. He also noted the complexity of ideas discussed during the hearing could not be adequately summarized in the Hearings Officer's Report for the Council's consideration. He said the applicant thought it unfair to pay for total transcription costs and that it was rightly an official function of Metro. Further, the applicant did not want to do anything to further delay the process. He asked the Council consider moving to approve a transcription.

The Presiding Officer asked for a motion to instruct staff to provide a transcription of the hearings. No motion was received.

Mr. Derr then introduced the new evidence to the Council. The petitioner, he said, was proposing 45 acres of the property be used as an outdoors performing arts center. He asserted this new use was not known to the property owner at the time of the hearing. He described plans for the facility and said the parties wishing to develop the center had completed similar, very successful projects in other cities and these projects had been deemed important assets to the entire region where they were located. Mr. Derr reported the Wilsonville City Council, on a preliminary basis, concluded that the City would potentially like to see the property used as an outdoor performing arts center. He also said the City Council concurred the center would probably not be built anywhere else in the region if it were not built on the property in question. An exhaustive study had concluded no other property existed within the UGB at this time that could accommodate such a facility, he said. He explained that because of these new facts, the City Council recommended the new evidence be presented to the Metro Council. Mr. Derr then described the unique requirements of the outdoor theater and described how the property was ideally located and configured to accommodate the facility. He concluded by saying the proposed facility would have significant economic and social value for the region. He said people were present at the meeting who could present more detailed information on the theater, if the Council desired.

Councilor Frewing asked if the petitioners would present evidence that the facility would not be built if the petition were not

Metro Council
May 15, 1986
Page 15

approved and would be built if it were approved. Mr. Derr answered answered in the affirmative.

Staff Comments and Council Questions on Petitioner's Request for a Verbatim Transcript

Ms. Baxendale first reviewed procedures in Metro's Code regarding transcripts. She read: "A verbatim or oral mechanical record shall be made of all the proceedings. Such verbatim record need not be transcribed unless necessary for Council or judicial review." Ms. Baxendale said it was clear when one would be required for judicial review but the Council had to resolve whether they would require a transcript. Staff's opinion, she explained, would require the Council have access to a transcript if there were a contest about the proceedings or when the factual issues were so complex they could not be presented in a summary form. Ms. Baxendale said Ms. Hinckley had attended the hearing, and she could offer her opinion on whether the Council would benefit by having access to a verbatim transcript.

Ms. Hinckley stated the Hearings Officer's summary contained all the issues raised at the hearing, and unless the Council felt there was a question of fact to be resolved she did not think a verbatim transcript was necessary.

The Presiding Officer asked for a motion to order a verbatim transcript be prepared. No motion was received.

Council Discussion on Petitioner's Request to Hear New Evidence

Councilor Oleson asked the Hearings Officer whether the new evidence presented would give him any reason to change his recommendation or to order new hearings.

Mr. Jordan said he would not offer an opinion on whether the new evidence would cause a change in the result of the case. He did not think it fair to offer judgment without hearing the new evidence. He did advise that the evidence was submitted on one of the five standards: the land use standard of economic and social consequences. Assuming the evidence was compelling on that standard, Mr. Jordan said the question must be raised about whether the evidence would impact the findings on the other four standards. This, he said, created a legal issue which he described as follows: when applying the ascending burden of proof, if one standard was so weighty, would it cancel out the necessity for the other standards to be weighty in accordance with the ascending burden of proof. Mr. Jordan said the Council might want to examine that issue. In summary, he said the standard read that the difference between the

Metro Council
May 15, 1986
Page 16

suitability of the proposed and existing UGB was based on consideration of all the applicable factors in subsection a, so that evidence on this factor would not change the conclusion on the other factors.

Ms. Baxendale said it was her opinion it was a policy choice, not a legal issue, whether the evidence had to be strong on all applicable standards or whether evidence on one standard could be enough in the aggregate to make an adequate case. The documents on the history of the standard did not discuss this issue. The Council could make that interpretation either way and have that decision sustained in court, she said.

Mr. Jordan said he agreed the Council had the discretion and latitude to interpret the standards in the manner described by Ms. Baxendale.

Councilor Frewing said the question of land use, as presented by the city of Wilsonville and the proposed amphitheater, should not be a question considered by the Council. The Empire State Building could be proposed; should that influence the UGB. Land use, he thought, was a concern of the City and the Council should only consider changes to the UGB. He asked staff whether there was a legal standard which would allow specific land use to be considered as distinct from the general effect of moving the UGB.

Ms. Hinckley concurred that particularly in cases of locational adjustments, Metro has no authority over land use and tended to examine cases from the standpoint of whether the land was suitable for urban use of any sort. She said, however, land use issues sometimes became involved in cases, especially for those of major adjustments to the UGB. It is virgin territory, however, for locational adjustments. She concluded it would be difficult to make distinctions in some cases, and said if the case were remanded, she would give the Council more instruction on the matter.

Councilor Kafoury said that land use should not be relevant when considering minor locational adjustments. The questions of need and use were not applicable to the standards considered. When considering major amendments, however, the question of need had to be considered so the proposed use is appropriate.

Mr. Derr pointed out the fifth criteria for a minor locational change read: "The compatibility of proposed urban uses with nearby agricultural activities...." He pointed out that language was a clear indication the criteria must take into account land use. He also noted the Hearings Officer's recommendation regarding economic and social consequences was made on the basis of the proposed uses

at the time of the hearing. Those uses, he said, had now changed and were no longer neutral but positive.

Councilor Hansen asked if the applicant would be bound to carry out its stated development plans if the UGB amendment were approved. Ms. Baxendale said there was no clear rule stating conditions must be met, but the Council could make such a rule. She explained such a procedure was not impossible, but it had been perceived in the past as being difficult to mandate.

Referring to the language in staff's report, Councilor Myers asked what evidence would exist, short of remanding the matter back to the Hearings Officer, that the amphitheater would be built. Ms. Hinckley said, in her view, the Council might consider testimony from the promotor on proposed plans, or some legal commitment such as a contract contingent upon approval of the UGB amendment, options on the property, etc.

Mr. Derr said the City was prepared to present proof that binding agreements were in place to cause the development to occur if approved by the City. He also said the City could agree to be bound by the condition of building the facility of the UGB were amended.

Motion: Councilor Kafoury moved to deny the petitioner's request to accept new evidence. Councilor Frewing seconded the motion.

Councilor Oleson asked if it were possible to write findings for approval to clearly show the unique nature of the case. Ms. Hinckley said, assuming all questions about the relevance of the performing arts center were answered in the affirmative, findings could be written to show it was a very unusual circumstance, she said.

Councilor Oleson said although he was concerned about the integrity of the boundary, he was not prepared to vote for the motion on the table.

In response to Councilor Myers' question, Mr. Derr said a contractual arrangement existed between the developer and property owner which would indicate the project would be completed if all necessary governmental approvals were received. He added the project would not be completed if it could not be developed on the property in question.

Councilor Frewing was concerned the proposed amphitheater would be built next to a fire station and truck stop. Mr. Derr also pointed out other land uses were nearby including a hotel and office

Metro Council
May 15, 1986
Page 18

center. Mr. Derr noted he and the developer did not think the fire station and truck stop would pose a problem for development of the amphitheater.

Councilor Kirkpatrick said she was concerned about considering land use issues because that was never Metro's role. She said the Council's role was to determine whether the 46 acres should be considered for a locational adjustment. Ten acres, she noted, had been established as a guideline. The Councilor said she was prepared to support the motion.

Vote: A vote on the motion to deny new evidence resulted in:

Ayes: Councilors Frewing, Gardner, Kirkpatrick, Kafoury, Kelley and Van Bergen

Nays: Councilors Cooper, Hansen, Myers, Oleson and Waker

Absent: Councilor DeJardin

The motion passed and the Council denied to accept new evidence from the petitioner.

Council Consideration of Adoption of Order No. 86-9

Ms. Hinckley circulated an errata sheet related to the Hearings Officer's Report. She said she the petitioners would also present evidence on whether the term "burden of proof" was properly applied and whether certain standards were properly described as being applicable rather than being met. Ms. Hinckley noted she did not think the petitioner's position would change the Council's outcome although petitioner should be given that opportunity.

The Presiding Officer offered the petitioner an opportunity to address the Council on the issued noted by Ms. Hinckley. Mr. Derr declined to address the Council, saying the Council had received the petitioner's exception statement.

Ms. Hinckley noted a typographical error on the third line from the bottom of the Order. The Order number should be changed to No. 85-1, she said.

Councilor Gardner noted another error on page 8, line 13, of the Hearings Officer's Report: The word "incompatibility" should be changed to "compatibility." Mr. Jordan agreed the word should be changed to read "compatibility."

Metro Council
May 15, 1986
Page 19

Motion: Councilor Kafoury moved to adopt Order No. 86-9 to include changes to page 9, line 12, of the Hearings Officer's Report noted in the errata sheet dated May 15, 1986, and to change the word "incompatibility" to read "compatibility" on page 8, line 13, of the Hearings Officer's Report. Councilor Van Bergen seconded the motion.

Presiding Officer Waker said he would not support the motion because he believed looping of the streets was an important issue.

Councilor Van Bergen explained he had come to understand the importance of the UGB and would support the motion because no burden of proof had been demonstrated by the petitioner.

Councilor Oleson said he shared the same concerns as Councilor Van Bergen but he wished to consider the additional evidence and, therefore, would not support the motion.

Vote: A vote on the motion to adopt the Order resulted in:

Ayes: Councilors Frewing, Gardner, Hansen, Kafoury, Kelley, Kirkpatrick and Van Bergen

Nays: Councilors Cooper, Myers, Oleson and Waker

Absent: Councilor DeJardin

The motion carried and Order No. 86-9 was adopted.

9.2 Consideration of Ordinance No. 86-202, for the Purpose of Adopting Findings to Comply with LCDC 86-CONT-001 (Bethany Property) (First Reading)

The Clerk read the Ordinance a first time by title only.

There were no questions from Councilors of Jill Hinckley, Land Use Coordinator, about the staff report.

Motion for Adoption: Councilor Kafoury moved to adopt the Ordinance and Councilor Kelley seconded the motion.

Presiding Officer Waker opened the public hearing.

Tim Ramis, 1727 N.W. Hoyt, Portland, represented several Bethany clients who were either long time property owners who had experienced the change of land from agricultural to residential and urban type development or property owners who purchased land with the

intent to develop the property based on Metro's previously adopted UGB. Mr. Ramis thanked both Metro and Washington County staff for their work in reaching a settlement and for preparing an excellent findings document. Mr. Ramis said his clients urged adoption of the Ordinance. He reviewed the utility planning efforts that had been made based on the assumption the land would continue to be within the UGB. Those efforts, he explained, would be wasted if the Council did not adopt the Ordinance.

Richard Leonard, 9999 S.W. Wilshire Street, Portland, an architect and planner representing property owners of the central Bethany area, urged the Council to adopt the Ordinance. He said the findings were one of the most complete set of facts and analysis to support a land use decision he had seen and he commended staff for an excellent job. He hoped the issue would be resolved because it had been debated far too long.

Dan Adair, 13960 N.W. Lakeview Drive, Portland, Chairman of the Bethany Landowners Association which represented the larger land owners in the area. He noted many land owners were present at the meeting and they wholeheartedly endorsed adoption of Ordinance No. 86-202. He thanked Metro and Washington County staff for their work and for preparing an excellent set of findings.

Ralph Hillier, Interland Investment Corporation, explained his corporation owned about 16 percent of the area in the Continuance Order. That property, he explained, was acquired in 1979 when it was assumed the land was within the UGB. He commended Eleanore Baxendale, Metro's Counsel, and Ms. Hinckley, for their work and appreciated that the findings of fact justified the reinclusion of the territory within the UGB. He noted he had submitted a letter dated May 12 1986, to be included in the official record and that the letter supported the findings of fact as submitted.

Maurine Warneking, 12835 N.W. Laidlaw Road, Portland, testified she was a Bethany area resident, the Chairman of CPO 7, and a member of the steering committee for the Bethany area planning process. She said the findings of fact were excellent and strongly supported adoption of the Ordinance. The Bethany area plan would mean nothing without the land being included in the UGB, she said.

Floyd Redding, Bruce Redding, Earl Stroller, John Mitchell, Stanley Richards and James White all agreed with the findings of fact and urged adoption of the Ordinance.

Bob Stacey, 534 S.W. Third Avenue, Suite 300, Portland, staff attorney for 1000 Friends of Oregon, noted that since his organization first starting working to reduce the amount of non-urban land in the

Metro Council
May 15, 1986
Page 21

UGB, dramatic development had taken place in the Bethany area. Those developments, he said, would make it impractical to exclude the Bethany area from the UGB. He said the findings concluded that to exclude the area from the UGB would mean a failure to provide the amount of housing space projected to be needed for the area. Therefore, Mr. Stacey said 1000 Friends of Oregon were withdrawing their longstanding opposition to Metro's 1979 decision. He stressed local governments should work hard to ensure good land use practices and Metro was clearly responsible, when considering petitions to expand the UGB, for guaranteeing a clear need be established that could not be accommodated on land already within the Boundary. He regretted the delay cause property owners but was happy the issue had finally been resolved.

The Presiding Officer read into the record a letter from Robert O. Warner. Mr. Warner was a long time resident of the Bethany area and urged the Council not adopt the Ordinance in order to maintain the area for agricultural use. He discussed the fact that agricultural land was shrinking and could be non-existent in the future.

There being no further testimony, Presiding Officer Waker closed the public hearing.

In response to Councilor Frewing's question, Councilor Kafoury said her motion for adoption of the Ordinance had included the changes noted in Ms. Hinckley's memo dated May 8, 1986.

Councilor Kafoury remarked on the importance of this decision. Although she was not totally in agreement with the conclusions of the findings, she said it was good to finally have the Boundary resolved.

The Presiding Officer announced the second reading of the Ordinance was scheduled for May 29, 1986.

9.3 Consideration of Ordinance No. 86-201, for the Purpose of Amending Ordinance No. 86-199 by Adopting Criteria for Implementation of Alternative Technology projects (Continued Second Reading and Public Hearing)

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

Motion: A motion to adopt Ordinance No. 86-201 was made by Councilors Kelley and Kafoury at the meeting of April 22, 1986.

Debbie Allmeyer, Solid Waste Analyst, reported Councilors had been mailed staff's responses to questions raised about the Ordinance at the previous meeting.

Metro Council
May 15, 1986
Page 22

Councilor Frewing asked if staff had prepared a notebook of materials presented on costs of various alternative technologies at the April 16 Council workshop. He recalled staff would compile the materials and make them available to Councilors who had not attended the workshop. Doug Drennen, Engineering and Analysis Manager, said he would provide those materials.

Presiding Officer Waker opened the public hearing on the Ordinance.

Teresa DeLorenzo, Chairman of the Solid Waste Policy Advisory Committee (SWPAC), distributed a memo from SWPAC and reported the Committee was impressed with the complexity of the project and Council and staff efforts to get complete information before making a choice. Ms. DeLorenzo said the Committee was very interested that the option selected be cost-effective and urged staff to maintain tight controls over premiums at the beginning of the negotiation process in order to keep costs down. She also reported SWPAC would prefer to see a smaller, more manageable project versus a larger project that could tax Metro's resources. Finally, she said SWPAC members considered not doing an alternative technology project could be an acceptable option for Metro.

The Presiding Officer read into the record a letter from Alyne Woolsey, 818 Fourth Street, Oregon City. Ms. Woolsey suggested the following language be incorporated into the Ordinance: "In recognition of the 1982 vote regarding garbage burning plants in Clackamas County, no garbage burner shall be built in Clackamas County unless such a burner shall meet or exceed the standards desired by the voters and such a proposed burner on the site shall be approved by a vote of the people of Clackamas County."

There being no additional testimony, the Presiding Officer closed the public hearing.

Dennis Mulvihill, Waste Reduction Manager, reviewed proposed new amendments to the Ordinance. He also referred Councilors to letters from the Oregon Environmental Council and Multnomah County Commissioner Gordon Shadburne. Mr. Mulvihill noted the amendments had been prepared in response to Council and Department of Environmental Quality (DEQ) questions about the meaning of specific Ordinance language. He distributed documents listing the proposed amendments and indicating how the Ordinance would read if the proposed amendments were adopted.

Councilor Frewing pointed out Councilor Myers had noted staff had omitted any reference to public acceptability of the project as a criteria.

First Motion to Amend: Councilor Frewing moved the Ordinance be amended to read: "Metro will process with that project which best meets the following criteria... (i) Project(s) technology, cost and location gain regional public acceptability." Later reference in the Ordinance to criteria (a) through (h) would also be amended to include the new criteria (i). Councilor Myers seconded the motion.

Councilor Frewing said this new language would not mean the project needed to gain absolute regional acceptability.

Vote on First Motion to Amend: A vote resulted in:

Ayes: Councilors Cooper, Frewing, Gardner, Hansen, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilors DeJardin, Kafoury and Kelley

The motion carried and the Ordinance was amended.

Second Motion to Amend: Councilor Kirkpatrick moved the Ordinance be amended to lower the referenced premium to 15 percent. Presiding Officer Waker seconded the motion for purposes of discussion.

Councilor Kirkpatrick said the motion would respond to concerns raised by SWPAC and the Environmental Council to keep costs at a minimum.

Councilor Waker said he supported the motion because he did not think the gains to be made by alternative technology were worth the larger premium initially proposed.

Councilor Gardner said even though the existing language would allow the Council to accept proposals up to 20 percent, he hoped premiums submitted by vendors would be lower. He said he would not support the amendment because he wanted to keep the process flexible.

Councilor Cooper agreed with Presiding Officer Waker's view that reducing a small quantity of waste landfilled at a much higher price was not a sensible solution to the problem, especially since landfills would still exist. He thought discussion of percentages at this point in the process was moot. The important thing, he said, was to maintain the option of looking at the "right" proposal.

Councilor Kirkpatrick supported Councilor Cooper's statement saying that was why a 15 percent limit was necessary. She said it was her

experience that vendors would bid as high as possible. If lower limits were established, they would bid lower.

Councilor Frewing questioned whether reducing the premium percentage would place unwanted restrictions on evaluating proposals.

Councilor Oleson thought the 20 percent figure too low. He said he would support a percentage up to 30 percent in order to encourage as much vendor participation as possible.

Councilor Hansen said the Council needed to send a signal to vendors and the DEQ that Metro was serious about a project that would substantially reduce the volume of waste landfilled. A 15 percent limitation would not accomplish that goal, he said.

Vote on the Second Motion to Amend: The vote resulted in:

Ayes: Kirkpatrick and Waker

Nays: Councilors Cooper, Frewing, Gardner, Hansen, Myers, Oleson and Van Bergen

Absent: Councilors DeJardin, Kafoury and Kelley

The motion failed.

Third Motion to Amend: Councilor Hansen moved the Ordinance be amended the raise the premium referenced to 30 percent. Councilor Oleson seconded the motion.

Vote on Third Motion to Amend: A vote resulted in:

Ayes: Councilors Hansen and Oleson

Nays: Councilors Cooper, Frewing, Gardner, Kirkpatrick, Myers, Van Bergen and Waker

Absent: Councilors DeJardin, Kafoury and Kelley

The motion failed.

Fourth Motion to Amend: Councilor Kirkpatrick moved the Ordinance be amended by incorporating the proposed amendments embodied in the version of the Ordinance marked "C."

Vote on Fourth Motion to Amend: The vote resulted in:

Ayes: Cooper, Frewing, Gardner, Hansen, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilors DeJardin, Kafoury and Kelley

The motion passed.

Vote on the Main Motion: The vote on the main motion, as amended, resulted in:

Ayes: Cooper, Frewing, Gardner, Hansen, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilors DeJardin, Kafoury and Kelley

The motion carried and Ordinance No. 86-201 was adopted as amended.

10. OTHER BUSINESS

10.1 Consideration of Extending the Operations for the Clackamas Transfer & Recycling Center (CTRC), Dated August 1982, with Genstar Transfer, Inc. for a Period of One Year

Mr. Drennen said the item was being reported to the Council for informational purposes and no formal action was required at this meeting. If there were no objections, staff would proceed to negotiate with Genstar Transfer, Inc., the current operator of the transfer station, for a contract extension of one year.

Presiding Officer Waker asked what factors would be considered if staff negotiated for a contract extension. Mr. Drennen said outstanding issues included the ability to divert waste to other sites and a Change Order for improvements to the "clam shell." The contractual fee would not increase, he said.

Motion: Councilor Van Bergen moved the CTRC operations contract be rebid in the proper manner and at the appropriate time. Councilor Frewing seconded the motion.

Councilor Van Bergen explained when the St. Johns operation contract was rebid, the lowest qualified bid was substantially under the amount estimated by staff. He said that experience demonstrated many qualified contractors were willing to do the job at competitive rates. He also thought it likely that litigation problems with the west transfer station project would make it prudent to adjust the bid schedule to CTRC rather than to the west transfer station.

Metro Council
May 15, 1986
Page 26

Responding to Councilor Frewing's question, Mr. Drennen said the annual contract fee for the CTRC operation contract was about \$1.3 million. A premium would be paid to bid the CTRC and west transfer station projects simultaneously, he explained, and the advantages to bidding the two projects simultaneously would include economy of scale, overhead flexibility and costs savings due to ability to use equipment interchangeably. He said the Council, however, would decide whether to bid the two projects separately or together.

A discussion followed regarding whether a rebid would result in lower bids, due to past experience in bidding the St. Johns operation contract.

Vote: A vote on the motion resulted in:

Ayes: Councilors Frewing, Kirkpatrick, Van Bergen and Waker

Nays: Councilors Cooper, Gardner, Hansen, Myers and Oleson

Absent: Councilors DeJardin, Kafoury and Kelley

The Presiding Officer explained that because the motion had failed, staff would commence work on extending the existing contract.

10.2 Presentation of a Rate Incentive Approach for the Solid Waste Reduction Program

Rich McConaghy, Solid Waste Analyst, presented a brief summary of the information contained in the staff report.

Motion: Councilor Kirkpatrick moved to endorse the general approach for soliciting public comment as outlined in the staff report. Councilor Myers seconded the motion.


Vote: A vote on the motion resulted in:

Ayes: Cooper, Frewing, Gardner, Hansen, Kirkpatrick, Myers, Oleson, Van Bergen and Waker

Absent: Councilors DeJardin, Kafoury and Kelley

The motion carried. There being no further business, the meeting was adjourned at 11:20 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

amn/5811C/313-3/07/01/86