

MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

September 8, 1988

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

Councilors Absent: Corky Kirkpatrick (Deputy Presiding Officer) and Elsa Coleman

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

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

Executive Officer Cusma reported she and Councilor Knowles had recently briefed Multnomah County Commissioners on the Convention Center project, Metro's relationship with the Greater Portland Convention and Visitors' Association and the hotel/motel tax.

Due to recent Portland City Council discussions concerning transfer stations, the Executive Officer had invited City Councilors to tour Metro South Transfer Station (formerly called the Clackamas Transfer & Recycling Center).

The Executive Officer announced she would request Council confirmation of Bill Naito to fill a vacant position on the Citizen Investment Committee.

The Executive Officer had recently testified before the Oregon Environmental Quality Commission and would distribute copies of her written testimony to Councilors.

4. COUNCILOR COMMUNICATIONS

Presiding Officer Ragsdale announced the Internal Affairs Committee scheduled for 4:00 p.m. this afternoon would be postponed until after the Council meeting due to a lack of quorum earlier in the day.

5. CONSENT AGENDA

Motion: Councilor Waker moved, seconded by Councilor DeJardin, to approve items 5.1 through 5.5 of the Consent Agenda.

Vote: A vote on the motion resulted in all eight Councilors present voting aye. Councilors Coleman, Cooper, Kirkpatrick and Knowles were absent.

The motion carried and the following items were approved:

- 5.1 Minutes of August 11, 1988
- 5.2 Resolution No. 88-894A, Amending the Classification and Pay Plans for the Metropolitan Service District
- 5.3 Resolution No. 88-979, Increasing the Contract Allowance for Metro Washington Park Zoo Africa Exhibit Gunite Work
- 5.4 Resolution No. 88-982, Authorizing a Contract Amendment with Dames & Moore for Convention Center Site Environmental Work
- 5.5 Resolution No. 88-983, Authorizing an Insurance Contract with CIGNA Insurance for Convention Center Project Builder's Risk Insurance

6. ORDINANCES

- 6.1 Consideration of Ordinance No. 88-262, for the Purpose of Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule to Provide Funding for a Contract with Preston, Thorgrimson, Ellis and Holman (for the Convention Center Project) (First Reading)

The Clerk read the ordinance by title only a first time. Presiding Officer Ragsdale announced he had referred the ordinance to the Council Finance Committee for a public hearing and consideration on September 29, 1988.

6.2 Consideration of Ordinance No. 88-258, for the Purpose of Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Implementation of the Collective Bargaining Unit (Local No. 483), Incorporation of Pay and Class Study Appeals and Payment for the Jefferson Street Rail Line (Second Reading)

The Clerk read the ordinance a second time by title only. The Presiding Officer announced the ordinance received a first reading before the Council on July 28. It was then referred to the Finance Committee for a public hearing and recommendation. The Committee hearing took place on August 18.

Councilor Collier, Chair of the Finance Committee, presented the committee's report and recommendation, summarizing her written report to the Council dated August 28, 1988. She explained the ordinance had originally included provisions for implementing new contract procedures under Ordinance No. 88-249. The Committee, however, had voted to delete that provision from the ordinance. The contract procedures issue was discussed separately at a committee work session on September 1. One or two additional work sessions would be scheduled for more discussion, she said. The Councilor also reported that at the committee's request, future budget amendment ordinances would be restricted to one item per ordinance.

Motion: Councilor Collier moved, seconded by Councilor Gardner, to adopt Ordinance No. 88-258 as recommended by the Finance Committee.

Vote: A roll call vote on the motion resulted in all nine Councilors present voting aye. Councilors Coleman, Kirkpatrick and Knowles were absent.

The motion carried and the ordinance was adopted.

7. RESOLUTIONS

7.1 Consideration of Resolution No. 88-977, for the Purpose of Awarding a Contract for Construction of the Oregon Convention Center, Bid Package No. 3, to Hoffman (Oregon) - Marmolejo, a Joint Venture

Executive Session

Presiding Officer Ragsdale called the meeting into executive session at 5:40 p.m. under the authority of ORS Chapter 192.660(1)(h) for the purpose of discussing with General Counsel potential litigation related to the Convention Center Project. All Councilors were present at the executive session except Councilors Coleman and

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Kirkpatrick who were absent. Executive Officer Cusma, Dan Cooper, Don Carlson, Jessica Marlitt, and Harry Bodine were also present at the executive session. The Presiding Officer called the meeting back into regular session at 5:55 p.m.

#### Regular Session

Councilor Knowles, Chair of the Council Convention Center Committee, reviewed the written committee report and recommendation, dated September 8, 1988, with the Council. At its September 8 morning meeting, the Committee had unanimously recommended the Council adopt Resolution No. 88-977. The resolution included an attachment which detailed findings of the rejection of Hensel Phelps Construction's bid based on non-compliance with Metro's DBE/WBE "good faith effort" requirements as outlined in Section 2.04.155 of the Metro Code and changed selection of Alternates 9B and 10B (IAC operable partitions) to 9A and 10A (Modernfold operable partitions). A summary of the committee's actions was included in the written report. Councilor Knowles explained that the No. 88-977A version of the resolution reflected the committee's actions plus additional amendments expressed by the committee's consensus later in the day.

Motion: Councilor Knowles moved, seconded by Councilor Waker, to adopt Resolution No. 88-977A to include Exhibit A, "Findings."

#### Testimony from Hensel Phelps Construction, Inc.

Doug Ragen, 111 S.W. 5th Avenue, Portland, Oregon, attorney for Hensel Phelps, introduced Jerry Meyer and Larry Gonda, 420 Sixth Avenue, Greeley, Colorado, representatives of Hensel Phelps, the apparent low bidder on the project.

Mr. Ragen testified regarding the Convention Center Committee's decision to disqualify Hensel Phelps' bid based on non-compliance with Metro's DBE/WBE requirements. He was concerned that Metro staff had not discussed its concerns with Hensel Phelps in advance of making its recommendation to the committee. He referred Councilors to a letter dated September 7, 1988, from himself to Councilors which responded to staff's specific concerns. He asked the Council to postpone making a decision until it had taken adequate time to review and investigate Hensel Phelps' concerns.

Mr. Gonda then testified in response to staff's claim that Hensel Phelps had not complied with Criterion No. 6 established by Metro relating to compliance with Disadvantaged and Women owned Business Enterprise (D/WBE) contracting goals. He asserted that Hensel Phelps had satisfied Metro's D/WBE program requirements and asked Metro to re-examine the level of D/WBE participation in the bid. He

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suggested Hoffman-Marmolejo had overstated its level of D/WBE participation to Metro (10 percent).

Mr. Meyers discussed Hensel Phelps' excellent reputation and history of D/WBE participation in other communities. He asked Metro to offer his company an equitable chance to build the project.

Councilor Hansen asked questions of Mr. Ragen related to Hensel Phelps' process for soliciting D/WBEs for the contract. Mr. Ragen said his company had followed the procedures. Other companies, he stated, had accepted higher bids from minority and women-owned subcontractors in order to increase the level of participation.

#### Testimony of Hoffman (Oregon)-Marmolejo, a Joint Venture

Cecil Drinkward, Chief Executive Officer of Hoffman Construction, reviewed his company's history of meeting or exceeding D/WBE program goals for past projects including the Justice Center and Pacwest Building. He acknowledged that sometimes the owner paid more for high program participation, but owners were clear in their intent to take D/WBE program goals seriously. He reviewed Metro's bid instructions for the Convention Center Project which he said were very clear to all bidders. Mr. Drinkward thought Hensel Phelps became serious about program participation only after they knew their bid could be rejected because of low D/WBE program participation. He then explained how Hoffman had conducted its search for qualified D/WBE subcontractors in order to meet Metro's goals. He stated this type of search and level of activity had become standard in the industry. Mr. Drinkward discussed Hoffman's excellent business reputation and stated his company would not ask Metro to pay for Hoffman's errors. He noted that Hensel Phelps, however, was asking Metro for pay for its errors. In summary, Mr. Drinkward said the formula for success was "effort equals results." Because Hensel Phelps had not put out sufficient effort, they had not show any results, he explained.

Jim Olney, an employee of Associated Builders & Contractors, 4815 S.W. Macadam, Portland, testified in support of the Convention Center Committee's recommendation to award the contract to Hoffman-Marmolejo. He explained that because the D/WBE program was now the law, his agency supported the program. The program was set up to guarantee equal treatment for true effort and he thought there were enough qualified contractors in the community to meet the project goals. He also explained that Hensel Phelps could have gotten updated lists of qualified D/WBE subcontractors from his office.

Lina Garcia Siebold, 10420 S.W. 130th, Beaverton, State of Oregon Advocate for Minority/Women Business, testified her office's directory of qualified D/WBE subcontractors should be sufficient to meet

goals for any contract. Her staff sent letters to all plan holders advising them of the State's services and procedures. None of her staff heard from Helsel Phelps in response to that letter, she said. Ms. Siebold thought Metro staff's recommendation showed commitment to its D/WBE program.

Harold Williams, 132 N.E. Ainsworth, Portland, Vice-President of Penn-Nor, Inc., supported awarding the construction contract to Hoffman-Marmolejo which he termed a "rainbow coalition." He regretted, however, that more black owned subcontractors had not participated in the project. He thought Hoffman and Marmolejo represented an excellent example of how the D/WBE program should work. "Anyone who says they can't meet the goals is a misnomer," he said.

#### Council Discussion

Councilor Knowles reported that most Councilors had attended the morning session of the Council Convention Center Committee and had heard staff's report and oral arguments. He summarized that demonstration of good faith efforts was not a passive requirement. He thought the project would have a significant impact on Northeast Portland and hoped the successful contractor would show commitment to providing jobs for the minority community.

Vote: A vote on the motion to adopt Resolution No. 88-977A as revised resulted in all nine Councilors present voting aye. Councilors Coleman, Collier and Kirkpatrick were absent.

The motion carried and Resolution No. 88-977A was adopted as revised.

The Presiding Officer called a recess at 7:05 p.m. The meeting was reconvened at 7:15 p.m. Immediately following the recess, the Executive Officer presented her report which is listed under Item No. 3 at the beginning of the minutes.

#### 8. ORDERS

##### 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 by Blazer Homes

Dan Cooper, General Counsel, explained the Council that it would consider the case for locational adjustment according to procedures outlined in Metro Code Chapter 3.01. State land use goals would not apply in this case. He further explained the Hearings Officer would be given 10 minutes to present an overview of his recommendation; the petitioner and opponent would each be given 40 minutes to present their cases; and the petitioner would be given an additional

10 minutes to rebut the opponent's presentation. Finally, Mr. Cooper reported that the Council had reviewed the case on June 9, 1988, to consider whether new evidence should be admitted. Subsequently, the Council had remanded the case to the Hearings Officer for the purpose of hearing specific, new evidence introduced by the Petitioner. After hearing new evidence, the Hearings Officer had not altered his recommendation.

#### Hearings Officer's Summary

Chris Thomas, Hearings Officer, reviewed highlights of Exhibit B to the Order, entitled "Report and Recommendation of Hearings Officer." He concluded that Blazer Homes' proposal would result in slight improvements -- not enough to warrant a boundary adjustment. He then discussed specific transportation, school, urban improvement and urban improvement issues to support that conclusion, all of which were addressed in the "Report and Recommendation" document.

#### Applicant's Testimony

Frank Josselson, an attorney representing Blazer Homes, said that the Hearings Officer had discussed material not included in his report and recommendation - specifically the issue of "leapfrogging" or contiguous land use. In response to his question, Mr. Cooper granted the applicant two additional minutes to respond to the Hearings Officer's statements on those issues.

Dennis Derby, co-owner of the Blazer Homes property, explained to the Council the hearings process was flawed because the Hearings Officer had not addressed information brought to him by the applicant. Mr. Josselson then asserted the Hearings Officer had ignored as evidence transportation plans adopted by the City of Lake Oswego and the City's resolution adopted in support of the petitioners' application. He also thought the best use of the land, given the urban nature of surrounding property, would be for single family housing. Mr. Josselson discussed in detail how the Hearings Officer's conclusions concerning traffic capacity of surrounding streets, adequate school capacity, the extent of improved urban services and contiguous land issues were incorrect. In conclusion, he urged the Council to not support the Hearings Officer's recommendation.

Leslie Roberts, an attorney representing Blazer Homes, addressed the Hearings Officer's previous statement that if the Blazer Homes petition were granted, it could result in a "leapfrogging" effect where adjacent land areas would soon be developed as a result of the urban services in place in surrounding areas. She said Mr. Thomas' statement was untrue and explained the developer had no hand in planning streets which had served the land in question. Further,

she said, there was no relationship between the contested case concerning the Ray property and this case, as the Hearings Officer had implied.

#### Opponents' Testimony

Phil Atherton, a property owner near the Blazer Homes petition area, reported that 43 people had attended the hearing and most were against the petition. He objected to the applicants' discounting at this meeting of the Hearings Officer's process, saying Mr. Thomas had conducted his work with decorum and using the guidelines developed to protect the integrity of the UGB. Mr. Atherton thought if the Council overturned the Hearings Officer's decision and granted the Blazer Homes petition, a flood of similar petitions to amend the UGB would result. He urged Councilors to remand the matter to the Hearings Officer if they had questions on the case.

Carol Atherton, area property owner, strongly supported the Hearings Officer's conclusion that McVey street in Lake Oswego was inadequate to handle further development. She described current traffic conditions as overcrowded and intolerable and that the City of Lake Oswego's traffic engineer had concluded three additional lanes would be required to handle anticipated growth.

Phil Atherton discussed issues related to the need for additional urban land in the area. He thought the 43 acres proposed to be added with this petition was excessive given that ample amounts of undeveloped land was still within the UGB. He asked the Council to concentrate on making urban land more livable rather than extending the boundary to encourage urban sprawl.

Mr. Atherton also addressed the process by which the City of Lake Oswego had adopted a resolution in support of the petitioner's application. The resolution had been adopted without proper notice to the public, he said. Further, the resolution had been adopted by a 4 to 3 vote -- clearly not a unanimous decision. Mr. Atherton said that after the resolution was adopted the City Council said they would take a neutral position on all subsequent UGB cases.

Regarding the issue of whether area schools could support additional urban growth, Ms. Atherton pointed out that the local school district had determined it would not support the petition. She noted that voter approval would be required to reopen Palasades School which would serve the Blazer Homes development.

In response to Councilor Van Bergen's question, The Atherton's said they lived about one-half mile from the proposed project and traveled on McVey Street often.



Stan Juett, 18455 Stafford Road, testified that given Metro's code and the process by which the Hearings Officer must review the petition, the correct decision had been recommended. The Hearings Officer had carefully reviewed water, sewer, drainage, fire, police, transportation and school service issues and had determined that not enough improvements would be made to warrant a boundary amendment. He asked the Council to support the Hearings Officer's recommendation.

#### Petitioner's Rebuttal

Mr. Josselson stated that traffic on McVey Street was not a problem. He said he lived in the area and was in a position to know if it were a problem. He also pointed out the newspaper articles cited by the Atherton's which had reported the Lake Oswego City Council's adoption on a resolution in support of the Petitioner were not in the official record. He explained even though the Atherton's had represented that the Council's approval of the petition had not been unanimous, the Council's official act was to approve the resolution.

There was no further testimony.

#### Council Discussion

Motion: Councilor Knowles moved, seconded by Councilor Waker, to reject the Hearings Officer's Report and Recommendations and to direct the Office of General Counsel to prepare findings of fact in support of the petition for locational adjustment.

Councilor Knowles said the letter from James H. Schell, Assistant Superintendent of the Lake Oswego School District to Blazer Homes, Inc., dated May 17, 1988, and the letter from Peter C. Harvey, Lake Oswego City Manager to Blazer Homes, Inc., dated May 25, 1988, concerning the Lake Oswego Comprehensive Plan, had helped to convince him that the criteria for locational adjustment had been met. He explained he was not a usual supporter of locational adjustments but thought the boundary should be amended in this case.

Councilor Collier said she would support the motion because the Hearings Officer's recommendation had noted the petitioner would make adequate urban improvements.

Councilor Gardner did not support the motion explaining only a slight gain in urban efficiency would be achieved after amending the boundary for a large parcel of land. He thought more justification should be required for such a large boundary adjustment.

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Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Hansen, Kelley, Knowles,  
Van Bergen, Waker and Ragsdale

Nays: Councilor Gardner

Absent: Councilors Coleman, Cooper, DeJardin and Kirkpatrick

The motion carried.

Councilor Van Bergen, addressing the Petitioner's attorneys, noted that although the case had been well presented, he objected to the attorneys' use of the Hearings Officers' name when making its objections to the Hearings Officer's recommendation.

9. COMMITTEE REPORTS

Councilors announced upcoming committee meeting schedules and agendas.

There was no other business and the meeting was adjourned at 9:30 p.m.

Respectfully submitted,



A. Marie Nelson  
Clerk of the Council

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