

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

August 28, 1986

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

Also Present: Rick Gustafson, Executive Officer

Staff Present: Eleanore Baxendale, Norm Wietting, Jennifer
Sims, Neil McFarlane, Tuck Wilson, Sandy
Bradley, Jill Hinckley, Randi Wexler, Peg
Henwood and Vickie Rocker

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

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

Councilor Kelley reported highlights of her recent trip to Japan
where she visited solid waste disposal facilities. She said she
would share slides and other information with Councilors at a later
date.

3. EXECUTIVE OFFICER COMMUNICATIONS

Due to the absence of the Executive Officer, the Presiding Officer
postponed the Executive Officer's Communications until later in the
meeting.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

6. CONSENT AGENDA

Motion: Councilor Van Bergen moved to approve the Consent
Agenda and Councilor DeJardin seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Frewing,
Gardner, Hansen, Kafoury, Kelley, Van Bergen and Waker

Absent: Councilors Kirkpatrick and Oleson

The motion carried and the following items were approved and adopted:

6.1 Minutes of July 24, 1986

6.2 Resolution No. 86-677, for the Purpose of Amending the Transportation Improvement Program to Add Two New City of Tigard Signal Projects

EXECUTIVE SESSION

The Presiding Officer called the meeting into executive session at 5:50 p.m. under the authority of ORS 192.660(1)(h) and (f). Councilors present at the executive session were Collier, Cooper, DeJardin, Frewing, Gardner, Hansen, Kafoury, Kelley, Van Bergen and Waker. Councilors Kirkpatrick and Oleson were absent. Presiding Officer Waker called the meeting back into regular session at 6:05 p.m.

7. ORDINANCES AND ORDERS

7.1 Consideration of Order No. 86-12, in the Matter of Contested Case No. 85-8, a Petition for a Major Amendment of the Urban Growth Boundary from BenjFran Development

After introducing the agenda item, Presiding Officer Waker announced he was disqualifying himself from considering the matter. Waker & Associates was currently performing direct services for the area adjacent to the property under consideration, he explained. He turned the chair over to Deputy Presiding Officer Gardner.

Deputy Presiding Officer Gardner outlined the procedure the Council would follow: Metro staff and the Hearings Officer would present reports, the petitioner and proponents of the UGB addition would be given 40 minutes to address the Council, a total of 40 minutes would be allowed groups and individuals opposing the action, the petitioner would be allowed a five-minute rebuttal period, and the Council would act on the order and then consider any requests to submit new evidence.

Staff's Report. Jill Hinckley, Land Use Coordinator, explained the staff report identified primary and secondary issues raised in the

exceptions. She said if the Council limited itself to considering the four primary issues, it would have sufficient basis to deny the Hearings Officer's recommendation. The petitioner had requested it be allowed to submit new evidence relating to Primary Issue "B" (peak hour versus off-peak hour travel time). Rather than delay the proceedings, staff determined the Council could make a decision based on issues A, B and D only. Ms. Hinckley then reviewed the rules for Urban Growth Boundary (UGB) proceedings.

Hearings Officer's Report. Adrienne Brockman, Hearings Officer for the case, presented an overview of BenjFran's petition. She said the development company requested the UGB be amended to add 472 acres to the Boundary to include an industrial park which would become four separate industrial parks. The parks would vary in size and over 60 percent of the property would be available by lease only. BenjFran proposed the parks be used for hi tech support services industries. In developing its proposal, BenjFran asked 25 hi tech support industry firms what they thought was the optimal travel time to provide customers required support. Eighty-four percent of the firms said they should be within 20 minutes driving time of the hi tech businesses. Because the 20-minute drive time requirement was during p.m. peak hours, the suitable locations for hi tech support services were very limited.

Ms. Brockman explained that based on the above responses to its questionnaire, BenjFran inventoried unconstrained land within 20 minutes of hi tech businesses. Year 2005 employment projections were then applied to that land, not to the land projected to be needed in the year 2005, she said. Therefore, Ms. Brockman questioned the petitioner's methodology.

Ms. Brockman said she also took issue with the petitioner's explanation that a 200-acre site was needed. She did not think the petitioner had explained why only a 200-acre site would work given the fact that the plan included four separate kinds of parks. She questioned whether other sites were available outside the 20-minute drive time that would satisfy the petitioner's needs. In summary, she said the petitioner did not introduce evidence explaining why the four industrial parks had to adjoin and the total range of alternative sites.

The petitioner, Ms. Brockman explained, raised the objection that a different burden of proof was applied to them than to Kaiser and Riviera Motors. Ms. Brockman said the need argument, the factual information presented by petitioner, the development patterns and the expert testimony presented at the hearing were all different from that presented by Kaiser and Riviera Motors. Kaiser and Riviera, she explained, argued a present need based on historical

facts. BenjFran, on the other hand, argued a long-range need based on employment projections for the year 2005. In spite of BenjFran's claims that hi tech support services had to be near industry, there was no record to show movement of changing land use patterns to support that position.

Finally, Ms. Brockman noted that unlike Kaiser and Riviera, BenjFran brought in only one expert witness to substantiate statements for change. She also questioned the way in which the petitioner used Metro's employment forecast figures to show the amount of new jobs projected for the Sunset Corridor.

At the conclusion of the BenjFran, Kaiser and Riviera hearings, Ms. Brockman said she had asked all three parties to submit findings. After reviewing those findings carefully, Ms. Brockman said she was not satisfied BenjFran had adequately stated its case to the Hearings Officer.

There were no questions of Ms. Brockman.

Petitioner's Statement and Statements by Others in Support of the Petitioner. Deputy Presiding Officer Gardner again explained the Council would allow 40 minutes for this section of the meeting.

Greg Hathaway, Attorney, 421 S.W. Sixth Avenue, Portland, representing BenjFran Development Company, emphasized the Council was dealing with four issues raised in the exception document. Employment projections, as raised by Ms. Brockman, was not an issue to be considered at this meeting, he said.

Mr. Hathaway presented graphic displays he said were related to the record. He pointed out the BenjFran petition focused on hi tech support companies to be located in the Sunset Corridor and then showed charts to illustrate the property in question as it related to other land in the Sunset Corridor and the UGB. He explained BenjFran had an option to purchase the property which was owned by the Sisters of St. Mary.

Mike Nelson, Portland Manager and Vice President of Development, BenjFran of Portland. Mr. Nelson noted heavily urbanized areas on the maps, some of which was not included within the UGB. He described BenjFran's corporate structure, explaining the company was Oregon-based and employed local people. The region, he said, would greatly benefit from urbanization of the property including sewer improvements, preservation of the beltline right-of-way, preservation of large oak and walnut trees, construction of a large industrial fire station, and the creation of 6,800 jobs in the planned industrial parks.

Mr. Nelson described the development plan. He said the land would be divided into large lots, a previous concern raised by the Council when it approved the Kaiser and Riviera Motors petitions. The project, he explained, would allow the land to be planned in an orderly yet flexible manner. Additional land would be needed in order to accommodate projected hi tech industry, he said. BenjFran had plans to aggressively market the property on an international level and would compete with other hi tech areas in the nation. Mr. Nelson stressed the importance of encouraging development and creating new jobs in Oregon rather than see new business go elsewhere. He asked the Council to help BenjFran stop Oregon's economic hemorrhaging.

Sister Mary Fidelius of the Sisters of St. Mary, 4440 S.W. 148th Avenue, Beaverton. The Sister addressed the Council on behalf of Superior General Sister Anna Hurtle who was out of town. She said the Sisters presently owned 461 acres of the property in question. She reviewed the 100-year history of the Sisters of St. Mary of Oregon teaching organization. The land was given to the Sisters by Annie Kelley Algusheimer in 1959 for the purpose of assisting to the needs of retired Sisters, educating young Sisters, and for the financial support of the St. Mary school. The land had undergone many zone changes but the Sisters had not offered any input about those changes because the organization was financially healthy. However, due to high medical costs, the organization was experiencing difficulty in providing for elderly Sisters in need of medical care. Education costs had also increased and the Sisters of St. Mary could no longer afford to subsidize education programs offered at the school. Sister Mary Fidelius said the organization's only hope for financial survival was to sell some of the land. She urged the Council to include the land in the UGB in order to help BenjFran realize the plans and to allow the Sisters to continue its mission of education.

In response to Councilor Van Bergen's question, Sister Mary Fidelius said she was not certain how much of the land sale proceeds would be lost to taxes if the Sisters of St. Mary sold its property.

Steve Larrance, 20660 S.W. Kinneman, Vice Chair of CPO #6 and Chair of the Land Use and Planning Subcommittee. Mr. Larrance distributed a statement to the Council which he read. He said when the UGB was first formed CPO #6 members questioned why the property now proposed to be included in the UGB had been excluded. The group generally felt the open area was accessible and serviced by the same urban services as adjacent areas which had been included in the Boundary. The Organization was told the land owner had requested a rural designation. He thought it peculiar the property owner had been able to effect the process.

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Mr. Larrance explained the CPO #6 area was lacking in industrial and commercially designated lands. He thought development of the property would play a key role in improving the area's transportation plans. He said an adequate boundary of open space and the use of old tree lines could be used to mitigate land use designation differences. Mr. Larrance said his Organization welcomed the opportunity to participate in the planning process and looked forward to completing the community plan in a way in which residents could be proud.

Mr. Larrance read into the record a letter to the Metropolitan Boundary Commission from Eleanore Peyton, Co-secretary of CPO #6, dated August 27, 1986. The letter outlined reasons the property in question should be included in the UGB: 1) both east and west boundaries abutted urban/industrial land; 2) the north boundary abutted the rail line, Tualatin Valley Highway and a commercial zone; 3) the CPO #6 plan indicated good transportation access through the property to align 209th with 219th for a future north/south throughway; 4) the land could be used for everyday, small, steady businesses; and 5) the property to the south, still designated rural, was fast being developed.

Greg Hathaway addressed the four legal issues before the Council. He explained issue B (regarding how the 20-minute time requirement would be defined) would not be discussed until the Council decided issues A, C and D.

Mr. Hathaway defined Issue A: When is preference a need? Had BenjFran demonstrated a public need for hi tech support industries to be within a 20-minute travel time of the primary hi tech manufacturers in the Sunset Corridor? He said BenjFran had satisfied the public need issue because of the evidence it had submitted and because of the basis on which the Kaiser and Riviera Motors petitions had been approved by Metro. He maintained the hi tech support industry was part of the same industry the Kaiser and Riviera petitions had addressed. It was clearly acknowledged, in the Kaiser and Riviera records, that support industries were an integral part of a hi tech end user locating within a certain area. Metro, the Hearings Officer, Kaiser and Riviera and BenjFran had all acknowledged the Sunset Corridor was the location of choice in this region for hi tech industry, he said, and there was a need to ensure the area's success by competitive marketing. Mr. Hathaway presented a graphic illustrating this point.

Mr. Hathaway said BenjFran attempted to identify and establish the need for creating a second, localized area in the Sunset Corridor for hi tech support industries. BenjFran surveyed 25 support companies to determine those companies' travel time requirements for

servicing their hi tech users. This time limit, he emphasized, was a requirement time not an optimum time. Contrary to the Hearings Officer's understanding, Mr. Hathaway thought the survey was in the official record. Survey results indicated 84 percent of those responding thought 20 minutes or less was required to serve hi tech end user customers and that support industries would not survive if they were not that close to hi tech customers.

Mr. Hathaway said no requirement had been imposed on Kaiser and Riviera Motors to define their area of localized need or to demonstrate that hi tech firms would not be able to survive outside the Sunset Corridor. He requested the Council apply the same standard to the BenjFran petition which would lead to the conclusion that the 20-minute timeframe was a justified requirement. He said Metro had the legal ability to determine BenjFran had demonstrated public need.

Mr. Hathaway addressed the third issue -- that of unconstrained land. The issue, he explained, could be summarized as such: What vacant, industrial land was available to meet the need BenjFran had identified? He said Metro's vacant land inventory did not provide parcel-by-parcel size and location data and did not show availability to the marketplace. The inventory did, however, identify vacant land within the regional, land off and on rail, and land within 1,000 feet of sewer service. Mr. Hathaway questioned why about 572 acres of land beyond 1,000 feet of sewer service had not been included in Metro's vacant land inventory. BenjFran had included such land it thought usable by the year 2005 in its petition. He suggested if the Council did not agree with that position, it remand the matter to allow BenjFran to analyse the acreage in question.

Finally, Mr. Hathaway addressed the question of why lots of 200 acres or larger would be required to support hi tech support companies. Large lot size would allow BenjFran to provide extraordinary community benefits over time that would otherwise have to be borne by the public, he said. He explained the Council had granted Kaiser the flexibility to appeal for smaller lot size if market conditions did call for large lots. BenjFran was also requesting the Council grant the lot size flexibility. The company's survey indicated companies saw a need for large lots.

In summary, Mr. Hathaway presented the BenjFran petition as an excellent planning opportunity to feed off the type of approval the Council granted the Kaiser and Riviera Motors petitions: to acknowledge the Sunset Corridor as the location of choice for hi tech development.

There was no further testimony of the petitioner or the petitioner's proponents.

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Karen Myers, an economist employed by BenjFran, responded to Councilor Frewing's question regarding the size of lots BenjFran had examined when putting together its petition. Ms. Myers explained the development company had conducted two types of analyses: lots of 200 acres or more; and the entire Metro inventory which included lots of varying sizes. She said that by using both methods, a need was demonstrated for large and small lots, a need which could not be met without expanding the Urban Growth Boundary.

Councilor Oleson noted the petitioner's proposal was based on tremendous growth projections over a period of time yet some of the companies surveyed by BenjFran had laid off hundreds of employees. He asked if the petitioner had examined a worst case scenerio and how would that apply to the petition now before the Council.

Mr. Hathaway said the petitioner had not addressed a worst case scenerio and thought it was understood employment projections would not be an issue before the Council.

Mr. Nelson explained the hi tech industry was a new field and therefore subject to some initial growth starts and stops. For that reason, the petitioner was seeking a 10-year land purchase agreement.

Ms. Hinckley pointed out a good deal of new information and new argument had been presented at this meeting by the petitioners. She was concerned the opponents had not had a chance to evaluate and respond to the new arguments. She noted the Council recently revised its rules to require that oral argument on written exceptions be limited to the issues raised in those exceptions. She proposed the opponents be given the opportunity to respond to written exceptions. If, at the conclusion of that presentation, the Council was still prepared to uphold the Hearings Officer's report, they could do so at that time. If the Council was not prepared to uphold the report, it could then remand the matter back to the Hearings Officer in order to allow those new issues to be subject to the full hearing process.

Councilor Van Bergen asked staff to define the term "need" as it applied in this case and questioned whether it was defined the same as "public interest" and "convenience." Ms. Hinckley explained when the Hearings Officer considered need, she considered long-term growth needs for population and employment and the need for housing, economic development and livability. Goal 14 had precisely defined those requirements, she said. Public need was a broader concept and in some cases, public need would not constitute need as defined under Goal 14.

Councilor Van Bergen asked how the Kaiser and Riviera Motors cases applied to the BenjFran case. Eleanore Baxendale, General Counsel,

explained when the Council first determined to hear major amendments to the Urban Growth Boundary, it determined to consolidate similar factors when more than one petition was received simultaneously. This would allow the Hearings Officer to make consistent decisions concerning issues of overlapping concern. Subsequently, the Hearings Officer heard similar issues at a consolidated hearing for the BenjFran Development, Kaiser Development and Riviera Motors petitions. She explained BenjFran was concerned about two issues: whether the facts were the same as the other petitioners; and whether Metro was requiring the same kinds of needs and factual evidence to meet the same kind of standard for all three petitioners. BenjFran maintained the Hearings Officer had not been consistent, she said, and the Hearings Officer could address those concerns later at this meeting.

Responding to Councilor Frewing's question, Ms. Brockman explained Kaiser and Riviera petitions had demonstrated a present need based on absorption rates. The Council had adopted the Hearings Officer's findings for those two petitions. The findings declared the Sunset Corridor location was a present need and that the Corridor was not designated as the choice for hi tech industries. During the hearings Bob Stacey of 1000 Friends of Oregon introduced evidence to show that other areas were suitable for hi tech industry including Wilsonville and East Multnomah County. Ms. Hinckley added evidence had been received at the Kaiser and Riviera hearings to indicate if Sunset Corridor land were not added to the UGB, potential hi tech industries would be located elsewhere outside the region.

Testimony from Parties Opposed to the Petition

Joseph R. Breivogel, Route 2, Box 803A, Beaverton, testified he lived adjacent to the property in question. As a landowner in that area and as an experienced practitioner of hi tech, his perspective differed from the petitioners. He said he was well qualified to state the needs of hi tech industry. He also stated that CPO #6 and Steve Larrance did not speak for him and other adjoining property owners in his neighborhood. Mr. Breivogel questioned the petitioner's claim that a 20-minute proximity to hi tech customers was required for support industries. The petitioner had not demonstrated this requirement beyond providing responses to their survey. He considered the proximity issue a marketing idea advanced in hopes of distinguishing BenjFran's proposal from other industrial developments. Existing corporations in the Corridor considered the existing infrastructure adequate to suit their needs, he explained. He discussed his business experience in Aloha and said few problems existed in receiving supplies from Japan or the Bay Area.

Mr. Breivogel testified he had heard BenjFran intended to use up to half of the 472 acres for residential and general commercial uses.

He requested BenjFran be required to submit a new petition to demonstrate the impact of that type of development on surrounding uses.

Mr. Breivogel explained the combined effect of hi tech business optimistically estimating potential growth was an overstatement of the potential market. The warning signs of this overestimation of growth were already present, he said, by the number of vacant buildings in hi tech development areas. Considering those factors, he did not see an immediate need for the type of development proposed by BenjFran.

In conclusion, Mr. Breivogel sympathized with the financial position of the Sisters of St. Mary but saw their situation similar to other landowners wishing to subdivide. LCDC, he explained, considered the landowner's financial condition irrelevant to land zoning and that position was necessary to maintain a coherent land use process.

Bob Stacey, staff attorney, 1000 Friends of Oregon, 519 S.W. 3rd Avenue, Suite 300, Portland, testified the Friends had supported the Kaiser and Riviera Motors petitions but did not support the petition of BenjFran. He noted Kaiser and Riviera had proposed adding large sites to the UGB to provide land for large scale hi tech industrial plants. BenjFran, however, had consistently proposed to develop an industrial park to provide smaller sites for a large number of small hi tech support service firms. Two different needs were proposed to be met by the three applications, he said. Mr. Stacey did not think BenjFran submitted adequate evidence to prove that hi tech businesses would not locate in the region unless all their suppliers were located within 20 minutes drive time of their plants. The 20-minute drive time, he explained, was only BenjFran's preference and not a factor preventing primary hi tech use in the region.

Regarding the land issues, Mr. Stacey explained Metro staff had recommended the Council assume BenjFran's employment and land available calculations were correct and to give BenjFran the benefit of the doubt on those issues. He thought the employment forecast unjustifiably high. The year 2005 land supply had also been underestimated because BenjFran took into account only unconstrained land in their application.

Mr. Stacey disagreed that large land lots were needed to meet support needs of primary industry. No evidence had been submitted to prove that need, he said. He thought it in BenjFran's interest, as the developer of the parcel, to have as many support firms as possible locate on the land. Adequate existing vacant lots or campus industrial parks existed within a 20-minute drive time of primary industries to accommodate BenjFran's needs, he said.

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In response to Councilor Kafoury's question, Mr. Stacey said all parties concurred that if the Council decided each of the primary issues in favor of the Hearings Officer's report, the Council would not have to consider the secondary issues. At this time the Council could assume those issues were all decided in BenjFran's favor. The Councilor was concerned the secondary arguments contained allegations that would not be addressed. Ms. Hinckley said such an action by the Council would not acknowledge the secondary arguments as true and correct.

James F. Ross, Director of the Department of Land Conservation and Development. The Clerk read a letter from Mr. Ross in which he concurred with the Hearings Officer's recommendation.

Ms. Hinckley noted that Mr. Breivogel introduced new evidence and argument when he addressed the issue of the slump in the hi tech industry and disputed the accuracy of BenjFran's employment projections were accurate. She requested the Council not regard that portion of his testimony in its decision at this time. If the Council decided not to adopt the Hearings Officer's findings, that testimony could be considered in a new hearing, she explained.

Deputy Presiding Officer Gardner said that portion of Mr. Breivogel's testimony was the subject of Councilor Oleson's question which should also be disregarded for purposes of this decision.

Responding to Councilor Frewing's question, Ms. Hinckley said a Council decision to approve the Hearings Officer's findings on any two of the major points would be sufficient grounds for denying BenjFran's petition.

Petitioner's Rebuttal

Greg Hathaway noted he was very concerned secondary issues had been raised during the opposition's testimony. He thought this was unfair to BenjFran Development because its exceptions document had justified why an exception was necessary relative to the secondary issues. The applicant, he said, had fairly addressed the four major issues in question and he thought it unfair to leave secondary issues dangling.

Dale Johnson, President, BenjFran Development, 15959 N.W. Blue Ridge Drive, Beaverton. Mr. Johnson said the real problem was in defining the term "need." He regretted no discussion had occurred on the intent of the Urban Growth Boundary or the extension of orderly neighborhood development. Rather, the hearings were focused on the concept of need, a concept he defied anyone to define. He maintain-

ed a decision had been made to approve Kaiser and Riviera's petitions by accepting a record rife with error and subjective statements. He pointed out the area covered by BenjFran's petition on a map and noted Beaverton and Hillsboro were currently in a dispute over which of the two cities would annex the land. The land, he said, was surrounded by full or partial development. Mr. Johnson urged the Council to deny the Hearings Officer's findings because if the petition were not approved, no development would occur. He asked the Council not to gamble with the possibility of economic growth.

Council Discussion

Main Motion: Councilor Kafoury moved to adopt Order No. 86-12 and Councilor Frewing seconded the motion.

Responding to Councilor Frewing's concern about an explanation of the issues, Ms. Hinckley referred to the Council to Attachment 2 of the Staff Report, "Summary and Recommendations on Primary Issues."

Councilor Kelley declared she would abstain from voting on the Order because a member of her family was represented on the BenjFran Board of Directors. She said that relationship could constitute the perception of a conflict of interest.

Ms. Hinckley explained the Order should be revised to exclude reference to primary issue B.

Councilor Frewing said he was concerned future applicants be given guidance on issues to be addressed. Ms. Hinckley responded that if the Order were adopted, the order would serve to give that guidance because the Hearings Officer had clearly distinguished major points to be addressed in her findings. Councilor Frewing requested staff prepare a guide on the "need" issue for future applicants.

Motion to Amend: Councilor Kirkpatrick moved to amend the main motion to exclude issue B from the record. Councilor DeJardin seconded the motion.

Vote on Motion to Amend: The vote resulted in:

Ayes: Councilors Collier, DeJardin, Frewing, Gardner, Hansen, Kafoury and Kirkpatrick

Nays: Councilors Cooper, Oleson and Van Bergen

Abstain: Councilors Kelley and Waker

The motion carried and the Order was amended.

Councilor Oleson said he would not support the main motion because he thought more land was required to create jobs in the Sunset Corridor.

Councilor Cooper agreed with Councilor Oleson saying the UGB process was flawed. He said he was pro-development and regretted putting the applicant through the expense of proving their case.

Councilor Van Bergen said he would not support the motion because the term "need" was impossible to define.

Deputy Presiding Officer said he would support the motion because a case to add additional land to the UGB had not been made. He acknowledged the region needed more jobs but thought the Boundary served to let developers know where to look for available land.

Vote on the Main Motion: The vote resulted in:

Ayes: Councilors Collier, DeJardin, Frewing, Gardner, Hansen, Kafoury and Kirkpatrick

Nays: Councilors Cooper, Oleson and Van Bergen

Abstain: Councilors Kelley and Waker

The motion carried and the Order was adopted as amended.

Deputy Presiding Officer Gardner called a recess at 8:25 p.m.. Presiding Officer Waker called the meeting back to order at 8:45 p.m.

7.2 Consideration of Ordinance No. 86-207, for the Purpose of Defining a Planning Procedure for Designating Areas and Activities for Which a Functional Plan May be Adopted (First Reading and Public Hearing)

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

Eleanore Baxendale, General Counsel, reviewed information contained in staff's written report. She said the purpose of the Ordinance was to provide a process for the Executive Officer to designate activities for which a plan could be adopted.

Councilor Frewing said he would vote against the Ordinance as written because the proposed procedure required the Executive Officer to report planning functions to the Council. He preferred a procedure that would allow the public, Council and staff to partici-

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pate in suggesting designated areas for functional plans. He thought the early phase of the annual budget process would be an excellent opportunity for seeking public comment.

Presiding Officer Waker noted the Ordinance outlined the first phase of the initiation process and that the Council would certainly be involved.

Motion: Councilor Gardner moved the Ordinance be adopted and Councilor Van Bergen seconded the motion.

Presiding Officer Waker opened the public hearing on the Ordinance. There being no testimony, he closed the public hearing.

Councilor Frewing, referring to a memorandum distributed to Councilors as an exhibit to staff's report from Eleanore Baxendale to Donald Carlson, asked whether the memo was representative of the reporting process that would occur if the Ordinance were adopted.

Ms. Baxendale explained when it became clear functional planning might be a tool the Council could use for solid waste management, she referred to the State Statutes to see how Metro could develop such a plan. The first step required establishing a generic process for naming plan topics. Under the proposed process, the Executive Officer would return to the Council with a resolution naming solid waste as an area to be addressed by functional planning. The resolution would contain the rationale for that action. The same process could be used for parks or libraries, she said.

Councilor Van Bergen said the Ordinance was unnecessary because the Executive Officer already had the authority to introduce such resolutions.

Ms. Baxendale responded the State Statute required the Council to adopt a process for naming designated areas for plans before a topic could be named.

Councilor Gardner supported the Ordinance saying it was acceptable and necessary. He thought the Council and the Executive Officer could take the initial steps to suggest plan areas.

Councilor Hansen said he agreed with Councilors Van Bergen and Frewing. He was concerned the Ordinance would pave the way for developing a hurried solid waste functional plan. He requested the Council and staff take time to develop a good process which would address all areas of concern.

After discussion, Councilor Frewing noted his specific concerns with the proposed Ordinance. He requested more specific language be

drafted to address when topics could be suggested for consideration. He saw the Council's role as making an aggressive, annual search for functional planning areas and to learn issues of concern to constituents.

Councilor Kafoury thought the annual process was too limiting. She did not think the proposed Ordinance as written precluded the Council from defining functional planning areas.

Councilor Kafoury suggested staff draft an amendment to more clearly define timing for inviting input into the functional planning process.

The Presiding Officer announced the Ordinance would be considered a second time at the meeting of September 11, 1986.

7.3 Consideration of Ordinance No. 86-206, for the Purpose of Amending Metro Code Chapter 3.02, Amending the Regional Waste Treatment Management Plan, and Submitting the Plan for Recertification (Second Reading)

Neil McFarlane, Public Facilities Analyst, reviewed information in staff's written report.

The Clerk read the Ordinance by title a second time.

Motion: Presiding Officer Waker noted the Ordinance was moved for adoption by Councilors Frewing and Kirkpatrick at the meeting of August 14, 1986.

Responding to Councilor Kelley's question, Mr. McFarlane explained the Ordinance would incorporate the city of Gresham and Portland studies as support documents to the "208" Plan. The Council was not approving those studies, he said, but was acknowledging the fact they existed.

Vote: A vote on the motion resulted in:

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

Absent: Councilor Kafoury

The motion carried and the Ordinance was adopted.

7.4 Reconsideration of Order No. 96-11, for the Purpose of Correcting the Regional Waste Treatment Management Plan

Councilor Hansen, who had made the request for reconsideration of the Order at the meeting of August 14, 1986, said he would withdraw his request to reconsider the Order if the Presiding Officer agreed to accept public testimony on Agenda Item No. 8.1, Resolution No. 86-679. Presiding Officer Waker agreed to Councilor Hansen's request and the Order was not reconsidered. The Council's decision to adopt the Order, made at the meeting of August 14, 1986, stood.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 86-679, for the Purpose of Recommending that Technical Studies be Undertaken for Unincorporated Areas of Clackamas County Near Lake Oswego

Mr. McFarlane reviewed the series of events leading to the introduction of the Resolution. He explained Order No. 86-11 corrected an error in the "208" Plan. Resolution No. 86-679 was proposed to address citizen's concerns raised at the Council meeting of August 14, 1986, regarding Order No. 86-11 and the "208" Plan.

The Presiding Officer asked the Council if they wished to hear new testimony on the subject. Councilor Frewing said he wished to know whether the citizens thought Lake Oswego would be the most appropriate public body to perform the sewer study.

Ray Dean, 18951, S.W. Indian Springs Circle, Lake Oswego, Vice President, Rosewood Action Group, said because a new proposal was now on the table, his group wished to hear the proponents of the Resolution address the Council first.

Peter C. Harvey, City Manager, City of Lake Oswego, first explained his position was not that of a proponent. The City would respond to the Council's request, he said, and a sewers study would be funded. Answering Councilor Hansen's question, Mr. Harvey explained the sewers study would not address the overall need for sewers in the area of concern. Rather, the study would determine what a completed sewer system would look like when and if it were built.

Steve Rhodes, P. O. Box 369, Tualatin, City Manager, city of Tualatin, reported his Council was supportive of the Resolution and would support the Lake Oswego sewer study.

Ray Dean, said although the Resolution was less than an ideal solution, he was glad to see light at the end of the tunnel and commended Metro staff for notifying citizens about this meeting. He testi-

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fied he would prefer Clackamas County perform the sewer study. He also said that according to law, citizens views must be considered when forming a public sewer policy.

Mr. Dean was still concerned about the changes made by adoption of Order No. 86-11. He urged the Council to defer action on the Order until the sewer study was complete. He further requested the Resolution be amended to identify the following elements in Lake Oswego's sewer study: demonstration of the extent of need; feasibility of area served; environmental impact statement; proposed funding sources; economic impact analysis; cost allocation plan; why Lake Oswego's administrative rules required annexation as a prerequisite to forming an LID; and provisions for an objective third party to follow up on the study.

Maurice C. Boley, 18954 S.W. Indian Springw Circle, Lake Oswego, questioned whether adoption of Order No. 86-11 was necessary and requested the Order be tabled until all facts about proposed changes were known. He said that if an error in the Plan had indeed been made, Lake Oswego would not have continued to receive funding.

Emil Jacobucci, 18893 S.W. Indian Springs Circle, Lake Oswego, opposed the city of Lake Oswego being the only jurisdiction conducting the sewer study. Mr. Jacobucci did not think sewers were necessary in his neighborhood and did not understand why citizens would be required to pay to have a study done that would conclude sewers were needed. He said most property in his area had gradually decreased on value, people were losing their jobs, and no one could afford the \$10,000 it would cost to install a sewer system.

Sherry Patterson, 18926 S.W. Arrowood, Lake Oswego, President, Rosewood Action Group, testified the Lake Oswego study would be a strong step in the right direction. However, no written statement existed outlining what the study covered. She requested appropriate neighborhood associations be involved in the study and suggested it was premature to identify only Lake Oswego as the provider of the study. Regarding Order No. 86-11, Ms. Patterson did not understand the Council's haste in adopting the action when a previous error had gone undetected with no resulting problems.

Regarding the error in the "208" Plan, the Presiding Officer noted no problems had yet resulted because the error had recently been identified.

Councilor Frewing asked if it were necessary for Order No. 86-11 to remain adopted in order for Lake Oswego to receive funds.

Mr. Harvey of Lake Oswego said the study in question would not be funded with federal dollars, therefore, adoption of the Order would not apply.

Councilor Frewing proposed the Resolution be amended to provide "such studies should include at a general level consideration of need, feasibility, environmental and economic impact, funding alternatives, cost allocation, and public input process." A discussion between Councilor Frewing and Presiding Officer Waker followed about the appropriate degree of instruction on the study that should be given to the city of Lake Owego.

Councilor Kirkpatrick opposed adding the language because the city was updating their sewage master plan as requested by residents. Although she supported the Resolution, she did not think it the Council's proper business to interfere in this area.

Motion: Councilor Van Bergen moved adoption of Resolution No. 86-679 and Councilor Gardner.

Vote: A vote on the motion resulted in:

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

Absent: Councilor Kafoury

The motion carried and the Resolution was adopted.

8.2 Consideration of Resolution No. 86-676, Adopting a Hazardous Waste Task Force Report

Councilor Frewing, member of the Hazardous Waste Task Force, introduced the item. Randi Wexler, Solid Waste Analyst, presented staff's report on the Resolution. She explained the Task Force had been working to develop Metro's Hazardous Waste Management Plan. The Committee's findings and proposed plan elements were included in the written staff report which Ms. Wexler reviewed.

Joyce Cohen, State Senator and Task Force member, testified she supported the Resolution and offered her full commitment in implementing the Hazardous Waste Management Plan. She discussed the support the Task Force received from sewage and fire agencies and from small business owners.

At Councilor Van Bergen's request, the Council agreed to consider adoption of the Resolution at this meeting. Adoption had been scheduled for September 11.

Motion: Councilor Frewing moved to adopt Resolution No. 86-676 and Councilor DeJardin seconded the motion.

Regarding Chapter 2 of the draft plan, Councilor Oleson said he thought Metro should seek legislative authority for hazardous waste disposal before seeking cooperation from small businesses. Ms. Wexler explained the Task Force had discussed that issue without conclusion. A new committee would address the issue but at this time no consensus existed for Metro to take a lead for hazardous waste disposal for small businesses. Senator Cohen agreed the current draft of the Plan was a starting place and more work would be done.

Vote: A vote on the motion resulted in:

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

Absent: Councilors Kafoury and Kelley

The motion carried and Resolution No. 86-676 was adopted.

8.3 Consideration of Resolution No. 86-682, for the Purpose of Creating the North Portland Rehabilitation and Enhancement Committee

Peg Henwood, Community Relations Coordinator, provided a historical perspective of the project as outlined in the written staff report. The Resolution included the recommendations of a task force of North Portland area representatives, she said.

Councilor Hansen reported the rehabilitation and enhancement project had created much excitement among North Portland residents. He emphasized that because many of the decisions to be made were controversial, they should be made by residents. He considered the Resolution a good balance of local representation and accountability.

R. S. Kolemaine, 2652 North Willamette, Portland, said he had monitored all meetings of the initial task force and thought the Resolution now before the Council represented a softening a previous hard feelings regarding the St. Johns Landfill. He said not all residents were comfortable with Metro's role in the partnership which was a good justification for community approval on projects financed by rehabilitation and enhancement funds.

Motion: Councilor Hansen moved Resolution No. 86-682 be adopted and Councilor DeJardin seconded the motion.

Vote: A vote on the motion resulted in:

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Ayes: Councilors Collier, Cooper, DeJardin, Frewing,
Gardner, Hansen, Kirkpatrick, Oleson and Waker

Absent: Councilors Kafoury, Kelley and Van Bergen

The motion carried and Resolution No. 86-676 was adopted.

The Presiding Officer commended Councilor Hansen on developing the program and said he looked forward to receiving good proposals from the Task Force.

3. EXECUTIVE OFFICER'S COMMUNICATIONS

West Transfer and Recycling Center Consideration of Resolution No. 86-685, for the Purpose of Establishing the West Transfer and Recycling Center Task Force and Appointing Members

Executive Officer Gustafson reported the owner of the selected 209th/TV Highway site had been notified of Metro's intent to make an initial offer to purchase the property as authorized by the Council on August 14, 1986. In addition, the Washington County Commission adopted zoning amendment that would change all industrial uses to conditional uses under a Type III process. This change would not go into effect until 90 days after its adoption and the rule had not yet been adopted. The Executive Officer said it was his intent to file metro's permit well in advance of the 90 days. Staff had scheduled a September 15 design issues meeting with the 209th/TV Highway neighborhood with additional meetings to follow.

Presiding Officer Waker said he had Resolution No. 86-685 prepared for consideration at this meeting to appoint Councilor Collier, Oleson and himself to the Task Force for the purpose of mitigating problems with the neighborhood.

Motion: Councilor Waker moved to adopt Resolution No. 86-685 and Councilor Cooper seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Frewing,
Gardner, Hansen, Kirkpatrick, Oleson and Waker

Absent: Councilors Kafoury, Kelley and Van Bergen

The motion carried and Resolution No. 86-685 was adopted.

Executive Officer Gustafson further reported two ownerships existed on the land parcels under consideration. Negotiations were underway

for the primary 8.2 acres. An additional acre was owned by another party and an operating business was on the property. The Council had authorized the Executive Officer to seek condemnation on both parcels, he said, but he had not commenced condemnation proceedings on the smaller parcel. The smaller parcel was not required in order to build the transfer center on that site. The land would help alleviate access issues along 209th Avenue, however. The Executive Officer said he was concerned about a previous decision of the Council not to locate a facility where an operating business was located. Randi Wexler explained two small sheet metal plants were located on the one-acre site.

In response to Councilor Frewing's question, Ms. Wexler said the acre in question or an additional acre needed to be acquired in order to make access to the transfer station agreeable with Washington County. The function of the site would not be affected.

After discussion of the issues, the Council agreed the Executive Officer should proceed with plans for purchasing the small parcel because the existing businesses were small and could be relocated.

Light Rail Transit Opening. Executive Officer Gustafson reported Metro had participated in the opening festivities for MAX and a booth on the proposed convention, trade and spectator facility had been at the Holiday Park Station.

Convention, Trade and Spectator (CTS) Facility. The CTS bond measure campaign would commence September 9 or 10. Legislative briefings on the CTS proposal would occur September 23.

8.4 Consideration of Resolution Nos. 86-680 and 86-681, Approving a Supplemental Budget, Creating a New Fund (Convention, Trade and Spectator Facility Capital Fund), Amending Resolution No. 86-659 and Authorizing an Interfund Loan

Jennifer Sims, Management Services Director, said the Council would not be asked to adopt the Resolutions at this meeting. She then reported on the proposed budget adjustments as outlined in staff's written report.

In response to Councilor Collier's question, Ms. Sims explained how the CTS project would be funded until after the November 4 bond measure election. She said hotel/motel tax revenue could be used to finance certain expenses until the bond measure became effective or until December 31, 1989.

Ms. Sims explained to Councilor Frewing the proposed interfund loan would be needed regardless of bond measure approval. Interest rates

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were about the same as average available rates, she said. She also explained all cost estimates had been carefully prepared and reviewed by CTS staff.

Report on Contract with the Greater Portland Convention & Visitors Association (GPCVA) for Tourism Promotion

Councilor Gardner, Chair of the Council Management Committee, reported the Committee had approved the above named contract at its meeting earlier that evening. The Contract, he said, was approved with the condition the approval be reported to the full Council as was now being done. The Councilor noted that specific legal issues relating to the contract were discussed earlier during the executive session and questioned whether continued discussion was needed.

Presiding Officer Waker noted the Management Committee had approved the contract and the Council's procedures did not provide for overruling their decision.

Councilor Collier explained although she usually did not go against staff's recommendation, she did not support approval of the contract. She thought it better to wait until after the November 4 CTS bond measure election before borrowing money from the CTS fund to support light rail.

Councilor Gardner said there was no question money borrowed from the CTS fund for the contract would not be recovered.

After further discussion of the issue, Presiding Officer Waker noted the Council's available options: 1) take no further action; or 2) remand the matter to the Management Committee for reconsideration after the November 4 election.

Motion: Councilor Collier moved to remand the matter back to the Management Committee for reconsideration after the November 4, 1986, CTS General Obligation Bond election. Councilor Frewing seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Frewing and Hansen

Nays: Councilors DeJardin, Gardner, Kirkpatrick and Waker

Absent: Councilors Cooper, Kafoury, Kelley, Oleson and Van Bergen

The motion failed.

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8.5 Consideration of Resolution No. 86-683, for the Purpose of Reconciling the Budget and Appropriations Schedule and Amending Resolution No. 86-659

Ms. Sims reviewed the need for the Resolution as explained in the written staff report. There was no discussion on the item.

Motion: Councilor Gardner moved the Resolution be adopted and Councilor Hansen seconded the motion.

Vote: A vote on the motion resulted in:

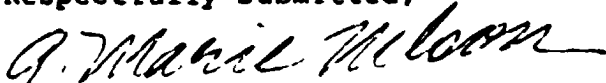
Ayes: Councilors Collier, DeJardin, Frewing, Gardner, Hansen, Kirkpatrick and Waker

Absent: Councilors Cooper, Kafoury, Kelley, Oleson and Van Bergen

The motion carried and the Resolution was adopted.

There being no further business, Presiding Officer Waker adjourned the meeting at 10:55 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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