

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

April 28, 1988
Regular Meeting

Councilors Present: Mike Ragsdale (Presiding Officer), Corky Kirkpatrick (Deputy Presiding Officer), Mike Bonner, Tanya Collier, Tom DeJardin, Jim Gardner, Gary Hansen, Sharron Kelley, David Knowles, Georgen Van Bergen and Richard Waker

Councilors Absent: Larry Cooper

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

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

1. INTRODUCTIONS

None.

2. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

4. EXECUTIVE OFFICER COMMUNICATIONS

None.

5. COUNCILOR COMMUNICATIONS

Councilor Kelley announced that a computerized regional parks inventory program had been developed and she would distribute written information about the program to Councilors in the near future.

The Presiding Officer announced that Agenda Item No. 8.6 would be referred back to the Planning & Development Committee and would not be considered at this meeting. Later in the meeting he announced that Item Nos. 8.7 and 8.8 would also be referred back to Committee.

6. CONSENT AGENDA

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

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Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Hansen were absent.

The motion carried and the following items were approved:

- 6.1 Minutes of March 24, 1988
- 6.2 Resolution No. 88-896, for the Purpose of Approving the FY 1989 Unified Work Program
- 6.3 Resolution No. 88-911, for the Purpose of Amending the FY 1988 Unified Work Program

7. ORDINANCES

- 7.1 Consideration of Ordinance No. 88-247, Adopting the Annual Budget for FY 1988-89, Making Appropriations, Levying Ad Valorem Taxes, Creating a Metropolitan Exposition-Recreation Fund and a Convention Center Debt Service Fund, and Eliminating the Convention, Trade and Spectator Facilities Fund (Second Reading) (Public Hearing)

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

Motion: A motion to adopt the ordinance was made by Councilors Collier and Cooper on April 14, 1988

Presiding Officer Ragsdale announced that after the April 14 first reading of the ordinance, he had referred it to the Council Budget Committee for a hearing, review and recommendation. He explained that at this meeting Councilor Collier, Chair of the Budget Committee, would present the Committee's recommendations concerning the proposed FY 1988-89 Annual Budget. The Council would also conduct a public hearing on the proposed budget and on the Committee's recommendations. The ordinance would then be continued to the May 5 Special Council meeting. At the May 5 meeting the Council would consider adoption of a resolution to approve the budget and authorize its transmittal to the Tax Supervising & Conservation Commission (TSCC). The Council would consider adoption of Ordinance No. 88-247 in June after the budget was certified by the TSCC.

Councilor Collier discussed the Budget Committee's process and introduced citizen members of the Committee present at the Council meeting including Gretchen Buehner, Tom Balmer and Phillip Korten. She thanked Committee members and staff for their work. She then summarized the Committee's recommendations which she said reflected the Council's adopted policy.

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Zoo. The Committee recommended the budgets as proposed by the Executive Officer and recommended that during the next fiscal year the Council review the financial plans and policies of the Zoo along with the tax levy request. The Committee felt it was important to explore whether or not the Zoo could reduce its reliance on the property tax as a source of revenue. Another concern was the issue of Metro identity at the Zoo. A budget note was recommended to address that issue.

Solid Waste. The major areas of concern were the significant proposed increases in operating expenditures for the Department, the transfer of significant funds to the St. Johns Reserve Fund for long-term landfill closure costs, and resulting impact on rates of those cost increases. The Committee recommended reducing the budget request for operating costs by approximately \$1.2 million, resulting in operating expenditures near the current level for the Department and an increase in the funds set aside for long-term closure.

Convention Center. The major areas of concern were the proposed reduction in staff for the Project Office and the creation of a Debt Service Reserve Fund. The Committee recommended restoration of two positions in the Project Office and continuation of the Project Director position at its current level. The Committee recommended the elimination of the Debt Service Reserve Fund with the money to be placed in the Unappropriated Balance category in the Project Capital Fund. This would enable those funds to be available for the costs of the project, if needed.

Metropolitan Exposition-Recreation Commission (MERC). The discussion of the MERC budget dealt mainly with organizational issues. The MERC is newly formed and is getting established. The development of its own operation and a relationship with the District is of paramount importance in this budget request. The Committee recommended the budget be increased from that originally proposed to enable the MERC to hire its own administrative staff so that it could contract with the City's E-R Commission to provide that body administrative services for the operation of their facilities. The Committee was concerned about the MERC's purchase of a new computer system and recommended a budget note regarding that purchase.

Planning. The major discussion in the Planning Fund was the creation of a Planning Department for the District. As an initial step the Committee recommended an increase in the transfer of funds from the Solid Waste Operating Fund to the Planning Fund for the purpose of moving responsibility for the Solid Waste Management Plan function to the Planning & Development Department.

Along with the transfer of funds was the transfer of 3.0 FTE from Solid Waste to the Planning & Development Department. The Committee

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recommended that the priority activities of the Department would be completion of the Solid Waste Plan and the Urban Growth Boundary periodic update. A budget note was proposed to reflect that recommendation.

The Committee recommended no changes in the Transportation Department request. The Committee recommended further efforts to explore consolidation of District planning functions (transportation planning) in one Department. A budget note was recommended for Council consideration.

General Fund and Support Services. The overriding issue in this area was the substantial increase in General Fund costs which has caused a significant increase in the transfers to the General Fund from the other operating funds. The Committee recommended a General Fund budget reduced by \$472,055 in proposed base costs and another \$663,489 of direct Solid Waste costs proposed to be budgeted in the Public Affairs Department. Most, but not all of these latter costs are now included in the Waste Reduction Program in the Solid Waste Operating Fund. The reductions in the proposed requests for the various General Fund departments were as follows: Council, \$36,199; General Counsel, \$32,478; Executive Management, \$85,858; Finance & Administration, \$248,870; and Public Affairs, \$68,650. Again, the Public Affairs reductions were in their proposed base budget request and did not include the \$663,489 of proposed direct solid waste costs. The Committee also recommended the Building Management Fund be reduced by approximately \$66,000.

The Committee had before it two budget notes regarding the General Fund. Due to the lateness of the hour at its April 27, 1988, meeting the Committee inadvertently did not adopt the notes.

Presiding Officer Waker opened the public hearing on Ordinance No. 88-247 and the Budget Committee's recommendations.

Gretchen Buehner, citizen member of the Council Budget Committee, testified she had not supported the Committee's recommendation to reduce the amount of the Transfer to the General Fund from the Convention Center Project Budget. That action would result in increasing the size of the General Fund Transfer for the Zoo and Solid Waste budgets, she explained, and would set a dangerous precedent for the future. She urged the Council to revisit the issue.

Councilor Collier thanked Ms. Buehner for her testimony and for her assistance on the Committee.

There was no other testimony and the Presiding Officer closed the public hearing.

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Councilor DeJardin suggested the Budget Committee, based on its recent experience, make recommendations for next years' budget process. Councilor Collier said the Committee had already discussed a followup meeting for that purpose.

Councilor Kelley noted the Zoo Committee had requested the Budget Committee examine the issue of whether the size of the General Fund Transfer from the Zoo Budget was appropriate and should be reduced. She pointed out that as a result of the Committee recommending the Convention Center's General Fund Transfer be reduced, the Zoo's transfer amount had actually increased. Councilor Collier agreed the Council would have to examine the issue of General Fund transfers.

The Presiding Officer continued the second reading of Ordinance No. 88-247 to the May 5, 1988, special Council meeting.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 88-865, for the Purpose of Notifying the Oregon Environmental Quality Commission (EQC) that the Bacona Road Landfill Site is Not Needed

Councilor Hansen, Chair of the Council Solid Waste Committee, reported the Committee recommended the Council adopt the resolution after the landfill services contract with Oregon Waste Systems was signed. That agreement was now executed, he explained.

Gary LaHaie, Route 1, Box 192, Cornelius, Oregon, supported the Committee's recommendation but disagreed with the notion that the Bacona Road Landfill site was not needed. The site should cease to be considered because it was clearly unsuitable for landfill purposes, he said. He thought it very lucky for Metro that the Arlington site had become a reality. Mr. LaHaie explained he had served on a review committee for the West Transfer & Recycling Center project and had witnessed the failed attempt to site a regional landfill at Wildwood. Based on those failures, he hoped Metro and the Department of Environmental Quality had learned that public officials should listen to citizens. It had been proven citizens knew if sites were not appropriate, he said. Mr. LaHaie submitted a report for the record entitled "Bacona Road Site Inclinator Moniroting Program, April 1988."

Steve Misner, Route 1, Box 222B, Banks, Oregon, testified that the Council should make sure the EQC completed a proper site vacation process for the Bacona Road site and officially designate the Arlington site as the regional landfill. He explained that action would eliminate the possibility of the Bacona Road site being considered in the future for a landfill.

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Linda Peters, Route 1, Box 192, Cornelius, Oregon, testified that by adopting Resolution No. 88-865, the Council would be giving the public confidence that sensible thinking could prevail in regional government. She noted that Councilor Hansen had earlier referred to the resolution as a "housekeeping" measure. She added that Bacona Road residents could now indeed return to normal, housekeeping matters. Finally, Ms. Peters invited Councilors and staff to attend an auction to benefit the legal defense fund for Bacona Road residents on May 14.

Presiding Officer Ragsdale acknowledged that Bacona Road residents had been extremely well organized in their presentations to and lobbying of the Council, and that their testimony had been factual, relevant and important.

Motion: Councilor Hansen moved, seconded by Councilor Gardner, to adopt Resolution No. 88-865.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried and Resolution No. 88-865 was adopted.

8.2 Consideration of Resolution No. 88-907, for the Purpose of Approving the Regional Tourism Strategy Proposed by the Oregon Tourism Alliance

Presiding Officer Ragsdale summarized the Convention Center Committee's unanimous recommendation to adopt the resolution.

Motion: Presiding Officer Ragsdale moved, seconded by Councilor Waker, to adopt the resolution.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried and Resolution No. 88-907 was adopted.

8.3 Consideration of Resolution No. 88-908, for the Purpose of Authorizing a Contract with Canron Western for Structural Steel, Bid Package No. 1, for the Oregon Convention Center

Councilor Knowles, Convention Center Committee member, reported the Committee had recommended awarding the contract to Canron Western because they were the lowest bidder and because they met the project's Disadvantaged and Women Owned Business Enterprise (DBE/WBE) goals.

Motion: Councilor Knowles moved, seconded by Councilor DeJardin, to adopt the resolution.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Hansen were absent.

The motion carried and Resolution No. 88-908 was adopted.

8.4 Consideration of Resolution No. 88-909, for the Purpose of Authorizing a Contract with Dewitt Construction, Inc. for Site Preparation, Bid Package No. 2, for the Oregon Convention Center

Councilor Knowles reported the Convention Center Committee recommended awarding the contract to Dewitt Construction, Inc. The Company met Metro's DBE/WBE goals.

Motion: Councilor Knowles moved, seconded by Councilor Kirkpatrick, to adopt the resolution.

Dan Cooper, General Counsel explained he received a letter from Joseph Yazbeck, an attorney representing Tri-State Construction Company (the apparent third low bidder on the Convention Center site preparation project) protesting the bids submitted by Dewitt Construction, Inc. (the apparent low bidder) and Elting, Inc. (the apparent second low bidder). Metro had also been served with a lawsuit before the Federal District Court concerning the matter.

Mr. Cooper explained the basis of Tri-State's protest concerning the Dewitt bid was that Dewitt failed to indicate in its bid whether the price for Alternative No. 1 (deleting steel pilings and substituting pre-stressed concrete pilings) was to be added to or deducted from the base bid price. Subsequent to the bid opening Dewitt verbally indicated they had intended Alternate No. 1 to be a deduct. Dewitt also submitted written indication of that intent after the bid opening.

Mr. Cooper reported that Metro's construction manager for the Convention Center Project, Turner Construction Company, had recommended the Council not base the bid award on the alternate. The price differential was not sufficient to overcome the extra costs associated with using pre-stressed concrete pilings and steel pilings were superior. Further, Metro's bid documents indicated Metro reserved the right to select the basis of award based on the base bid and whatever alternates Metro chose to select at the time it made the contract award. Mr. Cooper concurred with Turner's recommendation.

Mr. Cooper further explained Tri-State was concerned that Elting, Inc. had not signed a form required to be submitted by bidders. The

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company president's name had been typed on a line as preparation for signature, the form was unsigned, but the form had been notarized as being signed.

In summary, Mr. Cooper explained that Tri-State's position was that neither the apparent low or apparent second low bid was valid and the Council should award the bid to Tri-State.

Joseph A. Yazbeck, Jr., 1001 S.W. Fifth Avenue, 16th Floor, Portland, Oregon, an attorney representing Tri-State Construction Company, said Tri-State had sued Metro because Yvonne Sherlock, Metro legal counsel, had advised him staff would recommend the Council award the bid to Dewitt Construction Company. Tri-State was contesting that bid because Dewitt had failed to indicate whether Alternate No. 1 was an addition or deduct. Dewitt had also failed to submit three pages of the bid form as required by Metro. Mr. Yazbeck further explained that if the Council decided to award the contract to Dewitt based on the amount of the base bid, Metro would be changing the rules after the bids had been opened. Finally, he explained that Tri-State was contesting the bid submitted by Elting, Inc. for the reasons outlined earlier by Mr. Cooper.

In response to Councilor Van Bergen's question, Mr. Yazbeck said Tri-State was registered to do business in the State of Oregon.

Andrew Jordan, 1600 S.W. Cedar Hills Boulevard, Suite 102, of Bolliger, Hampton & Tarlow, an attorney representing Elting, Inc., the apparent second lowest bidder, testified Elting's bid form had been signed within 24 hours of the bid opening. No court of law would find that omission a material violation, he explained, and his client's omission had not given any other bidder an advantage.

Wayne Dewitt, President of Dewitt Construction, Inc., explained his company had submitted the lowest base bid. Alternates could be selected at the discretion of Metro. He said it was Dewitt's intent to deduct the cost of Alternate No. 1 and he had submitted a letter to Metro stating that intent. He also explained that if one calculated the amount noted on the bid form, one would conclude that Alternate No. 1 was intended to be a deduction.

Larry Thompson of Tri-State Construction Company, explained his company was based in the state of Washington but had performed work in Oregon for the last 15 months. He said he was not upset that his company had not submitted the lowest bid. Rather, he was concerned whether Metro, a public agency, would carry out its stated requirements of bidders. He wanted to make sure Metro was not negotiating for its own interests. He requested the Council consider all the facts before making a decision.

Motion to Amend: Councilor Knowles moved, seconded by Councilor Waker, to amend the "be it resolved" clause of Resolution No. 88-909 to read: "That the Council of the Metropolitan Service District authorizes the District to enter into a contract for Site Preparation, Bid Package No. 2, with Dewitt Construction Incorporated based upon the base bid submitted and no alternates and conditioned upon the timely receipt of all required backup documentation." (Language proposed to be added is underlined.)

At Councilor Van Bergen's request, the Presiding Officer called a recess at 6:45 p.m. for the purpose of allowing Councilors time to review Resolution No. 88-909 which had been distributed earlier in the evening. The Council reconvened at 6:50 p.m.

Vote on the Motion to Amend: A vote on the motion to amend the resolution resulted in all ten Councilors present voting aye. Councilors Bonner and Cooper were absent.

The motion carried.

Main Motion: Councilor Knowles moved, seconded by Councilor Kirkpatrick, to adopt Resolution No. 88-909 as amended.

Vote on the Main Motion: A vote on the motion to amend the resolution resulted in all ten Councilors present voting aye. Councilors Bonner and Cooper were absent.

The motion carried and Resolution No. 88-909 was adopted as amended.

8.5 Consideration of Resolution No. 88-897, for the Purpose of Amending the Transportation Improvement Program for the Transit Capital Improvements

The item was considered at the end of the meeting agenda.

8.6 Consideration of Resolution No. 88-915, for the Purpose of Supporting an Amendment to the State Statute to Provide for an Elected Council and an Appointed Executive

8.7 Consideration of Resolution No. 88-916, for the Purpose of Supporting Amendments to the State Statutes to Allow the Metro Council to Reapportion Itself and Allow Full Use of the Voters' Pamphlet for District Measures

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8.8 Consideration of Resolution No. 88-917, for the Purpose of Supporting an Amendment to the State Statute to Increase the Size of the Council to 13 Members

Presiding Officer Ragsdale announced earlier in the meeting he had referred Resolution Nos. 88-915, 916 and 917 back to the Planning & Development Committee.

8.9 Consideration of Resolution No. 88-918, for the Purpose of Authorizing a Contract with Dames & Moore for Investigation of the Rose City Plating Site for the Oregon Convention Center

Neil Saling, Construction Projects Manager, reported the remedial measures contemplated in the proposed contract would cost about \$233,000, would meet with Department of Environmental Quality (DEQ) standards and would keep the Convention Center Project on schedule.

Motion: Councilor Knowles moved, seconded by Councilor Waker, to adopt Resolution No. 88-918.

Councilor Knowles concurred with Mr. Saling's report and said the Convention Center Committee supported adoption of the resolution.

Councilor Van Bergen suggested the contract have a dollar ceiling. Staff could return to the Council to amend the contract if costs were more than the ceiling.

Motion to Amend: Councilor Waker moved, seconded by Councilor Knowles, to amend the Resolution to include a \$233,000.00 limit to the contract sum.

Vote on the Motion to Amend: A vote resulted in all eleven Councilors present voting aye. Councilor Ragsdale was absent.

The motion carried.

Vote on the Main Motion: A vote resulted in all eleven Councilors present voting aye. Councilor Ragsdale was absent.

The motion carried and Resolution No. 88-918 was adopted as amended.

9.1 Consideration of Order No. 88-18, in the Matter of Contested Case No. 87-5, a Petition for Major Amendment to the Urban Growth Boundary by BenjFran Development Company

Presiding Officer Ragsdale reviewed the process for considering the order: 1) Dan Cooper, Metro's General Counsel, would present a

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five-minute overview of the consideration process, the issues and the Council's options; 2) Chris Thomas, Hearings Officer, would present a fifteen-minute summary of his recommendations; 3) the petitioners would have one hour to address the Council; 4) the opponent would have one hour to address the Council; 5) the petitioners would be given 15 minutes to rebut the opponents' presentation; and 6) the Council would have an opportunity to question all parties, discuss the case and take final action.

Councilor Waker declared himself in conflict of interest concerning the matter because his engineering firm could benefit financially if the Urban Growth Boundary (UBG) were amended in favor of BenjFran's petition. The Councilor left the meeting and did not participate in further deliberations.

Counsel's Overview

Mr. Cooper reviewed his April 25, 1988, memo to the Council regarding the process and guidelines by which the contested case would be considered and the options available to the Council.

Mr. Cooper also announced the petitioners had delivered to him a letter requesting permission to submit new evidence before the Council. He advised the Council to hear the Hearings Officer's summary of the case before deciding whether the new evidence could be submitted.

Hearings Officer's Summary

Chris Thomas, Hearings Officer, presented a summary of his findings as contained in the written document entitled "Report and Recommendations of the Hearings Officer on Contested Case No. 87-5."

After summarizing his report, Mr. Thomas noted that should the Council decide not to accept his recommendation and to instead approve the petition, there were two areas where he felt additional evidence or assessment would still be needed. Those areas related to alternative sites and to the costs of mitigation measures needed to address environmental impacts.

Petitioners' Request to Hear New Evidence

Greg Hathaway, an attorney representing BenjFran Development Company, 1 S.W. Columbia, Portland, Oregon, requested the petitioners be allowed to add to the official case record Metro's new forecast of population and employment growth in the region. Mr. Hathaway explained that had that information been available to the petitioners when they were preparing their application, the hearings

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officer's decision would more likely have been in the petitioners' favor.

Opponents' Response to the Petitioners' Request

Ed Sullivan, 101 S.W. Main Street, Suite 2000, Portland, Oregon, an attorney representing 1000 Friends of Oregon, said because he had just received word of the petitioner's request to hear new evidence, he had not had time to review the forecast document. He did not think the new information would result in a different decision by the Hearings Officer, however.

Council Discussion Regarding the Petitioners' Request to Hear New Evidence

In response to Presiding Officer Ragsdale's question, Mr. Cooper advised that if the Council determined it would allow new evidence, it should then remand the case back to the Hearings Officer to allow sufficient time for the new evidence to be considered. He then read relevant portions of Metro Code Section 2.05.025, "Hearing," at the Presiding Officer's request which outlined procedures for hearing new evidence.

Councilor Kelley asked if the Council remanded the matter back to the Hearings Officer to hear new evidence concerning the population and employment forecast report, could it also instruct the Hearings Officer to hear new evidence on the issue of whether contiguous land in separate ownerships need be considered in the evaluation of alternatives. Mr. Cooper advised that it would be procedurally possible to hear new evidence on both matters if the Council remanded the matter with specific instructions. Due process would be allowed all parties as a result of that process.

Motion to Remand to the Hearings Officer: Councilor Kelley moved, seconded by Councilor DeJardin, to remand the case back to the Hearings Officer with instructions the case be reheard on the limited issue of whether the Petitioner's evaluation of alternatives should include land not under single ownership or land not presently industrially zoned; on the issue of whether technical fixes to address potential negative impacts would be economically feasible; and to hear the new evidence on Metro's population and employment growth forecast as submitted by the Petitioner.

In response to Councilor Van Bergen's question, Mr. Cooper said Metro's Contested Case procedures would not preclude or specifically address the question of whether the Council could send matters back to the Hearings Officer after it had come in front of them on their own motion. Such an action would not violate the inherent

rights of any of the parties. The Council had to determine, however, whether such an action would be wise.

Motion to Divide the Question: Councilor Van Bergen moved, seconded by Councilor Bonner, to divide the question into the issues of; 1) whether the matter should be remanded to the Hearings Officer to hear new evidence submitted by the Petitioner; and 2) whether the matter should be remanded to the Hearings Officer with instructions that the case be reheard on the limited issue of whether the Petitioner's evaluation of alternatives should include land not under single ownership or land not presently industrially zoned and on the issue of whether technical fixes or potential negative impacts are potentially economically feasible.

Councilor Gardner noted the Council had rather precise standards for remanding items back to the Hearings Officer. He did not think the land issues raised by Councilor Kelley met those criteria.

Mr. Cooper read Metro Code Section 2.05.045(b) which described the process for entering into a final order on contested cases: "Upon receipt of a proposed order and consideration of exceptions, the Council shall adopt the proposed order or revise or replace the findings or conclusions in a proposed order or remand the matter to the Hearings Officer. . ." He explained The Council's rules provided for the Council to send back to the Hearings Officer, at its pleasure, without requiring a motion from any of the parties.

Vote on the Motion to Divide the Question: A vote on the motion resulted in all ten Councilors present voting aye. Councilor Cooper was absent and Councilor Waker abstained.

The motion carried. Presiding Officer Ragsdale explained the Council would now consider separately the question of remanding to the Hearings Officer the two land use issues raised by Councilor Kelley and the question of remanding to the Hearings Officer the new evidence submitted by the Petitioners.

The Council discussed the issue of whether to remand the matter for the purpose of hearing the new evidence. Councilors Knowles, Kirkpatrick, Gardner, Collier and DeJardin did not favor accepting the new evidence. Councilor Gardner doubted the population and employment forecast information would change the Hearings Officer's recommendation. Councilor DeJardin thought the Council would never be in a position to have all information compiled to make the most informed decision and remanding the issue would not shed new light on the

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case. Councilors Bonner, Kelley and Van Bergen spoke in favor of remanding the matter. Councilor Kelley explained it was the Council's responsibility to obtain as much information as possible before making a decision.

Vote on Remanding the Case to the Hearings Officer to Hear New Evidence Submitted by the Petitioner: A vote on the motion resulted in:

Ayes: Councilors Bonner, Hansen, Kelley, Ragsdale and Van Bergen

Nays: Councilors Collier, DeJardin, Gardner, Kirkpatrick and Knowles

Absent: Councilor Cooper

Abstain: Councilor Waker

The motion failed for lack of a majority.

Discussion continued about Councilor Kelley's previous motion to remand the case to the hearings officer for the purpose of reconsidering particular land use issues. It was determined not to vote on the motion until after the Council heard argument from all parties.

Presiding Officer Ragsdale called a recess at 8:30 p.m. The Council reconvened at 8:35 p.m.

Oral Argument on Exceptions

The following parties spoke in favor of the Petitioners' application: Bradford H. Fletcher, 1500 S.W. 1st Avenue, Suite 620, Portland, Oregon; Greg Hathaway, an attorney representing BenjFran Development Company; Wally Hobson of Hobson & Associates, urban land economists; Edward Blakley, University of California at Berkeley, an urban planning expert; and Dale Weight, Chief Executive Officer of BenjFran Development Company.

The following parties spoke in opposition to the Petitioners' application: Ed Sullivan, an attorney representing certain neighbors to the property; Jack Churchill of Northwest Environments; Paul Ketchum, a Senior Planner representing 1000 Friends of Oregon; and Joseph Brievoгле, a neighbor.

Greg Hathaway presented the petitioner's rebuttal.

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Council Discussion and Action

Councilor Knowles suggested the matter be set over to the May 12 Council meeting to allow him to form questions of the petitioners and opponents and to review the record in light of the testimony received at this meeting. Presiding Officer Ragsdale called a recess at 10:55 p.m. The Council reconvened at 11:00 p.m.

The Council discussed the motion made earlier by Councilors Kelley and Hansen to remand the case to the Hearings Officer with instructions that the case be reheard on the limited issue of whether the Petitioner's evaluation of alternatives should include land not under single ownership or land not presently industrially zoned and on the issue of whether technical fixes or potential negative impacts were economically feasible. The Council requested the petitioner and defendant comment on the motion.

Mr. Hathaway, representing the petitioners, said the remand should include the key issue of need. He indicated that Petitioners could address questions regarding costs of mitigation but questioned whether the questions regarding alternative sites were appropriate.

Mr. Sullivan, representing the opponents said he opposed the motion and felt the Council should proceed instead of deny the petition.

Councilor Kelley urged the Council to adopt the motion, explaining the Council should seek to gain as much information as possible before making such an important decision.

Councilor Van Bergen explained he would oppose the motion because the Council had heard excellent, thorough presentations by both parties at this meeting. The Council's decision had to be based on state land use goals, he said.

Vote on Remanding the Case to the Hearings Officer to Reconsider Two Land Use Issues: The vote resulted in:

Ayes: Councilors Hansen and Kelley

Nays: Councilors Bonner, Collier, DeJardin, Gardner, Kirkpatrick, Knowles, Ragsdale and Van Bergen

Abstain: Councilor Waker

Absent: Councilor Cooper

The motion failed to carry.

Motion to Remand the Case for the Purpose of Preparing Findings in Support of Amending the UGB: Councilor Hansen moved, seconded by Councilor Van Bergen, to remand the case to the Hearings Officer for further proceedings to establish a basis to support adoption of the proposed amendment.

Mr. Cooper explained a majority vote of Councilors present could adopt the above motion and it would take seven votes to adopt an ordinance to approve the UGB amendment. It would take six votes to adopt Order No. 88-18.

Motion to Defer the Matter: Councilor Knowles moved, seconded by Councilor Bonner, to defer the matter to May 12, 1988.

Vote on the Motion to Defer the Matter: A vote on the motion resulted in:

Ayes: Councilors Bonner, Collier and Knowles

Nays: Councilors DeJardin, Gardner, Hansen, Kelley, Kirkpatrick, Ragsdale and Van Bergen

Abstain: Councilor Waker

Absent: Councilor Cooper

The motion failed to carry.

The Council then discussed Councilor Hansen's motion to remand the case to the Hearings Officer for the purpose of preparing findings in support of amending the UGB.

Vote on the Motion to Remand the Case for the Purpose of Preparing Findings in Support of Amending the UGB:
A vote on the motion resulted in:

Ayes: Councilors Hansen, Kelley, Ragsdale and Van Bergen

Nays: Councilors Bonner, Collier, DeJardin, Gardner, Kirkpatrick and Knowles

Abstain: Councilor Waker

Absent: Councilor Cooper

The motion failed to carry.

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Motion to Adopt Order No. 88-18: Councilor Gardner moved, Seconded by Councilor Kirkpatrick, to adopt Order No. 88-18 adopting the Hearings Officer's recommendation to deny the Petitioners' application to amend the Urban Growth Boundary.

Vote on the Motion to Adopt Order No. 88-18: A vote on the motion resulted in:

Ayes: Councilors Bonner, Collier, DeJardin, Gardner and Kirkpatrick

Nays: Councilors Hansen, Kelley, Knowles, Ragsdale and Van Bergen

Abstain: Councilor Waker

The motion failed to carry for lack of a majority.

Councilor Knowles explained he had voted against the motion to adopt the order because he was not prepared to make a final decision on the matter.

Motion to Defer: Councilor Knowles moved, seconded by Councilor DeJardin, to defer the matter to May 12, 1988.

Vote on the Motion to Defer: A vote resulted in all Councilors present voting aye. Councilor Waker abstained and Councilor Cooper was absent.

The motion carried the consideration of Order No. 88-18 was continued to the May 12 Council meeting.

8.5 Consideration of Resolution No. 88-897, for the Purpose of Amending the Transportation Improvement Program for the Transit Capital Improvements

Councilor Kelley explained that Councilor Waker did not support adoption of the resolution. Councilor Van Bergen suggested deferring consideration of the matter because Councilor Waker was not present at the meeting to discuss his objections.

Motion: Councilor Van Bergen moved, seconded by Councilor Kelley, to defer consideration of the resolution until the May 12 Council meeting.

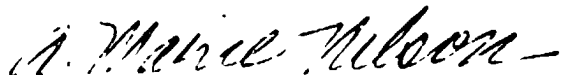
Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Waker were absent.

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The motion carried.

There was no other business and the meeting was adjourned at
12:05 a.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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05/13/88