

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

June 9, 1988
Regular Meeting

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

Councilors Absent: None (Councilor Bonner is not listed as absent because his resignation was acknowledged effective June 6, 1988, at this Council meeting.)

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

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Informational Report on Results of Memorandum of Understanding (MOU) Negotiations with Riedel Environmental Technologies, Inc. to Design, Construct, Own and Operate a Municipal Solid Waste Compost Facility

Dick Engstrom, Deputy Executive Officer, introduced Rich Owings, Solid Waste Director, and Debbie Gorham, Analyst. Mr. Owings described the written materials distributed to Councilors including: 1) Tax Act Transition Rules Regarding Investment Tax Credit and Accelerated Depreciation for Solid Waste Resource Recovery Projects; 2) a memorandum from Rebecca Marshall to Debbie Gorham entitled "In the Worst Case: Does Metro Have Any Debt Obligation for the Compost Project?" and 3) Metro/Riedel Memorandum of Understanding Presentation.

Ms. Gorham acknowledged the work of staff and consultants working on the project. She explained the Council was not being requested to take any action at this meeting. Consultants Harvey Gershman and

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Paul Atanasio would review the material in the "MOU Presentation" document. The Solid Waste Committee would then meet on June 21 to consider the MOU document and make a recommendation for Council consideration.

Ms. Gorham introduced Harvey Gershman and Paul Atanasio who made the presentation which included: discussion of key components of the MOU document; description of the MOU document attachments; key definitions of terms used in the MOU document; a technical description of the proposed composting facility; discussion of the proposed performance standards; discussion of compost product marketing and materials sales contracts; project funding sources; and key assumptions in tip fee projection.

After the presentation, the Council briefly discussed various aspects of the draft MOU document.

7.2 Consideration of Resolution No. 88-937, for the Purpose of Granting a Franchise to Wastech, Inc. for the Purpose of Operating a Solid Waste Processing Facility

Councilor Hansen, Chair of the Council Solid Waste Committee, reported the Committee recommended adoption of the resolution which would grant a five-year franchise with Wastech, Inc. The Councilor said the Committee also acknowledged the need update the franchise ordinance.

Motion: Councilor DeJardin moved, seconded by Councilor Van Bergen, to adopt Resolution No. 88-937.

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

The motion carried and Resolution No. 88-937 was adopted.

4. COUNCILOR COMMUNICATIONS

Presiding Officer Ragsdale announced he was in receipt of a letter from Councilor Bonner dated June 6, 1988, which stated the Councilor had resigned from the District 8 Metro Council position for personal reasons effective June 6, 1988. The Presiding Officer then reviewed the Council's process for filling Councilor vacancies per Resolution No. 83-385. The process included the Council appointing a citizen committee to assist with the selection process, advertising the vacancy, the committee and Councilors reviewing applications, the Council interviewing finalists, and the Council selecting a candidate to fill the vacancy. He expected the Council would interview candidates on July 7 and a candidate would be selected by July 14.

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Motion: Councilor Van Bergen moved, seconded by Councilor Kirkpatrick, to accept Councilor Bonner's resignation effective June 6, 1988.

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

The motion carried unanimously.

Responding to Councilor Knowles' question, the Presiding Officer explained the newly appointed Councilor would be on the General election ballot in November.

5. CONSENT AGENDA

Presiding Officer Ragsdale announced he had removed item 5.3 from the Consent Agenda (Resolution No. 88-898, Establishing the Order of Business for Regular Council Meetings).

Motion: Councilor Knowles moved, seconded by Councilor Gardner, to remove item 5.2 from the Consent Agenda (Resolution No. 88-922, Revising Guidelines for the Expenditure of Council Per Diem, Councilor Expense and General Council Materials and Services Accounts).

Councilor Knowles explained he had made the motion so that he could clarify that adoption of the resolution would not increase amounts paid to Councilors. The purpose of the resolution was to make expenditure guidelines and accounts consistent with the budget, he said.

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

The motion carried and Resolution No. 88-922 was removed from the Consent Agenda.

Motion: Councilor Kirkpatrick moved, seconded by Councilor DeJardin, to approve the Consent Agenda (item 5.2, minutes).

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

The motion carried and the minutes of May 12, 1988, were approved.

5.2 Consideration of Resolution No. 88-922, for the Purpose of Revising Guidelines for the Expenditure of Council Per Diem, Councilor Expense and General Council Materials and Services Accounts

Motion: Councilor Van Bergen moved to adopt the resolution and Councilor Knowles seconded the motion.

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

The motion carried and Resolution No. 88-922 was adopted.

6. ORDINANCES

6.1 Consideration of Ordinance No. 88-251, for the Purpose of Amending Section 4.01.030 of the Metro Code to Prohibit Illegal Parking in the Zoo Parking Lot and Other Areas Adjacent to the Washington Park Zoo, and Providing for the Issuance of Citations by Metro Personnel (First Reading)

The Clerk read the ordinance a first time by title only. Presiding Officer Ragsdale announced he had referred the ordinance to the Council Intergovernmental Relations Committee for a public hearing, review and recommendation.

6.2 Consideration of Ordinance No. 88-255, for the Purpose of Amending Section 2.04.040 of the Metro Code and Revising the List of Positions Subject to Confirmation by the Council (First Reading)

The Clerk read the ordinance a first time by title only. Presiding Officer Ragsdale announced he had referred the ordinance to the Council Internal Affairs Committee for a public hearing, review and recommendation.

7. RESOLUTIONS

7.1 Consideration of Resolution No. 88-923, for the Purpose of Expressing Appreciation to Lyndon A. S. "Tuck" Wilson for Services Rendered to the Metropolitan Service District

Councilor Cooper, Chair of the Convention Center Committee, read the entire resolution. He reported the Committee unanimously recommended adoption of the resolution.

Motion: Councilor Cooper moved, seconded by Councilor Waker, to adopt Resolution No. 88-923.

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Councilors Waker, Knowles and Ragsdale thanked Mr. Wilson for his excellent and dedicated work on the Convention Center project. Councilor Knowles noted that Mr. Wilson had assembled a top-knotch project team and commended his public service.

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

The motion carried and Resolution No. 88-923 was adopted.

7.2 Consideration of Resolution No. 88-937, for the Purpose of Granting a Franchise to Wastech, Inc. for the Purpose of Operating a Solid Waste Processing Facility

The resolution was considered at the beginning of the meeting.

7.3 Consideration of Resolution No. 88-938, for the Purpose of Entering Into a Contract with the City of Oregon City Providing for the Payment of a 50 Cent per Ton Mitigation and Enhancement Fee, and Revising the Tonnage Limitation at the Clackamas Transfer & Recycling Center (CTRC)

The Presiding Officer acknowledged a letter to the Council from Estle Harlan, Consultant to the Tri-County Council and Oregon Sanitary Service Institute. The letter stated the "solid waste industry reluctantly requests the approval of Resolution No. 88-938. It is difficult for us to embrace any action that is going to increase disposal fees. But in this instance, we see the fee as a way to cut our losses. The settlement . . . is less disruptive to our operations and less costly to both us and our customers than bans or diversions of selected loads or classes of trucks in order to reach an arbitrary limit of 21,000 tons per month."

Councilor Hansen, Chair of the Council Solid Waste Committee, reported the committee recommended adoption of the resolution. He thought it the best way out of a difficult situation and less costly than other proposed solutions.

Motion: Councilor Hansen moved to adopt Resolution No. 88-938 and Councilor DeJardin seconded the motion.

Councilor Knowles explained he had initially opposed payments to the City of Oregon City in lieu of taxes. He was very reluctant to set this precedent, explaining he would have supported an agreement if the funds were used strictly for enhancements.

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Councilor Waker said he would not support the resolution for reasons similar to the ones stated by Councilor Knowles.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Gardner, Hansen, Kelley, Van Bergen and Ragsdale

Nays: Councilors Kirkpatrick, Knowles and Waker

The motion carried and resolution No. 88-938 was adopted.

7.4 Consideration of Resolution No. 88-931, for the Purpose of Confirming the Appointment of Richard H. Carson to the Position of Director of Planning and Development

Intergovernmental Relations Committee Chair Councilor Waker reported the Committee had tentatively approved Mr. Carson's appointment subject to investigations into background references. Those investigations had been performed and he recommended the candidate's confirmation.

Motion: Councilor Waker moved, seconded by Councilor DeJardin, to adopt Resolution No. 88-931.

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

The motion carried and Resolution No. 88-931 was unanimously adopted.

7.5 Consideration of Resolution No. 88-924, for the Purpose of Authorizing Transfer of 1.4 Acres of Metro Washington Park Zoo Lands to the Oregon Department of Transportation

Councilor Waker, Chair of the Intergovernmental Relations Committee, explained the Committee had unanimously recommended adoption of the resolution. The City of Portland was in agreement with the transfer.

Motion: Councilor Waker moved to adopt Resolution No. 88-924 and Councilor Gardner seconded the motion.

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

The motion carried and Resolution No. 88-924 was unanimously adopted.

7.6 Consideration of Resolution No. 88-932, for the Purpose of Supporting a Regional/Local Library Study Including the Development of an Implementation Plan

Councilor Knowles, Chair of the Council Planning & Development Committee reported the Committee recommended adoption of the resolution.

Motion: Councilor Knowles moved, seconded by Councilor Kirkpatrick, to adopt Resolution No. 88-932.

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

The resolution was unanimously adopted.

7.7 Consideration of Resolution No. 88-933, for the Purpose of Supporting a Regional/Local Parks Study Including the Development of an Implementation Plan

Councilor Van Bergen explained he had not responded to a survey of Councilors upon which Resolution Nos. 88-932 and 88-933 had been developed because he opposed that method of reaching a consensus. He thought the issues should have been discussed by the Council before the resolutions were written. The Councilor further explained he was sensitive to local government issues and thought the Council should be cautious and not jeopardize any favored, local projects.

Councilor Knowles, Chair of the Planning & Development Committee, explained the Committee had acknowledged that issue and had carefully worded the resolutions to reflect it would be the Interim Task Force on Metropolitan Governance's responsibility to request studies be done.

Motion: Councilor Kelley moved the Council adopt substitute Resolution No. 88-933A. Councilor Hansen seconded the motion.

Councilor Kelley explained she had introduced substitute Resolution No. 88-933A because it clarified that a regional parks study was already being done. Resolution No. 88-933 implied that no study was underway, she said.

Councilor Knowles did not support the substitute resolution because it advocated a strong endorsement of regional parks. He thought it premature for the Council to adopt such a position.

Don Carlson, Councilor Administrator, explained the current parks study was a work plan for a regional parks inventory. It would involve developing a database for all parks in the region.

The Council continued to discuss the merits of the substitute resolution. Several language changes were proposed. Councilor Kelley agreed to withdraw her motion after Councilor Knowles proposed an amendment to the main resolution to which she agreed.

Withdrawal of Motion: Councilors Kelley and Hansen withdrew the motion to adopt substitute Resolution No. 88-933A.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Waker, to adopt Resolution No. 88-933 and the "Be it Resolved" paragraph be changed to read: "That the Council of the Metropolitan Service District supports [undertaking] continuing a study . . ."

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

The motion carried unanimously and Resolution No. 88-933 was adopted as amended.

8. ORDER

8.1 Consideration of Order No. 88-19, in the Matter of Contested Case No. 87-3, a Petition for Locational Adjustment of the Urban Growth Boundary (UGB) By Blazer Homes

Presiding Officer Ragsdale explained that at this meeting the Council would consider whether to accept additional evidence concerning the case. If the Council decided to accept the additional evidence, it would then determine whether to remand the case back to the hearings officer or to hear the evidence itself. If the Council decided to hear additional evidence, no further action could take place at this meeting in order to allow time to inform all interested parties of the new hearing, he explained.

Councilor Waker announced he knew the applicant personally and as a result of his membership in the Home Builders Association. The Councilor said he had no business dealings with the applicant and was qualified to deliberate and vote on matters relating to the case.

Councilor Van Bergen acknowledged he had received letters from interested parties concerning the case but explained it was his usual practice to destroy such correspondence once it was learned it related to a UGB matter.

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The Presiding Officer announced he would allow 10 minutes for the proponents to address the Council on the matter of admitting new evidence. The opponents would then be given the same amount of time to address the Council. The Presiding Officer called a recess at 7:40 p.m. to determine how he would accept the proponents' testimony after it was learned each opponent wished to speak on his or her own behalf. The opponents were not represented by one attorney or spokesperson. The Council reconvened at 7:50 p.m. The Presiding Officer announced only one person would be speaking in opposition since it had been determined another party's testimony was not related to the question before the Council.

Proponent's Testimony on the Matter of Whether the Council Should Accept New Evidence

Frank Josselson, an attorney representing Blazer Homes, Inc., summarized the applicants' written request to submit new evidence. He explained the Hearings Officer had denied the petitioner's application because he did not think sufficient evidence had been submitted to show compliance with the standards relating to transportation and schools. Mr. Josselson said if the petitioners were allowed to submit the cited in their request, the Hearings Officer would then have the complete and conclusive evidence needed to determine the case. He also explained that Metro's Code allowed for the petitioner to submit this additional evidence. He urged the Council to grant the petitioner's request which would result in a fair and just decision.

Opponent's Testimony on the Matter of Whether New Evidence Should be Accepted

Carole Atherton explained she was an attorney by profession but was speaking on her own behalf as a resident of the area in question. She read a letter from Carolyn Stricklin, another resident, who opposed the admittance of new evidence on the basis that the evidence was available at the time of the initial hearings and was not then submitted by the applicant.

Ms. Atherton urged the Council not to accept new evidence. Most of the 44 parties attending the initial hearing opposed the petitioner's application. If new evidence were allowed, the case would be reopened at great inconvenience to those parties. She also explained the petitioner had, after the hearing, objected to her testimony because she was an attorney. She explained it behooved the petitioner to make a thorough presentation at the time of the initial hearing because there was never a guarantee of an opportunity to reopen the case. Ms. Atherton was doubtful the 1977 traffic survey included in the Lake Oswego Comprehensive Plan would be relevant or useful to the case.

Ms. Atherton then discussed the fact that the portion of the new evidence relating to potential solutions to school overcrowding was inappropriate to the case. The solutions advanced were contingent on whether voter approval for funds could be secured. She also disagreed with the statement that additional homes would increase the school tax base. She pointed out the law limited the amount by which a tax base could be increased.

In summary, Ms. Atherton urged the Council not to accept the new evidence because most of it was available at the time of the initial hearing and was not submitted then. She explained, however, if the Council decided to accept the evidence, it should admit the entire Lake Oswego Comprehensive Plan and not just the portions relating to traffic. She thought it would be unfair to the voters to reopen the case.

In response to Councilor Waker's question, Ms. Atherton said it would be unfair to reopen the case due to the quasi-judicial nature of the process. At the initial hearing, the parties were expected to "lay all the cards on the table." If the evidence were admitted piecemeal, she said, it would be more difficult for all parties to participate.

Council Discussion and Decision

Councilor Waker asked Counsel if new evidence could be admitted only if it were determined the evidence was likely to result in a difference decision. Mr. Cooper answered that in order for new evidence to be admitted the applicant had to explain in writing that the evidence would make a difference in the outcome of the hearing. The Council, however, did not need to make specific findings in order to admit the new evidence.

Councilor Van Bergen noted that once again the Hearings Officer had put the Council in a planning commission role. The Council's proper role was to determine whether the UGB should be amended, not to determine whether the end use of the property was proper, he said.

Proponent's Rebuttal of Opponent's testimony

Presiding Officer Ragsdale announced he had agreed in advance that if the Opponent's testimony was longer than 10 minutes, the Proponent would be given additional time to rebut that testimony. He then allowed additional time to the Proponent.

Mr. Josselson explained that not all the new evidence requested to be admitted to the case had been available at the time of the initial hearing. The Lake Oswego School Board had recently made decisions on alleviating overcrowding. He also explained the peti-

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tioner had assumed the Hearings Officer would examine traffic portions of the Lake Oswego Comprehensive Plan because the Plan had been made available to him. The Hearings Officer, however, had not examined that information and Mr. Josselson said he had no doubt the decision would be different had he examine the document.

Council Discussion and Decision

Motion: Councilor Knowles moved, seconded by Councilor Kirkpatrick, to remand the matter back to the Hearings Officer for the limited purpose of receiving new evidence specifically identified in the Petitioner's request.

At the Presiding Officer's request, Mr. Cooper reviewed the options available to the Council based on Code criteria.

Councilor Gardner said he favored the motion because the Hearings Officer was best suited to hear the new evidence in context with all the other evidence previously heard.

Vote: A vote on the motion to remand the case resulted in all eleven Councilors present voting aye.

The motion carried. Presiding Officer Ragsdale acknowledged it was very unlikely the Hearings Officer would hear the new evidence in time for Council consideration on June 23.

Opponent Kenneth H. Wright, 22560 S.W. Stafford Road, Tualatin, President of the Lower Tualatin Valley Homeowners Association, Inc., requested the Clerk state in the record he had attended the meeting.

9. COMMITTEE REPORTS

Budget and Finance Committees. Councilor Collier, Chair of the Council Finance and Budget Committees, reported the Budget Committee had convened with citizen members to critique its FY 1988-89 review process. A final report of that discussion would be issued which would include the following recommendations: 1) the process for orienting citizen members should begin earlier; 2) the proposed budget should be received earlier; 3) a quarterly reporting system on budgeted programs should be re-established; 4) citizen members of the Budget Committee should attend Council committee meetings when quarterly reports are reviewed; 5) agreement should be reached between the Executive Officer and the Budget Committee on the budget review process in advance of review; and 6) Council standing committee's should make recommendations in advance of the Budget Committee meetings.

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A discussion followed about whether citizens should continue to be involved on the Budget Committee. Councilor Hansen noted that although the entire Budget Committee (which included citizen members) had voted to continue citizen membership on the committee, Council members serving on the committee were divided on the issue.

Task Force on Health Insurance

Councilor Van Bergen, Task Force Chair, reported the group was continuing to meet and would have a resolution for consideration on the June 23 Council agenda.

There was no other business and the meeting adjourned at 8:45 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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