

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

REGULAR MEETING
NOVEMBER 24, 1987

Councilors Present: Mike Bonner, Tanya Collier, Larry Cooper,
Tom DeJardin, Jim Gardner, Gary Hansen,
Sharron Kelley, Corky Kirkpatrick, David
Knowles, Mike Ragsdale, George Van Bergen
and Richard Waker

Councilors Absent: None

Also Present: Rena Cusma, Executive Officer
Dan Cooper, General Counsel

Presiding Officer Waker called the meeting to order at 5:35
p.m.

1. INTRODUCTIONS

The Presiding Officer introduced Sandra Stallcup, of the
Convention Center Project, as the acting clerk for the
meeting.

2. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Presiding Officer Waker read a letter received November 24,
1987, addressed to the Metro Council from Ted Stanwood, Co-
Chair, Alternatives to Burning Committee, Warren, Oregon.

3. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

4. COUNCILOR COMMUNICATIONS

Councilor Van Bergen questioned the intent of a letter from
the Schwabe law firm dated November 19, concerning
contracting arrangements on the Out-of-Region Land Fill
project. Dan Cooper, General Counsel, said the letter was
not a threat of litigation, but it could raise questions
about the bid specifications. He talked with Jim Benedict
and Rich Owings and asked Mr. Benedict to address the
concerns of the specifications. Councilor Van Bergen
questioned the implications. Mr. Cooper said Riverbend did
not want to sign a firm commitment, but they did want some
indication from Metro that it would continue the present
arrangement. The matter has been reviewed by the Solid Waste
Technical Committee and the functional process and a

recommendation will be forwarded to the Solid Waste Policy Committee of Council for action.

5. EXECUTIVE OFFICER COMMUNICATIONS

Metro Exposition Recreation Committee

Executive Officer Cusma discussed the appointments to the Metropolitan Exposition-Recreation Commission. The Council Convention Center Committee will review the candidates and their confirmation to the Council on December 10. Presiding Officer Waker referred the matter to the Council Convention Center Committee for hearings. Councilor Ragsdale informed Council that the nominees' hearing would be December 3 at 4:00 p.m.

Council/Executive Management Workshop

Executive Officer Cusma, indicated her appreciation of the time and energy Councilors and staff put into the excellent workshop on November 20. She said a brief of the meeting would be forthcoming itemizing all the issues. She requested the Attorney General's office render an opinion with regard to contracting, and the response will be delivered to Council.

Construction Manager

Executive Officer Cusma stated that Metro hired a new construction manager, Neil Saling, who will start work the first of January.

6. CONSENT AGENDA

6.1 Minutes of September 22, 1987

6.2 Resolution No. 87-823, for the Purpose of Amending the Transportation Improvement Program to Include a Project for the Region's Non-Urbanized Area Public Transportation Program.

Motion: Councilor Ragsdale moved, seconded by Councilor Kelley, to approve the Minutes of September 22, 1987 and Resolution No. 87-823.

Vote: A vote on the motion resulted in all 12 Councilors present voting aye.

Motion carried and items 6.1 and 6.2 were approved.

8.1 Consideration of an Intergovernmental Agreement with the Portland Development Commission for Phase II of Aquarium Feasibility Study Services.

Councilor Kirkpatrick reported that the Zoo Planning Committee requested this agenda item be deferred until January, 1988. She stated the committee is working with Commissioner Lindberg's staff on an intergovernmental agreement and the task force will act on that agreement. The committee will have the proposal to Council in January.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Knowles, to have item 8.1 concerning Phase I of the feasibility of the aquarium study deferred until January, 1988.

Vote: A vote on the motion resulted in all Councilors present voting aye.

The motion carried.

9.1 Consideration of Resolution No. 87-828, for the Purpose of Adding a Legal Counsel Position to the Executive Management Department.

Ray Phelps and Dan Cooper discussed the need for the Legal Counsel position as outlined in staff's written report.

Councilor Knowles raised the question, if this person would be an exempt employee under Senate Bill 629. Mr. Cooper stated the person would report to General Counsel as part of the Executive Management structure and the position was exempt. Councilor Knowles thought it would be awkward for legal personnel to be employed under the Personnel Rules.

Councilor Kirkpatrick suggested changing the job description of the Contracts Specialist to accommodate the existing situation. She recommended this position be referred to the Management Committee along with a six-month review of the budget and to have the Executive Officer present it with other anticipated new positions, for recommendation for Council. Mr. Cooper volunteered to meet the Management Committee to discuss the need for the new position. Councilor Gardner stated he had the same concerns as

Councilor Kirkpatrick and suggested the Management Committee look at the numbers more closely.

Motion: Councilor Ragsdale moved, seconded by Councilor Kirkpatrick, to refer Resolution No. 87-828 to the Management Committee for recommendation.

Vote: A vote on the motion resulted in all 12 Councilors voting aye.

The motion carried.

7. Consideration of Design Development for the Oregon Convention Center.

Mr. Tuck Wilson, Project Director of the Convention Center Project, gave a nine-month history of the design development process. He then introduced Mr. Bob Frasca, architect, who presented Council with a slide show and visual aids of the final exciting design of the convention center.

Mr. Tom Walsh, Chairman of the Advisory Committee on Design and Construction, presented the committee's report with a summary of the final design. The \$52 million dollar construction budget had not varied since last April. He complimented Turner Construction Company and ZGF for the discipline and quality work which brought this project on time and on budget.

Discussion was led by Councilor Hansen who had concern about accessibility to the building. Mr. Frasca said the architects met with members of the handicapped community and the building would respond to all code requirements.

Presiding Officer invited comments from the public regarding the Oregon Convention Center design.

Mr. Steve Weed, Irvington Neighborhood Association, indicated he was concerned about the additional traffic that would be in the area. He also had concerns regarding changes in the Lloyd Center. Professional services and shops could be displaced and cause hardship on the residents of the area.

Councilor Ragsdale referred him to the Portland Development Commission. Neil MacFarlane, Public Facilities Analyst,

reported on the agreement that Metro had with the Portland Development Commission to conduct an area study.

Mr. Dan Saltzman, a local citizen, asked if the convention center was to be exemplary in terms of waste collection and source separation. Tuck Wilson discussed the two waste disposal locations in the building. He proposed the Metropolitan Exposition-Recreation Commission would be working to assure the efficient and appropriate disposal of wastes.

8.2 Consideration of a Contract with the Greater Portland Convention & Visitors Association (GPCVA) for Long-Range Marketing Services for the Oregon Convention Center.

Tuck Wilson introduced the Greater Portland Convention & Visitors Association's new executive director, Charles Ahlers, who discussed the proposed marketing program. The plan would promote the convention center during the next six months. Most of the funds would be spent on promotion, advertising opportunities and delivery of additional collaborative materials.

Councilor Ragsdale, Chairman of Council Convention Center Committee said the committee reviewed the budget in detail and unanimously recommended the Council approve the budget as submitted. There was discussion of the responsibilities and coordination of the promotion of the convention center and the team work of Metro, Greater Portland Convention and Visitors Association and the Exposition-Recreation Commission.

Motion: Councilor Ragsdale moved, seconded by Councilor Gardner to approve the contract with the Greater Portland Convention & Visitors Association.

Vote: A vote on the motion resulted in all twelve Councilors present voting aye.

The motion carried.

9.2 Consideration of Resolution No. 87-826, for the Purpose of Amending Resolution No. 878-744, Revising the FY 1987-88 Budget and Appropriations Schedule for an Aquarium Study, Metro Center Improvements and a Legal Counsel Position

Jennifer Sims reported on the amendment relating to the building management fund to complete the projects in progress as detailed in the staff report.

Motion: Councilor Ragsdale moved, seconded by Councilor Van Bergen to adopt the portion of Resolution No. 87-826 for the Metro Center improvements and to delete the aquarium study and legal counsel items.

Presiding Officer Waker invited public to testimony to the Council. There were no requests from the public. There was discussion pertaining to the budget, remodeling of office costs for the year, and lease of the building by Councilor Van Bergen.

Vote: A vote on the motion resulted in all twelve Councilors present voting aye.

The motion carried and Resolution No. 87-826 was adopted as amended.

9.3 Consideration of Resolution No. 87-820, for the Purpose of Complying with the Clackamas Transfer and Recycling Center (CTRC)

Councilor Gardner reported this item was returned to Council from the preceding two meetings. A task force, appointed by Councilor Waker, met to negotiate with Oregon City and put together an offer regarding the operation of CTCR. The primary issue seemed to be the litter around the site. Metro legal counsel, Mr. Cooper, conveyed an offer to Oregon City officials and their attorney. Negotiations are still proceeding and there is potential for agreement. Councilor Gardner suggested this item be carried over while negotiations are pending.

Motion: Councilor Gardner moved, Councilor Kirkpatrick seconded, to consider Resolution No. 87-820 the first Council meeting in January.

Discussion was led by Councilor Van Bergen regarding whether a notice of the offer had been filed with the Court. Councilor Gardner said that a notice had been filed but there was no date set. There was further discussion regarding the date to reconsider the resolution.

Motion to Amend: Councilor Gardner moved, Councilor Kirkpatrick seconded that Resolution 87-820 be reconsidered on December 22.

There was further discussion on the motion to amend.

Vote: A vote on the motion and amendment to Resolution No. 87-820 resulted with all twelve Councilors voting aye.

The motion and the amendment carried.

Presiding Officer Waker called for a break at 7:25 p.m. The meeting resumed at 7:50 p.m.

9.4 Consideration of Resolution No. 87-822 for the Purpose of Initiating Annexation to Metro and Expressing Council Intent to Amend the Urban Growth Boundary in Contested Case No. 87-1 for the Edy Road, Highway 99W, Middleton and Substation Sites; and,

10.1 Consideration of Ordinance No. 87-234, for the Purpose of Adopting a Final Order and Amending the Metro Urban Growth Boundary in Contested Case No. 87-1 for the Chicken Creek, Harborton and Bull Mountain Sites (Second Reading).

Presiding Officer stated the first reading of No. 87-234 occurred at the November 12 Council meeting, at which time Councilors DeJardin and Ragsdale moved to adopt the Ordinance. No motion was made to adopt Resolution No. 87-822. Presiding Officer Waker then requested the Acting Clerk of the Council to read the Ordinance by title only. The Acting Clerk read Ordinance No. 87-234 a second time by title only.

Jill Hinckley, Land Use Coordinator, reported this item involved two actions: adoption of the Ordinance would be taking action on those properties which are in Metro's district; adoption of the Resolution was required to annex the property.

Councilor VanBergen asked if this request related to the PGE property included in the urban growth boundary a couple of years ago. Ms. Hinkley stated affirmative.

There was discussion regarding the land trade and provisions of trade.

Motion: Presiding Officer Waker moved, seconded by Councilor Ragsdale, to adopt Ordinance No. 87-234.

Vote: A roll call vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kelley, Knowles, Ragsdale and Waker

Nays: Councilors Bonner, Collier and Van Bergen

Absent: Councilor Kirkpatrick

The motion carried, and Ordinance No. 87-834 was adopted.

Jill Hinckley presented the companion Resolution No. 87-822. There was no discussion.

Motion: Presiding Officer Waker moved, seconded by Councilor Ragsdale, to adopt Resolution No. 87-822.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kelley, Knowles, Ragsdale and Waker

Nays: Councilors Van Bergen, Bonner and Collier

Absent: Councilor Kirkpatrick

The motion carried and Resolution No. 87-822 was adopted.

10.2 Consideration of Order No. 87-16, in the Matter of Contested Case No. 87-2, a Petition for a Locational Adjustment of the Urban Growth Boundary by Joseph and Lynn Angel.

Ms. Hinkley, Land Use Coordinator discussed the petition and introduced Chris Thomas, Hearings Officer for the case. Mr. Thomas summarized written Hearings Officer's Report contained in the meeting materials. The Hearings Officer had concluded that as a matter of law, Metro's standards must be applied to the proposed land adjustment, and the adjustment approved only if those standards were met. He further found they had

not been met in this case and as such, recommended the Council not approve the petitioners' request to amend the Urban Growth Boundary (UGB).

In response to Presiding Officer Waker's question, Mr. Thomas said his decision was indeed a judgment call, as were most decisions relating to locational UGB adjustments. He had determined the gain in efficiency would not warrant granting the petitioner's request.

Presiding Officer reviewed procedural options for Councilors: 1) move to adopt the hearings officer's recommendation without a further public hearing; or 2) move to hear oral arguments from the petitioners and the petitioner's representatives concerning the hearings officer's report before voting on whether to accept the hearings officer's recommendation.

Motion to Hear Oral Arguments: Councilor Kelley moved to hear oral arguments from the petitions and their representatives. The motion was seconded.

Vote: A vote on the motion resulted in all twelve Councilors present voting aye.

The motion carried.

Petitioners Oral Argument to the Hearings Officer's Report

Stephen Janik, an attorney representing the applicant, Joseph Angel, introduced Mr. Angel who then described the property in question and presented history of the case.

Mr. Angel, referring to a map of the property, explained the property had been annexed in 1968 to the City of Portland with the understanding and promise he would receive urban services to that land. He said a water line ran from Germantown Road south to his property. The section of land between his property and the City boundary was without urban water lines. He then learned that not all his property had been included in the UGB. In the process of trying to find out why all the land had not been declared urban, Metro had made it clear they could not do anything until they received notice from the City of Portland that the land in question had been declared urban.

Mr. Angel reported a West Hills land study had been conducted by the City and he petitioned the City and Planning

Commission regarding urbanization of the property. Because he was a member of the City of Portland Planning Commission, he excused himself from hearing the petition. The Commission determined the land should be declared urban and should be provided urban services.

Later that same year, the City conducted an urban services boundary study, Mr. Angel explained. Again, the question was raised about whether the Angel property was urban and again, the City (via the City Council and the Planning Commission) confirmed their intent the property be within the urban services boundary.

Mr. Angel said he approached Metro's staff and the hearings officer with the above information, as had been originally required by Metro. He expressed his concern, however, that Metro's required process was intended to apply to petitions for land moved from outside the UGB to inside the boundary. In his case, the City had clearly indicated the land should always have been declared urban and the land was inside the limits of the City of Portland. He noted it had taken about three years to go through the process reported earlier.

Mr. Janik discussed the urban nature of the 42 acres in question. The land was all within the City of Portland boundaries. The land presently received City water service, fire and police protection. The land was developed as a residence and was part of a larger land parcel. The portion not developed was within the UGB and the developed portion was currently outside the UGB. Mr. Janick concluded that no clear public policy existed that focused on the type of property owned by Mr. Angel.

Mr. Janik discussed the hearings officer's decision. He noted the case dealt with an awkward situation of land that had urban characteristics and was outside the UGB. Mr. Thomas had been charged with the task of how to evaluate urban efficiencies for that property. He noted it probably would have been easier to evaluate the case if the property had no pre-existing services. Mr. Thomas concluded the services would improve efficiencies. However, Mr. Janick noted, where Mr. Thomas got "hung up" was that he determined the services did not improve the property enough. "I guess he laid the appropriate foundation for your decision, which is a judgment call," Mr. Janick noted. He wanted to focus on that judgment call and how he thought the Council should properly interpret its standards.

Mr. Janik pointed out the Council adopted standards that presumed land outside the UGB would not have the characteristics of land already serviced and developed. Those evaluating cases would be evaluating petitions from the point of view of what efficiency improvements would be provided by bringing the land inside the UGB. Since the Angel property was already improved, those standards of evaluation were unfair.

Mr. Janik referred to a memo from Ms. Hinckley in anticipation of tonight's hearing. Ms. Hinckley had pointed out that if the hearings officer's argument was correct, perhaps it formed the basis for mending Metro's standards for UGB locational adjustments. He agreed with Ms. Hinckley's statement. He also noted Ms. Hinckley had attached to her memo, a memo from Eleanore Baxendale, former Metro General Counsel, in which Ms. Baxendale summarized other UGB adjustment cases under 50 acres and discussed the trade-offs between costs of urban services and efficiency improvements in urban services. Mr. Janick noted Mr. Thomas' analysis did not discuss such trade-offs.

Mr. Janik concluded the UGB was drawn with a broad brush stroke. There would be situations, such as the Angel property case, that would merit individual attention. He thought common sense, planning, integrity (i.e., the purpose of the UGB) would dictate the Angel property be included in the UGB. The hearings officer had demonstrated that to include the property would result in improvement in efficiencies. Services already existed at no cost to Metro. He urged the Council to allow the property to be included in the UGB, especially in light of the fact that the petition process had taken three years.

Questions from Councilors to the Petitioner

In response to Councilor Kelley's question, Mr. Angel showed the Councilors the area of the West Hills land study, discussed the nature of the study and extent of urban services on and surrounding the Angel property. Ms. Hinckley confirmed that most of the property in the area was zoned F-2 with an average ratio of one home per two acres of land. Discussion continued concerning the history of the process to get land included in the UGB.

Councilor Knowles asked staff to comment on Metro Code provisions concerning corrections of the UGB. Ms. Hinckley responded that those corrections were limited to circumstances where a clear legislative intent could be

demonstrated that the boundary was meant to be placed in another specific location. She said that had not been alleged in the Angel property case. Had CRAG or Metro looked more closely at the case they might have chosen to have placed the boundary differently, but no one actually said there had been a mistake, she explained.

Councilor Knowles recalled a past Council action to waive the requirement of the Metro Code requiring that no petition be accepted that would create an island of urban land. He asked if there were a Code provision that addressed that as a standard, rather than a threshold requirement. Ms. Hinckley responded no such code requirement existed. "It would appear only through your evaluation of the impact on service efficiency," she said.

Councilor Gardner said he was very bothered by the applicant's argument that the land has access to urban services. He noted a situation would always exist where land just outside the UGB would not have the same services provided to land inside the boundary. He also stated he was bothered by the contention that by changing the boundary the "mistake" would be corrected. He pointed out the hearings officer's record seemed to make it clear that Skyline Boulevard was chosen as a boundary for a reason and it probably followed either road or property lines.

Mr. Janik said he, as an attorney on the case, had not argued that the boundary was erroneously drawn, Mr. Angel had expressed that as his personal opinion. Mr. Janik said he had discussed the history of why that boundary may have been drawn. It was intended to be recognition of topography changes. He then explained his main argument was that the Angel property was outside the UGB and already had urban services--not just access to services.

Motion: Councilor Bonner moved, seconded by Councilor Collier to accept the Hearings Officer's recommendation by adoption of Order No. 87-16.

In response to Councilor Van Bergen's question, Mr. Waker said if the motion failed and the Council did not adopt the hearings officer's recommendation, the Council would then seek findings to support an opposite vote.

Councilor Cooper said he agreed with the applicant's arguments and that to exclude the property from the UGB made no sense.

Councilor Knowles said although the applicant had presented some good arguments. He did not think the Council should be considering petitions for locational adjustments on a piece-meal basis, but the Council would have to deal with repeated petitions similar to the Angel case. He suggested the process should have allowed for the City of Portland to initiate the UGB amendment. He also advised maintaining the integrity of the boundary and taking a comprehensive look at the entire area.

Councilor Cooper thought the suggestions would require years to implement, explaining the Council's immediate charge was to determine cases as they came along. He supported the applicant's request.

Councilor Gardner supported the hearings officer's recommendation.

Councilor Ragsdale recalled his experience as a state legislator and the legislative discussions leading up to Metro's assuming responsibility for the UGB. He said he had passed the legislation out of committee based on the commitment that the process for requesting locational adjustments to the boundary would be workable for individuals like Mr. Angel. He had the commitment the process would be logical and reasonable and would not require applicants to be put through a "bureaucratic nightmare" of three to five years. He was very concerned that applicants such as Mr. Angel could not go through a straight forward process. Specifically, he did not think Metro Code Chapter 3.01 was consistent with the legislature's intent and he supported Mr. Angel's request to amend the UGB.

Councilor Hansen said he thought the hearings officer's decision was a judgment call with respect to the degree of urban improvements made to the Angel property. He thought the improvements were significant, explaining he had calculated about \$100,000 per lot of improvements to be added, which amounted to a \$2 million plus increase to property tax rolls. He supported the applicant's request.

Vote: A vote on the motion to adopt Order No. 87-16 resulted in:

Ayes: Councilors Bonner, Collier, Gardner, Knowles

Nayes: Councilors Cooper, DeJardin, Hansen, Kelley, Ragsdale, Van Bergen, Waker.

Absent: Councilor Kirkpatrick

The motion failed.

Presiding Officer said he presumed that because the motion to adopt the order failed, the Council wished to consider findings in support of the applicant's request.

Councilor Kelley asked that the findings address the issue of water services, its relevance to the applicant and to other property owners who would technically be "islanded." In response to her question, Mr. Angele confirmed the City of Portland planned to install a water tower in the area to provide water service to the area. Mr. Thomas did not think the "island" situation was an issue of concern in this case.

Motion: Councilor Ragsdale moved, motion was seconded, to approve Joseph and Lynn Angel's petition to amend the Urban Growth Boundary with findings to be adopted at a later date by the Council.

Councilor Bonner thought it a serious mistake not to accept the hearings officer's recommendation. He explained the UGB was drawn with a specific purpose in mind and that any amendments should be seriously considered.

A discussion followed regarding Council's process for taking action on the petition. Presiding Officer Waker explained adoption of Councilor Ragsdale's motion would indicate the majority of the Council was attempting to approve the UGB amendment subject to subsequent adoption of the findings which would be defended by the applicant, if necessary.

Councilor Gardner thought no vote should be taken on Councilor Ragsdale's motion until Councilors had an opportunity to review the written findings.

Dan Cooper, General Counsel, responding to Councilor Knowles' question, said the Council could make a tentative decision at this meeting, but when the findings were actually presented, the Council would then have to vote on whether or not to accept the findings.

In responding to Councilor Knowles' question, Mr. Janik said it would be helpful for the applicant to get an indication of the Council's sentiments and direction after which findings would be submitted for Council consideration. He noted a vote on Councilor Ragsdale's motion would not be binding. A vote on whether to approve the findings would be the binding decision.

A discussion followed between Councilor Bonner and Ms. Hinckley regarding the schedule for Metro's overall review of the UGB in 1988.

Vote: A vote on the motion to approve the applicant's petition and to consider findings at a later date resulted in:

Ayes: Councilors Cooper, DeJardin, Hansen, Kelley, Ragsdale, Van Bergen, Waker

Naves: Councilors Bonner, Collier, Gardner, Knowles

Absent: Councilor Kirkpatrick

The motion carried.

In response to Mr. Janik's question, the Presiding Officer said the findings should be submitted to Mr. Cooper, Metro's General Counsel.

Councilor Van Bergen requested staff provide Councilors with a periodic reports--perhaps quarterly--of upcoming petitions concerning the UGB, a simple summary of each case, and whether appeals have been made to the Land Use Board of Appeals.

11. COMMITTEE REPORTS

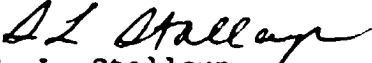
Metropolitan Exposition-Recreation Commission (MERC).

Councilor Ragsdale, Chair of the Council Convention Center Committee, announced he had copies available of the questions that would be asked of all MERC candidates.

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There being no further business, the meeting was adjourned at
9:05 p.m.

Respectfully submitted,


S. L. Stallcup
Acting Clerk of the Council