

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ADOPTING A FINAL) ORDINANCE NO. 91-395A
ORDER AND AMENDING THE METRO)
URBAN GROWTH BOUNDARY FOR)
CONTESTED CASE NO. 90-1:)
WAGNER)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY
ORDAINS:

Section 1. The Council of the Metropolitan Service District (the "Council") adopted Resolution No. 91-1351, attached as Exhibit C of this Ordinance and incorporated by this reference, on December 13, 1990, which stated its intent to amend the Metro Urban Growth Boundary for Contested Case No. 90-1: Wagner pending annexation of the subject property to the City of Wilsonville and/or the Metropolitan Service District within six (6) months of adoption of the resolution.

Section 2. The Portland Metropolitan Area Local Government Boundary Commission acted on March 7, 1991, to annex the petitioners Wagner's property, the subject of Contested Case No. 90-1: Wagner, to the City of Wilsonville and the Metropolitan Service District. The action of the Boundary Commissioner is attached to this Ordinance as Exhibit D, which is incorporated by this reference.

Section 3. The Council conducted a public hearing on Contested Case No. 90-1 on December 13, 1990. At the hearing, the Council considered the Hearings Officer's Report and Recommendations, as well as Exceptions to and additional testimony given at the hearing on the Report and Recommendations,

and other testimony in the record, the Council finds that it is appropriate to consider the subject property as a single unit, and that the inclusion of the entire subject property will result in a superior Urban Growth Boundary. Accordingly, the Council of the Metropolitan Service District hereby accepts and adopts as the Final Order in Contested Case No. 90-1 the Hearings Officer's Report and Recommendations in Exhibit B of this Ordinance, which is incorporated by this reference.

Section 4. The District Urban Growth Boundary, as adopted by Ordinance No. 79-77, is hereby amended as shown in Exhibit A of this Ordinance, which is incorporated by this reference.

Section 5. Parties to Contested Case No. 90-1 may appeal this Ordinance under Metro Code Section 2.05.050 and ORS Ch. 197

ADOPTED by the Council of the Metropolitan Service District this 13th day of June, 1991.

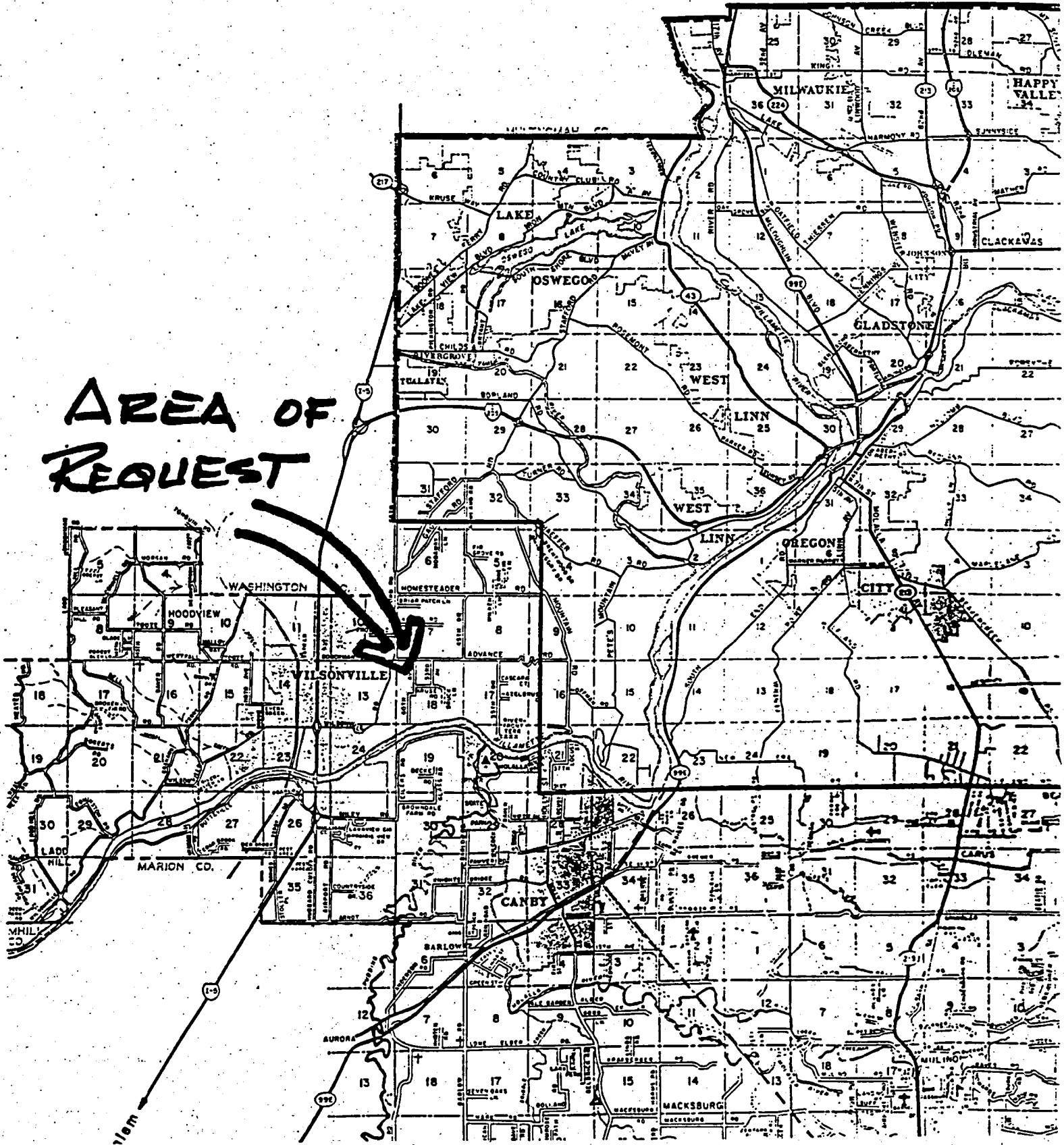

Tanya Collier, Presiding Officer

ATTEST:


Clerk of the Council

ES/es
5/20/91
pa
6/5/91

AREA OF
REQUEST



3-05

R.R.F.F.- 5

STAFFORD MARKET
SW
AMERICAN

94.42 Ac.

700
0.43 Ac.
800
0.60 Ac.

900
0.21 Ac.

LOT 43.82

601
29.25 Ac.
27480

1000
0.42 Ac.
27520

1101
60.00 Ac.

G.A.D.

LOT 43.72

1200
4.00 Ac.
6351

**PROPOSED UGE
AMENDMENT**

ROAD

ROAD

ADVANCE

TRAIL ACRES

RA-1
3-5 du/
acre

2100
4.84 Ac.
6360

2000
19.44 Ac.

G.A.D.

LOT 43.78

2001
2.00 Ac.
28335

2300
3.60 Ac.

2400
10.98 Ac.

EASEMENT 16 COR.

200
3.60 Ac.

300
21.00 Ac.

2500
5.22 Ac.

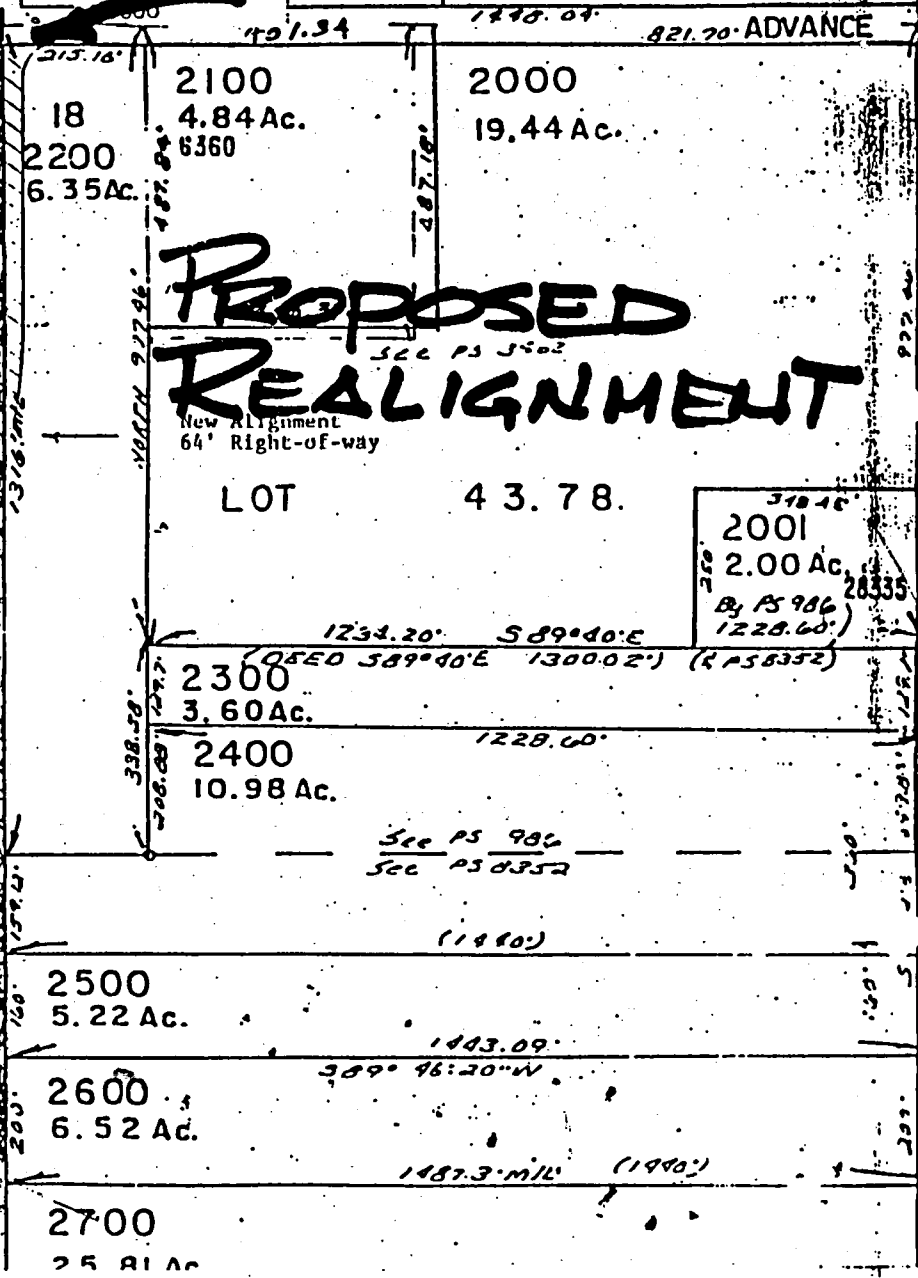
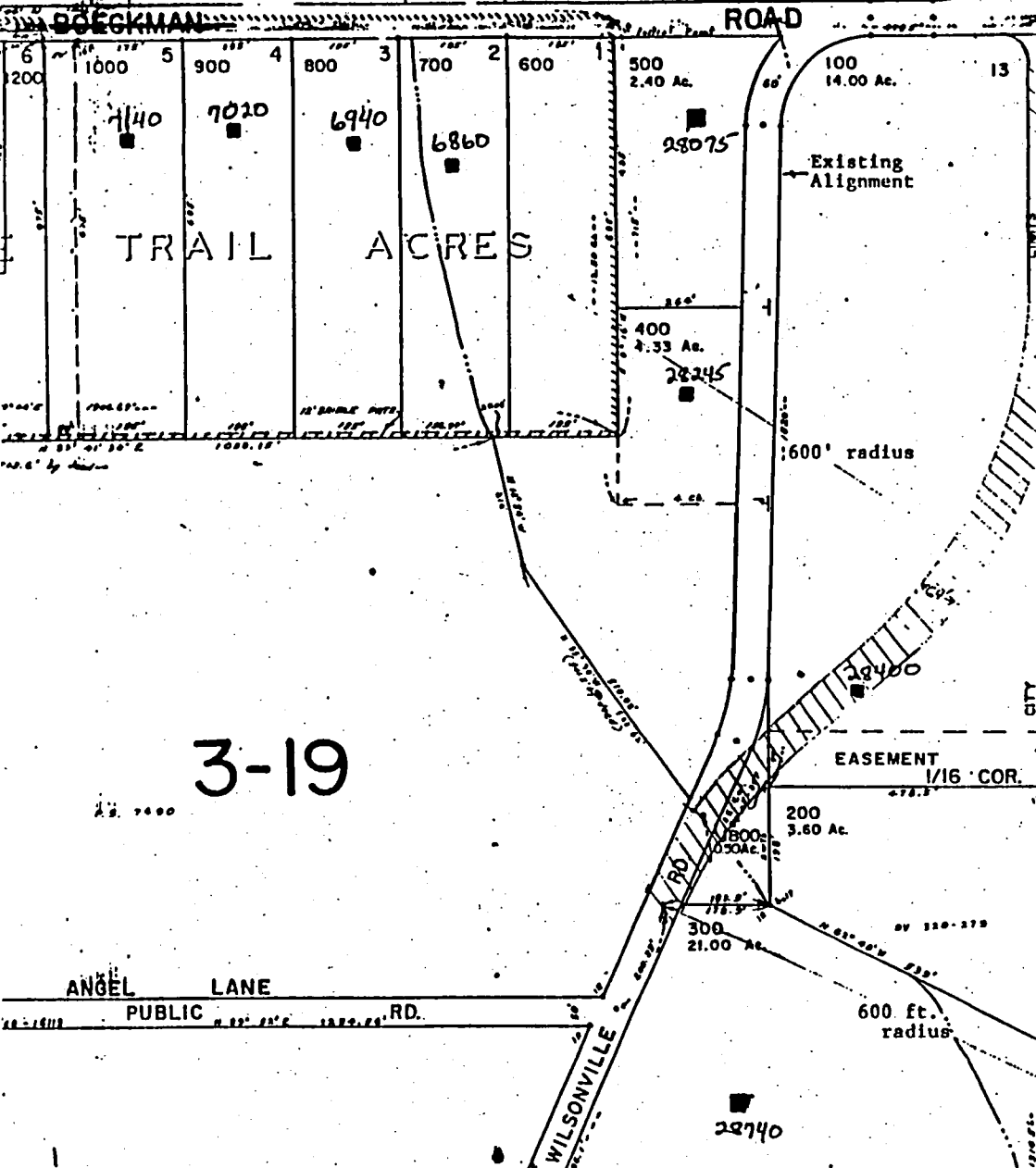
2600
6.52 Ac.

3-19

ANGEL LANE
PUBLIC RD

D D D

U.G.B.



3-19

BEFORE THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT

In the matter of the petition of Marvin and Bonnie Wagner to amend the Urban Growth Boundary to add 6.35 acres to the urban area north of Wilsonville in Clackamas County) Contested Case No. 90-01) HEARINGS OFFICER) REPORT &) RECOMMENDATION

I. Nature and Summary of the Issues

Petitioners propose to add 6.35 acres (the "Subject Property") to the Urban Growth Boundary (UGB) north of and adjoining Wilsonville in Clackamas County. Petitioners also own 17.6 acres already in the UGB adjoining the Subject Property. Petitioners propose to include the Subject Property in the UGB to facilitate development of their property and to facilitate dedication of a realigned right of way for Wilsonville Road.

The majority of the road realignment will occur on land already in the UGB. However, a roughly 800-foot long half-width section of the road is planned on the northwest part of the Subject Property outside the UGB on land zoned for exclusive farm use.

One issue in this case is whether the petitioners can dedicate the half-width right of way for realigned Wilsonville Road if the petition is denied. If the right of way can be dedicated for the road outside the UGB, or if the road can be built on land already inside the UGB, then the petition should be denied, because it does not result in an improvement in urban service efficiency to land already inside the UGB.

Petitioners argued they cannot dedicate right of way on land zoned GAD based on state law. No one else addressed the issue. Metro Counsel should advise the Council regarding this issue. Given the record, the hearings officer concludes that the petitioners cannot create a parcel necessary to dedicate right of way from land zoned for exclusive farm use.

If the right of way cannot be dedicated without granting the petition, then granting the petition facilitates the substantial public service efficiency represented by the realigned road, and it should be approved if it complies with other criteria for a Locational Adjustment, because granting the petition is a necessary first step to dedication of the right of way.

Another issue is whether the Council can and should treat the "right of way" and "remainder" portions of the Subject Property differently. The half-width right of way for realigned Wilsonville Road on the Subject Property is referred to as the "right of way" portion. The rest of the Subject Property is referred to as the "remainder" portion.

Metro Code (MC) Section 3.01.070 allows the Council to approve a petition in whole or in part; therefore, the two portions of the Property can be considered and acted on separately. Whether the Council should consider them separately is discretionary and not dictated by clear and objective standards. In acting on UGB Locational Adjustment cases in the past, the Council has not considered parts of a property separately.

Findings adopted in support the rules for Locational Adjustments in the Metro Code provide that, if including a parcel containing 10 acres or less in the UGB results in any benefit to land already in the UGB, then the petition complies with the efficiency standard of MC section 3.01.040(a)(1) for the whole parcel. This suggests that a parcel containing 10 acres or less should be considered as a unit at least for purposes of MC section 3.01.040(a)(1).

If the Subject Property is treated as a unit, then the merits of the road realignment warrant finding that the all of the Property complies with MC section 3.01.040(a)(1).

If the "right of way" and "remainder" portions of the Subject Property are treated separately, the hearings officer concludes that only the "right of way" portion fulfills the increased service efficiency standard of MC section 3.01.040(a)(1). Inclusion of the "remainder" portion of the property does not increase the efficiency of public facilities.

The hearings officer also concludes that including the "remainder" portion is not necessary for urbanization of or for delivery of public services to land inside the UGB, and that it increases the potential incompatibility between urban uses on the Subject Property and nearby agricultural activities, and therefore violates MC section 3.01.040(a)(4) and (5), respectively.

Given the past practice of the Council of considering a locational adjustment parcel as a single unit, the finding adopted in support of the rules noted above, and the circumstances of the case, including the relatively small size of the Subject Property, the buffer provided by the natural feature on the "remainder" portion, and the residential land use east of the north part of the Property, the hearings officer recommends that the Subject Property be considered as a unit.

The hearings officer recommends the UGB be amended to include the Subject Property, because dedication and improvement of the road increases the efficiency of road services for land already within the UGB, that increased efficiency cannot be accomplished without use of agricultural lands, including the Subject Property will not cause significant environmental, energy, social or economic impacts, and urban use of the Subject Property will be compatible with nearby agricultural activities.

However, so that the Council can evaluate the merits of treating the Subject Property as a unit versus treating each portion separately, the Report and Recommendation provides findings for both approaches. That way, the Council can draw its own conclusions about how the property should be treated.

II. Procedures and Record

A. History, Proceedings, and Comments from affected jurisdictions.

1. On or about June 28, 1990, Richard Whitman filed a petition for a Locational Adjustment for Parcel 2200 in Township 3 South, Range 1 East, WM, Clackamas County (the "Subject Property") on behalf of its owners, Marvin and Bonnie Wagner. See Exhibits 4 and 5.

2. On or about August 27, 1990, the hearings officer sent notices by certified mail to owners of land within 250 feet of the Subject Property, the petitioners, the City of Wilsonville, Clackamas County, and the Far West Citizens Planning Organization (CPO) that a hearing would be held September 25 regarding the petition. The notices and certificates of mailing are included as Exhibits 2 and 3. A notice of the hearing also was published in *The Oregonian* on or before September 5.

3. On September 25, 1990, from 2:30 pm until about 4:30 pm, the hearings officer held a public hearing at the Wilsonville City Hall. Nine witnesses testified in person about the petition. The hearing was recorded on audio tape. Two witnesses testified in writing. See Exhibits 18 and 19.

4. After the September 25 hearing, the hearings officer left the record open for 3 days to allow William Ciz to submit written testimony and for an additional 3 working days for submission of a response from the petitioner. See Exhibits 25 and 26.

5. On November 1, 1990, the hearings officer filed with the Council this Report and Recommendation.

B. Written record. The following documents are part of the record in this matter. The hearings officer also takes official notice of relevant provisions of the comprehensive plans and land development ordinances of the City of Wilsonville and Clackamas County.

<u>Exhibit No.</u>	<u>Subject matter</u>
1	Memorandum from Seltzer to Epstein dated 8/20/90
2	Notice of public hearing and map of the Subject Property
3	Certificates of mailing of notice of hearing
4	Letter from Seltzer to Whitman dated 6/28/90
5	Petition for Locational Adjustment
6	Notice of Proposed Action to DLCD
7 A-D	Requests for comment from Clackamas County Sheriff, West Linn School District, Tualatin Valley Fire and Rescue District, and Clackamas County
8	Comment from Tualatin Rural Fire Protection District
9	Comment from West Linn School District
10	Letter from Whitman to Sorenson dated 6/22/90
11	Letter from Whitman to Seltzer with attachments (PMALGBC forms)
12	Letter from Whitman to Seltzer dated 9/5/90
13	Letter from Starner (Wilsonville) to Seltzer dated 9/4/90
14	Letter from Bruck to Wagner dated 9/4/90
15	Letter from Cook (Clackamas County) to Seltzer with attachments
16	Clackamas County Board Order 90-806
17	Wilsonville Resolution 778
18	Letter from Beck to Epstein dated 9/25/90
19	Letter from Connolly to Epstein dated 9/24/90
20	Letter from Van Lente (Far West CPO) to Epstein dated 9/25/90
21	Soil Survey for Clackamas County Area (excerpt)
22	Petition in support of application and attached map
23	Letter from Wagner to Connolly dated 9/19/90
24	Map showing existing and proposed orchard and rights of way
25	Letter from Ciz to Epstein dated 9/27/90
26	Letter from Whitman to Epstein dated 10/3/90
27	Profiles of Commercial Agriculture (excerpt)

C. Responses from service providers and affected jurisdictions.

1. The Subject Property is in the Tualatin Valley Fire and Rescue District and West Linn School District 3J. Both districts filed a written comment recommending approval of the petition. See Exhibits 8 and 9.

2. The Subject Property is in unincorporated Clackamas County. The County Commissioners adopted a Board Order recommending approval of the Locational Adjustment only to the extent the land included in the UGB will be included in a realigned right of way for Wilsonville Road. See Exhibit 16. The County did not make an express recommendation regarding that portion of the Subject Property that is not needed for the realigned right of way of Wilsonville Road. However, the Board Order includes the following findings:

... It further appearing to the Board it is not necessary to include the entirety of the parcel within the Urban Growth Boundary in order to incorporate the road realignment, and

... It further appearing to the Board the County Comprehensive Plan allows agricultural land be designated urban only after considering retention of that agricultural land, and it appears the request to include all the property in the Urban Growth Boundary is not supported by County Comprehensive Plan policies to retain agricultural lands...

3. The Subject Property adjoins the City of Wilsonville. The City Council adopted a resolution recommending approval of the petition. See Exhibit 17.

III. Basic Findings About the Subject Property and the Surrounding Area

A. Location. The Subject Property is situated south of and adjoining Boeckman/Advance Road, east of the southerly extension of Stafford Road, and about 475 feet east of Wilsonville Road. The west edge of the site adjoins the UGB and the city limits of Wilsonville in Clackamas County. See the map included in Exhibit 2.

B. Legal description. The legal description of the Subject Property is Tax Lot 2200, Township 3 South, Range 1 East, WM, Clackamas County.

C. Size and shape. The Subject Property is a rectangle about 215 feet wide (east-west) and 1316 feet deep (north-south) and contains about 6.35 acres.

D. Existing and proposed uses.

1. The subject property is used predominantly for an agricultural purpose in conjunction with the adjoining 17.6-acres to the west. Based on Exhibit 24, the Subject Property contains about 253 filbert trees on the northwesterly 3.6 acres of the property. The southeasterly 2.75 acres of the Subject Property is not developed; it contains native vegetation and a seasonal drainageway.

2. The petitioner intends to annex the Subject Property to Wilsonville (see Exhibit 11) and to apply for an appropriate Comprehensive Plan amendment and zone change to an urban designation and a residential zone. If the annexation, plan amendment and zone change are approved, the petitioner plans to:

a. Dedicate the northwesterly 1 acre of the Subject Property for a realignment of Wilsonville Road consistent with City development requirements,

b. Develop about 2.75 acres of the Property for dwellings together with the adjoining 17.6 acres owned by petitioners inside the UGB (TL 1800 and 200), and

c. Establish 2+ acres of the Property as an open space and drainage tract.

3. The residential density that would be permitted on the area dedicated for road and open space purposes will be transferred to the remainder of the petitioner's land (TL 1800 and 200 and the developable portion of TL 2200). If TL 2200 has the same zoning as adjoining land in the UGB, it could be developed for up to 31 dwelling units. Storm water from all three parcels would be discharged to the drainageway on the Subject Property. The petitioner did not submit more detailed plans for the proposed development.

E. Surrounding land uses, designations, and zoning.

1. The 14-acre parcel west of the Subject Property (TL 1800) and the 3.6-acre parcel to the southwest (TL 200) also are owned by the petitioners. Unlike the Subject Property, the parcels to the west are inside the Urban Growth Boundary and the City of Wilsonville. The parcel to the west contains the petitioners' home; both parcels contain filbert trees that are part of the orchard that includes the trees on the Subject Property. The properties are designated Residential on the Wilsonville Comprehensive Plan Map and are zoned RA-1 (Residential-Agriculture, 3 to 5 dwellings per acre). The property inside the UGB can be developed for up to 88 dwelling units, based on existing zoning.

2. Land south, east, northeast, and north of the Subject Property is designated Agricultural and zoned GAD (General Agricultural District) by the Clackamas County. Land to the south and southeast is used for nursery stock. Directly east of the north part of the Subject Property is a single family home on a 4+ acre parcel. Farther east are tilled fields and pasture. Land to the north across Boeckman/Advance Road is used for a tree farm.

3. Land northwest of the site is designated Rural on the County Comprehensive Plan Map and is zoned RRFF5 (Rural Residential/Farm and Forest 5 acres). That land is used predominantly for rural residential development and small scale farming and animal husbandry.

F. Public facilities and services.

1. Sewer and water.

a. The Subject Property is not served by a private well or sanitation system or public water system or sewer. The nearest water and sewer lines are situated about 800 feet southwest of the Subject Property in the Wilsonville Road right of way south of the stream at the southwest corner of Tax Lot 1800.

b. Tax Lots 1800, 400, and 500 --- inside the Wilsonville city limits and the UGB --- also are not served by public water or sewer. To provide water and sewer to those properties and to the Subject Property, the City would have to extend lines across the stream at the southwest corner of Tax Lot 1800.

c. Water and sewer lines extended as part of recent development in the City southwest of the Subject Property were sized to accommodate service to all properties in the urban area, based on testimony from City Engineer Richard Drinkwater. Mr. Drinkwater concluded the incremental impact of service to these properties on capital facilities of the City is negligible, although the system would not accommodate further expansion to the north, and, at some undetermined time, the City will have to expand its capital facilities to provide sewer service to all developable land in the City.

2. Storm water drainage.

a. The Subject Property is not served by an improved public storm water drainage system. There is a roadside ditch along Boeckman/Advance Road at the north edge of the property. Also a natural drainage channel that enters the Subject Property near its northeast corner and extends southwest diagonally through the Subject Property to its southwest corner before continuing off-site to merge with a drainageway south of TL 200.

b. The City has not prepared a storm drainage master plan for the area that includes the Subject Property or adjoining urban land to the west. City policies promote use of natural drainageways. The City urban renewal plan provides that storm drainage is to be provided as part of the Wilsonville Road realignment project. See Exhibit 26.

3. Roads and transit access.

a. The north edge of the Subject Property adjoins Advance/Boeckman Road. That road is identified as a collector street on the Wilsonville Master Street System Plan. It has a 20-foot paved section between gravel shoulders and drainage ditches.

b. Stafford Road terminates at a 90° intersection with Boeckman/Advance Road at the northwest corner of the Subject Property. It is identified as an arterial road. It has a 20-foot paved section between gravel shoulders and drainage ditches.

c. Wilsonville Road is about 475 feet west of the Subject Property. It is designated as an arterial road on the Wilsonville Master Street System Plan. It has a 90° intersection with Boeckman/Advance Road. It has a 20-foot paved section between gravel shoulders and drainage ditches adjoining TL 1800 and 200, but has been improved to full urban standards adjoining recent development further south.

(1) There have been 5 vehicle accidents at the intersections of Wilsonville and Boeckman Roads and of Stafford and Boeckman Roads in the last three years, based on a summary by the petitioner of accident statistics from the sheriff's office.

(2) Wilsonville Road is to be realigned so the centerline of the road aligns with the centerline of Stafford Road. The realigned right of way will extend south and southwest to intersect with existing Wilsonville Road near the southwest corner of Tax Lot 1800. It will roughly split Tax Lot 1800 into two equal pieces and will require removal of the existing dwelling and much of the filbert orchard on that lot. The right of way for realigned Wilsonville Road will be 64 feet wide with 6-foot wide permanent easements on both sides, based on testimony from City Engineer Richard Drinkwater. The existing right of way of Wilsonville Road may be vacated once the road is relocated; however, at least a portion of the road is likely to continue to be used for access to TL 400 on the west side of the road because it will not adjoin relocated Wilsonville Road.

(3) The City of Wilsonville will require the petitioner to dedicate the realigned Wilsonville Road right of way through TL 1800 as a condition of approval of development permits for TL 1800 and 200 west of the Subject Property. See Exhibit 13. The City also will require the petitioner to improve the street before occupancy of structures on the Subject Property, such as by making the improvement, participating in a local improvement district (LID), or including the project in the City's Urban Renewal District with financing provided by tax increment revenue.

d. The Subject Property is not within one-quarter mile of a transit corridor designated by Metro.

G. Soil, slope and natural features.

1. The Subject Property contains predominantly Aloha Silt Loam soils on slopes of 0 to 6%, based on the SCS Soil Survey of Clackamas County. This soil has a agricultural capability class of Class II. The soil survey map is at a scale that makes it difficult to state precisely the area of the site with this soil, but it appears that about 2/3 of the site or about 4 acres is this type of soil. It is found on the north and west portions of the Subject Property.

2. The seasonal drainage channel on the Subject Property contains Xerochrepts and Haploxerols soil on slopes of 20% or more, based on the SCS map. This soil has an agricultural capacity class of Class VIIe. The site contains a little more than 2 acres of this soil type. Petitioners' attorney testified 2.8 acres of the site contains this soil, but there is no precise quantification in the record. Based on an inspection of the site, little of the Xerochrepts and Haploxerols soils are sloped more than 20%, particularly at the north end of the drainage channel. A topographic survey is needed to determine slopes precisely.

3. The predominant natural feature on the site is the seasonal drainageway that extends from near the northeast corner of the Subject Property to the south edge of the property, from which point it continues south. The drainageway was dry during site inspection. The banks of the drainageway are covered in predominantly deciduous trees and shrubs. The remainder of the Subject Property does not contain significant natural features; most native vegetation was removed to enable farming of the site.

H. Relevant Comprehensive and Urban Renewal plan designations, policies, & zoning.

1. The Subject Property is designated Agricultural on the Clackamas County comprehensive plan map and is zoned GAD (General Agricultural District). The Subject Property is not in an area approved as an exception to Goal 3 (Agriculture).

2. The Wilsonville Comprehensive Plan does not designate the Subject Property. However, the Master Street System and Function Classification Map in the City Plan provides conceptually that Wilsonville Road is to be realigned to extend northeast across TL 1800 west of the Subject Property and along the north part of the west edge of the Subject Property so the centerlines of Wilsonville Road and Stafford Road align. This will eliminate a "jog" created by two 90° turns in a 1/10-mile section of road where Wilsonville Road and Stafford Road now join. The Clackamas County Plan also provides for realignment of Wilsonville Road (Transportation Element 32 and Map V-9).

a. A final design for the Wilsonville Road realignment has not been prepared by the City. The City has considered several scenarios for realigning the road, including one or more that do not use land outside the UGB. If the final road plan differs from the conceptual plan in the comprehensive plan, the City may need to amend the plan.

3. The Wilsonville Comprehensive Plan does not require the City to provide funds to acquire and develop the right of way for the Wilsonville Road realignment per se. Policies 3.3.1, 3.3.3 and 3.3.5 of the Plan provide in relevant part:

The Street System Master Plan has been designed to meet projected year 2000 traffic volumes. It specifies the design standard for each arterial and major collector street. The conceptual location of proposed new major streets are also identified. However, actual alignments may vary from the conceptual alignments based on detailed engineering specifications and design considerations, provided that the intended function of the street is not altered...

... Dedication of adequate right of way, as established in the Street System Master Plan, or as otherwise approved by the Planning Commission, shall be required prior to actual site development...

The City shall assume the responsibility to plan, schedule, and coordinate all street improvements through a Capital Improvements Plan...

4. The Wilsonville Urban Renewal Plan includes the realignment of Wilsonville Road as a project. The Urban Renewal District does not extend beyond the city limits; therefore, the project does not involve the Subject Property. If the Subject Property is not involved in the project, only a half-width dedication and improvement would be made at the north end of the road realignment. The project includes associated storm drainage, water, and sewer system development. The Urban Renewal Plan for the City has yet to be adopted, and is scheduled for an advisory vote in November, 1990. Costs of the Wilsonville Road realignment project are listed below:

Construction	\$496,000
Property acquisition	\$100,000
Engineering and legal fees	<u>\$189,400</u>
Total	\$785,400

5. Wilsonville Zoning Ordinance section 4.167(f) requires, prior to issuance of a building permit or recording of a final plat, an applicant to dedicate right of way in accord with the Street System Master Plan and to file a waiver of remonstrance against formation of a local improvement district. It also requires a minimum setback of 55 feet from the centerline of a street or 25 feet from the edge of the right of way whichever is greater.

6. Regarding storm water management, the City Plan provides the following in Policies 3.4.3 and 3.4.4 in relevant part:

Major natural drainageways shall be established as the backbone of the drainage system and designated as open space. The integrity of these drainageways shall be maintained as development occurs... Developers shall be required to retain and protect existing vegetation in steeply sloped (15 percent or above) and landslide prone areas to decrease the amount of surface runoff, to preserve areas of natural percolation and help stabilize landslide prone areas...

7. Section 402 of the Clackamas County Zoning and Development Ordinance (ZDO) contains the regulations for the GAD zone. That section does not allow roads or drainage utilities as a principal use. However, "utility facilities necessary for public services" and "public and private conservation areas and structures for the conservation of water, soil, forest, or wildlife habitat or resources" are permitted as nonfarm uses following a public hearing and compliance with certain approval criteria.

8. Clackamas County Comprehensive Plan Map V-15 provides for a bicycle path along Wilsonville Road. The Pathways Master Plan and Policies 3.3.11 and 3.3.12 of the Wilsonville Comprehensive Plan also provide for development of a bicycle path along Wilsonville Road. Policy 3.3.12 provides in relevant part:

... When land is developed which includes a designated pathway, appropriate dedication of right of way or easements shall be required. In cases where the proposed development will substantially increase the need for the path, construction also may be required prior to occupancy...

Policy 3.3.13 provides that pathways shall be completely separated from vehicular traffic, unless physical barriers or interim phasing warrant creation of a pathway that is merely delineated by pavement markings, curbs, or bumper blocks or that shares traffic right of way with motor vehicles.

9. Wilsonville Zoning Ordinance section 4.136(5) provides for density transfers:

When calculating the density of a planned development, the total area shall include the area of the proposed development, including streets, dedications, and mapped open space designated in the Comprehensive Plan up to 10% of the total land area.

10. Wilsonville Zoning Ordinance section 4.161(5) protects stream corridors. The width of the protected area along a stream varies with the classification of the stream. Along a "major drainageway," the minimum buffer is 20 feet from the channel bottom centerline plus 1 additional foot for each percent of bank slope greater than 12%. Along a "minor drainageway," the minimum buffer is 10 feet from the channel bottom centerline plus 1 additional foot for each percent of bank slope greater than 12%. Along a "seasonal drainageway," the minimum buffer is 10 feet from the channel bottom centerline. Based on the record, the City would classify the drainageway on the Subject Property as seasonal.

IV. Applicable Approval Criteria for Location Adjustment

A. Background.

1. The UGB is intended to accommodate urban growth through the year 2000. It can be changed in two ways. One method involves Major Amendments, which generally involves a change of more than 50 acres in the UGB.

2. The other way to change the UGB is called a Locational Adjustment. Metro Ordinance No. 81-105 provides that a Locational Adjustment may be warranted where a patent mistake was made when the UGB was drawn, where the addition uniquely facilitates development of land already in the UGB, where the addition of two acres or less would make the UGB coterminous with property lines, or where other conditions warrant the addition based on standards in that ordinance, codified in Metro Code Chapter 3.01.

a. Need for more urban land is not relevant to a Locational Adjustment.

b. A Locational Adjustment cannot add more than 50 acres to the UGB. To prevent contiguous, incremental amendments from exceeding the 50 acre maximum, a Locational Adjustment cannot add more than 50 acres including all similarly situated land.

c. It is assumed that a change of 50 acre in the region would not affect the efficiency of major public facilities, considering the population and area for which major public facilities are designed. But, all land in the UGB is intended to be developed for urban uses. If 50 acres is added to one part of the UGB, it could supplant use of a comparable size area or combination of areas elsewhere in the UGB. This could affect the efficiency of public services and increase energy consumption and pollution from travel in the region. That is, there would be costs and potential service inefficiencies, because public facilities would be available to serve land in the UGB that would not be developed and because there would be costs to serve the land that is added to the UGB.

d. To ensure the effect of adding land to the UGB is warranted despite the potential service inefficiencies elsewhere in the region, Ordinance 81-105 requires Metro to consider whether the addition of a given area to the UGB would increase the efficiency of public services and facilitate development inside the existing UGB. If so, then the benefit from adding the land can outweigh the cost that may accrue from not developing a comparable area inside the UGB.

e. The larger the size of the area to be added, the greater the cost that may accrue from not developing a comparable area inside the UGB. The cost of leaving a 10 acre or smaller parcel inside the UGB vacant is so small that it is not significant if, as a result of adding a comparable size area to the UGB, any benefit accrues to land in the UGB abutting the land to be added. For Locational Adjustments involving more than 10 acres, a net benefit should result to the area inside the UGB. The larger the area involved, the greater the benefit required.

f. Statewide Planning Goal 3 (Agriculture) is intended to protect agricultural land. The UGB is one way to fulfill that goal by clearly delineating urban and nonurban areas. The Locational Adjustment standards reflect this priority by allowing agricultural land to be included in the UGB only under compelling circumstances.

B. Locational Adjustment standards. The relevant standards for addition of land to the UGB, contained in Metro Code Section 3.01.040(a), are as follows.

(a) As required by subsections (b) through (d) of this section, Locational Adjustments shall be consistent with the following factors:

(1) *Orderly and economic provisions of public facilities and services.* A Locational Adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and school in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion.

(2) *Maximum efficiency of land uses.* Considerations shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

(3) *Environmental, energy, environmental and social consequences.* Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.

(4) *Retention of agricultural land.* When a petition includes land with Class I-IV soils that is not irrevocably committed to non-farm use, the petition shall not be approved unless it is factually demonstrated that:

- Retention of the agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

- Retention of the agricultural land would prevent the efficient and economical provision of urban services to an adjacent area inside the UGB.

(5) *Compatibility of proposed urban uses with nearby agricultural activities.* When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility...

(d) Petitions to add land to the UGB may be approved under the following conditions:

(1) An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions of this subsection if the adjustment will add a total of two acres or less, the adjustment would not be clearly inconsistent with any other factors in subsection (a), and the adjustment includes all contiguous lots divided by the existing UGB.

(2) For all other additions, the proposed UGB must be superior to the UGB as presently located based on consideration of the factors on subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).

V. Arguments in Support of the Petition

A. In summary, petitioners make the following major arguments in favor of the Locational Adjustment:

1. Development of the 17.6 acres owned by petitioners inside the UGB and 4.83 other acres inside the UGB is impossible without dedication and improvement of the realigned Wilsonville Road, including that portion of the realigned right of way now outside the UGB, because traffic in the area exceeds the capacity of Wilsonville Road until the road is realigned, and dedication of the right of way and improvement of the roadway is not possible unless the area needed for the road is included in the UGB and annexed to the City.

a. The City should not, and perhaps cannot, annex land outside the UGB or include such land in the Urban Renewal District.

b. Petitioners cannot dedicate right of way for realignment of Wilsonville Road outside the UGB without violating ORS 215.213(2).

(1) ORS 215.213(2) and 215.296 allow construction of public roads and highways in an agricultural zone (such as GAD) if it does not create a new parcel or force a significant change in accepted farm practices on surrounding land devoted to farm use or significantly increase the cost of accepted farming practices.

(a) Under ORS 215.010(1), a "parcel" is created on agricultural land by partition or by deed. The right of way for the realignment would be acquired by partition and deed pursuant to Clackamas County regulations. Therefore, dedication of the right of way (by granting a deed) on land zoned GAD would violate ORS 215.213(2). One way around this prohibition is for the County to acquire all of the Subject Property. This would substantially increase land acquisition costs, if the County purchases the property for the road realignment.

(b) If 1 acre of the Subject Property is used for a road, and 2.75 acres of the Subject Property is not suitable for agriculture because it is part of the drainageway, then only about 3 acres of the Subject Property could be used for agriculture. Such a small area of land cannot be used practicably for agriculture without forcing a significant change in or significantly increasing the cost of accepted farming practices.

2. Petitioners cannot discharge storm water from land in the UGB to the drainageway on the Subject Property outside the UGB, because the Clackamas County GAD zone does not allow urban level utility facilities. Therefore, petitioners would have to build a new 1700-foot long storm sewer at a cost of \$200,000 to accommodate storm water from land now within the UGB.

3. Petitioners could not build a bicycle path on the east side of the realigned Wilsonville Road, because the Clackamas County GAD zone does not allow urban level utility facilities. Therefore, the path would have to be located on the west side of the road, requiring the path to cross the road at its south end.

4. If the road realignment cannot be financed by Urban Renewal tax increment funds, then it will fall on the petitioners to build it. This would cause an onerous financial impact on petitioners, and would prevent or delay urbanization of the petitioners' land already in the UGB.

5. Including the Subject Property in the UGB will increase the efficiencies of scale for the petitioners by increasing the number of dwelling units that can be built on petitioners' property. This will reduce the incremental cost per unit of development, including costs of extending public water, sewer and roads. Because including the Subject Property increases the permitted number of dwelling units on petitioners' property by about 35%, (31 units allowed on Subject Property + 88 units allowed on land already in UGB), the cost per unit of infrastructure improvements is reduced an equivalent amount. Also, if the subject 6.35 acres is added to the UGB, then the area of land inside the UGB that needs public water and sewer services is increased by about 25% (6.35 + 24.83 acres = 25%). This, too, reduces the per unit service delivery cost an equivalent amount and results in more efficient service delivery.

6. The impact of the road realignment on petitioners' property inside the UGB — it splits the property in half with a curvilinear road creating two triangular parcels — makes it more difficult to design a practicable housing complex. Including the Subject Property in the UGB will offset in part the negative effects of the road relocation on the petitioners' property by increasing the number of units on that property and by providing a larger buildable area on the east side of the realigned road.

7. Pursuant to the City comprehensive plan and development codes, the easterly 2.75 acres of the Subject Property will be preserved as an open space and drainage tract. This provides a buffer between urban development on petitioners' property and adjoining agricultural uses to the east and southeast. More than 45 residents of the area signed a petition supporting the Locational Adjustment, showing that they believe the adjustment will not adversely affect their agriculture activities. Petitioners also agreed to execute a covenant waiving rights to object to lawful agricultural practices on adjoining land. Taken altogether, this shows urban development on the Subject Property will not adversely affect agricultural uses in the area.

8. Granting the petition enables Wilsonville Road to be developed by the City sooner than it would be by the County and enables the road and adjoining development to be subject to one set of standards.

VI. Findings Applying Approval Criteria to the Facts of the Case

In applying the approval criteria to the facts of the case, it is useful to distinguish the merits of including that portion of the Subject Property that will be dedicated for the Wilsonville Road realignment (the "right of way portion") from the merits of including the rest of the Subject Property in the UGB (the "remainder portion").

A. Orderly and economic provision of and net improvement in efficiency of public facilities and services (§ 3.01.040(a)(1)).

1. Water and sewer.

a. Water and sewer can be provided to the Subject Property by extending a line from the public water and sewer lines that will be built in the realigned Wilsonville Road right of way. It would be orderly and economic to serve the Subject Property with water and sewer service once Wilsonville Road is realigned and associated infrastructure improvements are made. Realignment and improvements will be made as a condition of approval of development of petitioners' land already in the UGB. Therefore, the Subject Property can be served by public water and sewer systems in a timely and orderly manner.

b. Including the "right of way portion" of the Subject Property in the UGB increases the City's options about where to locate the water and sewer lines. That is, if the right of way portion is included in the UGB, then the water and sewer lines can be placed anywhere in the right of way. However, the City could locate the water or sewer lines in the right of way to be dedicated from land already in the UGB. Therefore, the Locational Adjustment is not necessary to provide water or sewer service to land already in the UGB. Including the right of way portion of the Subject Property to the UGB does not affect the construction or operating cost of the water or sewer line. Therefore, including the "right of way portion" of the Subject Property to the UGB has no net effect on the provision or efficiency of water or sewer service.

c. Including the "remainder portion" of the Subject Property in the UGB is not necessary to provide water or sewer service to land already in the UGB, because water and sewer lines will not cross the Subject Property to serve land already in the UGB. Including the "remainder portion" of the Subject Property to the UGB potentially increases the number of dwelling units served by the water and sewer systems, marginally increasing service efficiency by having the system serve more dwelling units and reducing per unit service costs by spreading those costs over more users. However, such a result by itself cannot result in a net improvement service efficiency for purposes of the Locational Adjustment standards, or else every petition would have to be approved on that basis. The service cost reductions per unit will be offset by higher gross construction cost. Therefore, including the "remainder portion" of the Subject Property in the UGB has no net effect on water or sewer system service efficiency in the UGB.

d. To the extent including both portions of the Subject Property in the UGB expedites development of all of petitioners' land, it also expedites water and sewer system improvements associated with realignment of Wilsonville Road and expedites delivery of water and sewer services to land already in the UGB that do not have those services, including TL 1800 and 400. However, water and sewer service to land already in the UGB is physically practicable without including either portion of the Subject Property in the UGB. Also, water and sewer service can be provided to land in the UGB when petitioners' land already in the UGB is developed. Therefore, including both portions of the Subject Property in the UGB has no effect on water or sewer system service efficiency in the UGB.

2. Roads and transportation.

a. If the Subject Property is included in the UGB, it can have vehicular access to realigned Wilsonville Road and to Boeckman/Advance Road. Therefore, the Subject property can be served by roads in an orderly and efficient manner.

b. Property already in the UGB can be served by Wilsonville Road. However, the permitted use of land already in the UGB may be constrained by the capacity of Wilsonville Road, because its route and level of improvements. If the road is realigned and improved, then full use of adjoining urban land would be permitted.

c. Wilsonville Road is required to be realigned and improved before urban use of the petitioners' property already in the UGB.

(1) Petitioners argue ORS 215.213(2) and 215.296 preclude dedication of the right of way outside the UGB, because such a dedication results in creation of a "parcel" and would force a significant change in accepted farm practices on adjoining farm land.

(2) Given the limited record regarding this issue, the hearings officer agrees with petitioners that dedication of a portion of the Subject Property for the road would violate ORS 215.213(2), because dedication of right of way from the Subject Property results in creation of a parcel as defined by state law. Therefore, including the "right of way portion" of the Subject Property results in more efficient delivery of road services that benefit land already inside the UGB. The hearings officer notes, an argument could be made that state law was not intended to treat a right of way as a parcel and that dedication of the right of way does not result in creation of an additional parcel; it merely adjusts the boundary between two existing parcels --- TL 1800 and TL 2200.

(3) However, dedication of the half-width right of way from the Subject Property would not violate ORS 215.296, because it would not force a significant change in accepted farming practices. It would reduce the farmable area of the Subject Property by one acre. It is not so much the dedication of the right of way from the Subject Property that makes farming the Subject Property problematic; it is the loss of the remainder of the filbert orchards on petitioners' property already inside the UGB. By developing their land already in the UGB, petitioners' eliminate most of their orchard. It is that development that has the most significant impact on the farm use potential of the Subject Property. Even if the right of way is not dedicated from the Subject Property, the Subject Property still is too small to be farmed by itself, given the drainageway on the property, based on Exhibits 14 and 27. Petitioners could dedicate right of way for the northeast half-width of realigned Wilsonville Road without violating ORS 215.296.

d. Including the "remainder portion" of the Subject Property in the UGB is not necessary to provide and does not facilitate access to other property inside the UGB. It makes it easier for petitioners to recover the cost of road improvements or reduces the per unit cost by allowing petitioners to build more units whose residents can be charged for the improvements. However, that does not result in more efficient delivery of urban services; only that it would be more economical to the petitioner if the petitioner ultimately builds the road. This sort of private economic benefit is not relevant to the Locational Adjustment. Therefore, including the "remainder portion" of the Subject Property in the UGB does not affect road system service efficiency in the UGB.

3. Police and Fire. Police and fire protection services can be provided to the Subject Property from existing or planned facilities in the vicinity, based on responses from service providers. Fire hydrants can be added as needed. Given the relatively small size and potential development of the Subject Property, no change in the efficiency of delivery of these services would follow from including the Subject Property in the UGB.

4. Schools. School services can be provided to the Subject Property from existing and planned facilities in the vicinity, based on responses from service providers. By including the Subject Property in the UGB and realigning Wilsonville Road, school-related traffic would benefit from improved road services.

5. Storm drainage.

a. The Subject Property can be served by storm drainage by discharging water into the drainageway on the property. Therefore, the property can be served by drainage facilities in a timely and orderly manner.

b. Including the "right of way" portion of the Subject Property in the UGB will make it possible for the realigned Wilsonville Road to contain complete storm drainage features. Therefore, including that portion of the property in the UGB results in a net improvement in the efficiency of the storm drainage system.

c. It is not necessary to include the "remainder portion" of the Subject Property in the UGB to provide drainage services for land already in the UGB. Petitioners' property already in the UGB can discharge water to the storm sewer scheduled to be built in the Wilsonville Road right of way, to the drainageway south of the TL 1800, or to the drainageway on the Subject Property.

(1) The hearings officer disagrees with petitioners' argument that storm water cannot be discharged from land inside the UGB to land outside the UGB, because such an activity is not listed as a permitted use in the GAD zone. Clackamas County could conclude the use of the drainageway for drainage does not rise to the level of a land use under the GAD zone or could grant a conditional use permit for the drainage features as a public utility.

(2) Including the "remainder portion" of the Subject Property in the UGB makes it easier to discharge storm water from the urban area to the drainageway, because a conditional use permit would not be necessary. It is not clear from the Rules for Locational Adjustments or from past actions pursuant to those rules whether administrative ease is intended to be a measure of service efficiency, however the hearings officer concludes administrative ease is not a measure of service efficiency.

(3) Given that drainage services can be provided to land inside the UGB without the "remainder portion," including that portion of the property in the UGB does not result in a net improvement in the efficiency of the storm drainage system.

B. Land use efficiency (§ 3.01.040(a)(2)).

1. Including the "right of way portion" of the Subject Property in the UGB is necessary to enable full development of a realigned Wilsonville Road and thus to enable full development of land already in the UGB. Therefore, including the "right of way portion" results in maximum efficiency of land uses in the urban area.

2. Including the "remainder portion" of the Subject Property in the UGB is not necessary to enable urban use of land already in the UGB and therefore does not affect the efficiency of land uses inside the UGB. Including the "remainder portion" of the Subject Property in the UGB does not provide access which otherwise does not exist to the adjoining property; it does not provide services which would not otherwise exist to the adjoining property; it does not remedy physical development limitations which exist on the adjacent urban property. The Subject Property and adjoining lands to the north, east, and south are developed for agricultural and rural residential uses consistent with their County Comprehensive Plan Map designation. The adjoining land to the west can be developed independent of the "remainder portion" of the Subject Property, consistent with their City Comprehensive Plan Map designation.

3. Including the "remainder portion" of the Subject Property in the UGB could facilitate development of the adjoining land to the west by allowing more dwelling units to be built on land in the UGB through density transfers --- the density allowed on land dedicated for roads and for open space could be transferred to the land already in the UGB. More efficient use of land in the UGB results if such density transfers occur. However, the density from the drainageway and road could be transferred onto the "remainder portion" of the Subject Property rather than onto land to the west. There is no means to assure that density from the undevelopable parts of the Subject Property would be transferred to land to the west.

4. Petitioners also argued the costs of development associated with property in the UGB can be spread over a larger area and more dwelling units if the "remainder portion" of the Subject Property is included in the UGB. However, private economic benefits due to potential cost-spreading are not relevant to a Locational Adjustment except to the extent they are shared by the public at large. In this case, including the "remainder portion" of the Subject Property does not result in cost savings to the public.

5. The curvilinear route of realigned Wilsonville Road makes development of TL 1800 more difficult, because of the long curved road frontage. Including the "remainder portion" of the Subject Property in the UGB would make it easier to develop part of TL 1800, because it could be combined with TL 1800 to create a larger and therefore more flexible developable area. To this extent, including the "remainder portion" of the Subject Property in the UGB facilitates more efficient use of land already in the UGB.

C. Environmental, energy, social and economic consequences (§ 3.01.040(a)(3)).

1. Including the Subject Property in the UGB will not have significant environmental, energy, or economic consequences, because of the relatively small size and development potential of the property. Physical development limitations presented by the drainageway on the property will be addressed pursuant to land development laws of the local governments; the Wilsonville Code requires protection of at least a 20-foot wide portion of the drainageway as an open space tract. The Locational Adjustment would not affect regional transportation corridors, because the site is so far from I-5.

2. Including the Subject Property in the UGB could have adverse social consequences if urban development on the property disrupts nearby agricultural uses and rural residences. Adverse consequences could include a perception that urban uses are extending into the agricultural area, reducing the certainty that agricultural uses will be protected from such intrusions, and encouraging speculation.

a. Including the "right of way portion" of the Subject Property will not cause adverse social consequences, because the road will buffer urban uses on land in the UGB from adjoining agricultural land to the northeast, and the "remainder portion" of the Property and the drainageway on the southeast portion of the Subject Property will buffer urban uses on land in the UGB from agricultural land to the southeast.

b. Including the "remainder portion" of the Subject Property will not cause adverse social consequences, because the drainageway on the southeast portion of the Subject Property will buffer urban uses from agricultural land to the southeast, and the limited developable area at the north end of the property and the existing home on land to the east of the north end of the property will minimize the potential for urban/farm conflicts.

D. Retention of agricultural land (§ 3.01.040(a)(4)).

1. The Subject Property contains Class VII soils based on Exhibit 21. The Locational Adjustment is subject to Section 3.01.040(a)(4), because the property also contains Class II soils, is designated and zoned for farm use by Clackamas County, and is not irrevocably committed to non-farm use.

2. Retention of the "right of way portion" of the Subject Property in agricultural use would preclude development of realigned Wilsonville Road to full width standards. Unless Wilsonville Road is developed to full urban standards, development of land already in the UGB could exceed the capacity of the road system. It is necessary to include the

"right of way portion" of the Property in the UGB to enable development of Wilsonville Road to full width standards and thus permit full development of land within the UGB.

3. Retention of the "remainder portion" of the Property in agricultural use would not preclude urbanization of adjacent land inside the UGB, because adjoining land in the UGB can be developed without that portion. Retention of the "remainder portion" of the Subject Property would not prevent the efficient and economical provision of urban services to the adjacent land inside the UGB, based on findings VI.A.1.c and d, 2.d, 5.c, and B.2. This is the principal reason to treat the "right of way" and "remainder" portions of the Subject Property separately --- conversion of agricultural land is not necessary to provide the service efficiencies that in large part justify a Locational Adjustment.

4. On the other hand, the "remainder portion" of the Subject Property is not large enough on its own to accommodate accepted farming practices common to the area. The minimum developable area required for such use is 5 acres, based on Exhibits 14 and 27. The "remainder portion" contains not more than 3 acres of developable land. The minimum lot size for farm uses in the area --- the smallest lot size allowed by Clackamas County --- is 9 acres. The "remainder portion" could be joined with land to the east to create a larger developable area. However, because there is a home on the developable land east of the north part of the Subject Property, it is unlikely that combining the "remainder portion" with adjoining land to the east will enhance its productivity for agriculture. Therefore, if the "remainder portion" is not included in the UGB, it will be a substandard sized parcel that cannot be used for any purpose without a conditional use permit from Clackamas County unless merged with adjoining nonurban land. That makes it of low value for agricultural purposes except to the extent it provides a buffer between agricultural and urban lands.

E. Compatibility with agricultural activities (§ 3.01.040(a)(5)).

1. The Locational Adjustment would allow an urban use in the vicinity of agricultural activities described in finding III.E. These agricultural activities could be adversely affected by trespass and vandalism from residents of the Subject Property or users of the road across the Subject Property, and residents of the Subject Property could object to accepted farming practices, such as use of natural and chemical fertilizers.

2. Potential adverse effects of urban use of the "right of way portion" of the Subject Property on agricultural uses in the area could be reduced by fencing the east side of realigned Wilsonville Road, prohibiting direct access from that road to adjoining agricultural lands for nonfarm purposes, and establishing a buffer between that portion of the property included in the UGB and adjoining agricultural land. The substantial public interest in realigning Wilsonville Road, including the service efficiencies noted above, outweigh the potential incompatibility between urban uses on the "right of way portion" of the property and nonurban uses on land to the east.

3. Potential adverse effects of urban use of the "remainder portion" of the Subject Property would be reduced by the buffering effect of the drainageway-open space tract and by the presence of a single family home east of the north portion of the property. Urban uses and agricultural activities would not adjoin directly. However, they would be physically closer to each other if the "remainder portion" of the Subject Property is included in the UGB. This increases the potential for incompatibility. The negligible public benefits resulting from inclusion of the "remainder portion" of the Subject Property in the UGB do not outweigh the potential incompatibility between urban uses on the property and nonurban uses on land to the east. This is a second reason to treat the "right of way" and "remainder" portions of the Subject Property separately --- to provide the maximum protection and compatibility for nearby agricultural activities.

F. Superiority of proposed UGB (§ 3.01.040(d)(2)).

1. If the "right of way portion" of the Subject Property is included in the UGB, then Wilsonville Road can be realigned. This enhances road services and provides greater flexibility regarding the location of utilities within the right of way. The north part of that road would form the edge of the urban area, resulting in a superior UGB, because the road is an easily perceptible boundary between urban and nonurban areas. As it is now, the UGB falls between two of petitioners' properties and is not readily apparent on the ground. Therefore, including the "right of way portion" of the Subject Property in the UGB does result in a superior UGB.

2. If the "remainder portion" of the Subject Property is included in the UGB, then the drainageway on the east side of the property becomes the edge of the UGB. This has little effect on the efficiency of urban services. The drainageway creates an easily perceptible boundary at the southeast part of the property, but not at the northeast part of the property where it differs little from surrounding land in appearance, similar to the existing UGB. Including the "remainder portion" of the Subject Property in the UGB does not result in an inferior or superior UGB.

3. The existing UGB is coterminous with property lines. If the "right of way portion" of the Subject Property is included in the UGB, but not the "remainder portion," then the UGB will not be coterminous with property lines. The UGB will split the Subject Property into 1-acre and 5.35-acre portions. However, the 1-acre portion will be dedicated for right of way purposes, so that the west property line of the Subject Property will be the east edge of the Wilsonville Road right of way. Therefore, in the end, the UGB will be coterminous with property lines if the "right of way portion" of the Subject Property is included in the UGB, but not the "remainder portion."

G. Similarly situated land (§ 3.01.040(d)(3)).

The petition includes similarly situated lands, considering topography, soils, and other natural features of the land and considering the ownership patterns in the area. The only property owned by petitioners with access to realigned Wilsonville Road that can be served by public sewer and water facilities is the Subject Property.

VII. Conclusions and Recommendation

A. Whether the Subject Property is considered as a unit or in two portions, public facilities and services can be provided in an orderly and economic manner, including water, sewer, storm drainage, roads, fire, police, and schools.

B. If the Subject Property is considered as a unit, then the efficiency resulting from inclusion of the "right of way portion" of the Property is sufficient to warrant inclusion of the "remainder portion" of the Property. If the two portions of the Property are considered separately, then the "remainder portion" of the Property does not comply with the increased service efficiency criterion of MC section 3.01.040(a)(1).

1. Including the "right of way portion" of the Subject Property increases the efficiency of road services for land already in the UGB, because it provides right of way for realignment and widening of Wilsonville Road. That realignment and widening cannot be done to full urban standards consistent with ORS 215.213(2) without the amendment. The realignment and widening is necessary for urban development of land inside the UGB.

2. Including the "remainder portion" of the Subject Property in the UGB does not increase or reduce the efficiency of urban services for land already in the UGB, although it would facilitate higher density on adjoining land inside the UGB pursuant to a density transfer and would expedite development of land in the UGB.

C. Including the "right of way portion" of the Subject Property increases land use efficiency in the UGB by allowing realignment and widening of Wilsonville Road, thus allowing full urban development of land already in the UGB. Including the "remainder portion" of the Subject Property in the UGB is not necessary to enable urban use of land in the UGB and does not necessarily increase the efficiency with which that land is used. Therefore if the Subject Property is treated as a unit, the petition complies with MC section 3.01.040(a)(2). If the Subject Property is treated in two portions, the "remainder portion" of the Subject Property does not comply with that section.

D. Whether the Subject Property is considered as a unit or in two portions, including the Subject Property in the UGB will not have adverse environmental, energy, social, or economic consequences and will comply with MC section 3.01.040(a)(3).

E. Retention of the "right of way portion" of the Subject Property in agricultural use would preclude development of realigned Wilsonville Road to full width standards. Therefore, including the "right of way portion" in the UGB complies with MC section 3.01.040(a)(4). Retention of the "remainder portion" of the Subject Property, which is agricultural land, would not preclude urbanization of an adjacent area already inside the UGB, because adjoining land in the UGB can be developed without that portion of the property. Therefore, if the Subject Property is treated in two portions, the "remainder portion" of the Subject Property should not be included in the UGB, because it would violate MC section 3.01.040(a)(4).

F. The substantial public interest in realigning Wilsonville Road, including the service efficiencies noted above, outweigh the potential incompatibility between urban uses on the "right of way portion" of the property and nonurban uses on land to the east. The lack of public benefits resulting from inclusion of the "remainder portion" of the Subject Property in the UGB do not outweigh the increased potential incompatibility between urban uses on the property and nonurban uses on land to the east. Therefore, if the Subject Property is treated in two portions, the "remainder portion" of the Subject Property should not be included in the UGB, because it would violate MC section 3.01.040(a)(5).

G. If the Subject Property is treated as a unit, then the UGB will be superior to the present UGB if the Subject Property is included in the UGB. If the Subject Property is treated in two portions, then the UGB will be superior to the present UGB if the "right of way portion" of the Subject Property is included in the UGB, but not if the "remainder portion" of the Subject Property is included in the UGB.

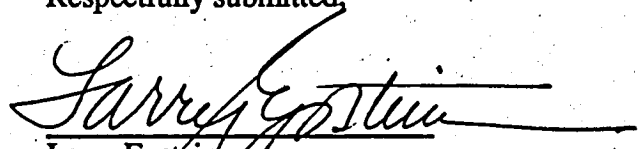
H. The petition does include all similarly situated contiguous land outside the UGB.

I. For the foregoing reasons, the hearings officer recommends that the Metropolitan Service District Council grant the petition in Contested Case 90-01 if the Council decides to treat the Subject Property as a unit. If the Council decides to treat the property as two portions, then the hearings officer recommends the Council grant the petition only for the "right of way portion" of the Property and deny the petition for the "remainder portion" of the Property.

J. Given the past practice of the Council of considering a locational adjustment parcel as a single unit, the finding adopted in support of the rules for locational adjustments noted above, and the circumstances of the case, including the relatively small size of the Subject Property, the buffer provided by the natural feature on the "remainder" portion, and the residential land use east of the north part of the Property, the hearings officer recommends that the Subject Property be considered as a unit and, therefore, that the Council approve the petition for the whole Property.

DATED this 1st day of November, 1990.

Respectfully submitted,



Larry Epstein
Hearings Officer

EXHIBIT C

Certified & True Copy of the Original Thereof
Wendy W. Barrett
Clerk of the Council

BEFORE THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXPRESSING)
COUNCIL INTENT TO AMEND METRO'S)
URBAN GROWTH BOUNDARY FOR CON-)
TESTED CASE NO. 90-1, WAGNER)
PROPERTY)

RESOLUTION NO. 90-1351

WHEREAS, Contested Case No. 90-1 is a petition from Marvin and Bonnie Wagner to the Metropolitan Service District for a locational adjustment of the Urban Growth Boundary to include approximately 6.35 acres east of Wilsonville in Clackamas County as shown on Exhibit A; and

WHEREAS, A hearing on this petition was held before a Metropolitan Service District Hearings Officer on September 25, 1990, in Wilsonville; and

WHEREAS, The Hearings Officer has issued his Report and Recommendation, attached as Exhibit B, which finds that all applicable requirements have been met and recommends that the petition be approved; and

WHEREAS, The property is currently outside, but contiguous with, the boundary for the Metropolitan Service District; and

WHEREAS, The Metropolitan Service District Code Section 3.01.070(c) (i) provides that action to approve a petition including land outside the District shall be by resolution expressing intent to amend the Urban Growth Boundary after the property is annexed to the Metropolitan Service District; now, therefore,

BE IT RESOLVED,

That the Metropolitan Service District, based on the

findings in Exhibit B, attached, and incorporated herein, expresses its intent to adopt an Ordinance amending the Urban Growth Boundary as shown in Exhibit A within 30 days of receiving notification that the property has been annexed to the Metropolitan Service District, provided such notification is received within six (6) months of the date on which this resolution is adopted.

ADOPTED by the Council of the Metropolitan Service District this 13th day of December, 1989.

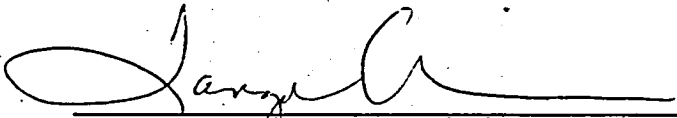


Tanya Collier, Presiding Officer

ES/es
11/26/90

findings in Exhibit B, attached, and incorporated herein, expresses its intent to adopt an Ordinance amending the Urban Growth Boundary as shown in Exhibit A within 30 days of receiving notification that the property has been annexed to the Metropolitan Service District, provided such notification is received within six (6) months of the date on which this resolution is adopted.

ADOPTED by the Council of the Metropolitan Service District this 13th day of December, 1989.



Tanya Collier, Presiding Officer

ES/es
11/26/90

PORTLAND METROPOLITAN AREA LOCAL GOVERNMENT BOUNDARY COMMISSION
320 S. W. Stark (#530) - Portland, Oregon 97204 - Tel: 229-5307

FINAL ORDER

RE: BOUNDARY CHANGE PROPOSAL NO. 2909 - Annexation of territory
to the City of Wilsonville.

Proceedings on Proposal No. 2909 commenced upon receipt by the Boundary Commission of a petition from the property owner on February 1, 1991, requesting that certain property be annexed to the City. The petition meets the requirements for initiating a proposal set forth in ORS 199.490, particularly paragraph (c) of section (1).

Upon receipt of the petition the Boundary Commission published and posted notice of the public hearing in accordance with ORS 199.463 and conducted a public hearing on the proposal on March 7, 1991. The Commission also caused a study to be made on this proposal which considered economic, demographic and sociological trends and projections and physical development of the land.

The Commission reviewed this proposal in light of the following statutory guidance:

"199.410 Policy. (1) The Legislative Assembly find that:

(a) A fragmented approach has developed to public services provided by local government. Fragmentation results in duplications in services, unequal tax bases and resistance to cooperation and is a barrier to planning implementation. Such an approach has limited the orderly development and growth of Oregon's urban areas to the detriment of the citizens of this state.

(b) The programs and growth of each unit of local government affect not only that particular unit but also the activities and programs of a variety of other units within each urban area.

(c) As local programs become increasingly inter-governmental, the state has a responsibility to insure orderly determination and adjustment of local government boundaries to best meet the needs of the people.

(d) Local comprehensive plans define local land uses but may not specify which units of local government are to provide public services when those services are required.

(e) Urban population densities and intensive development require a broad spectrum and high level of community services and controls. When areas become urbanized and require the full range of community services, priorities are required regarding the type and levels of services that the residents need and desire. Community service priorities need to be established by weighing the total service needs against the total financial resources available for securing services. Those service priorities are required to reflect local circumstances, conditions and limited financial resources. A single governmental agency, rather than several governmental agencies is in most cases better able to assess the financial resources and therefore is the best mechanism for establishing community service priorities.

(2) It is the intent of the Legislative Assembly that each boundary commission establish policies and exercise its powers under this chapter in order to create a governmental structure that promotes efficiency and economy in providing the widest range of necessary services in a manner that encourages and provides planned, well-ordered and efficient development patterns.

(3) The purposes of ORS 199.410 to 199.519 are to:

(a) Provide a method for guiding the creation and growth of cities and special service districts in Oregon in order to prevent illogical extensions of local government boundaries and to encourage the reorganization of overlapping governmental agencies;

(b) Assure adequate quality and quantity of public services and the financial integrity of each unit of local government;

(c) Provide an impartial forum for the resolution of local government jurisdictional questions;

(d) Provide that boundary determinations are consistent with local comprehensive plans and are in conformance with state-wide planning goals. In making boundary determinations the commission shall first consider the acknowledged comprehensive plan for consistency of its action. Only when the acknowledged local comprehensive plan provides inadequate policy direction shall the commission consider the state-wide planning goals. The commission shall consider the timing, phasing and availability of services in making a boundary determination; and

(e) Reduce the fragmented approach to service delivery by encouraging single agency service delivery over service delivery by several agencies.

199.462 Standards for review of changes; territory which may not be included in certain changes. (1) In order to carry out the purposes described by ORS 199.410 when reviewing a petition for a boundary change or application under ORS 199.454, a boundary commission shall consider local comprehensive planning for the area, economic, demographic and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed boundary change or application under ORS 199.464 and the goals adopted under ORS 197.225."

(2) Subject to any provision to the contrary in the principal Act of the affected district or city and subject to the process of transfer of territory:

(a) Territory within a city may not be included within or annexed to a district without the consent of the city council;

(b) Territory within a city may not be included within or annexed to another city; and

(c) Territory within a district may not be included within or annexed to another district subject to the same principal Act.

The Commission also considered its policies adopted under Administrative Procedures Act (specifically 193-05-000 to 193-05-015), historical trends of boundary commission operations and decisions, and past direct and indirect instructions of the State Legislature in arriving at its decision.

FINDINGS

(See Findings in Exhibit "A" attached hereto).

REASONS FOR DECISION

(See Reasons for Decision in Exhibit "A" attached hereto).

ORDER

On the basis of the Findings and Reasons For Decision listed in Exhibit "A", the Boundary Commission approved Boundary Change Proposal No. 2909 on March 7, 1991.

NOW THEREFORE IT IS ORDERED THAT the territory described in Exhibit "B" and depicted on the attached map, be annexed to the City of Wilsonville as of 45 days from this date which is April 21, 1991. Subject to the provisions of ORS 199.505. Provisions of ORS 199.519 which would ordinarily delay this effective date until after the May election are overridden by Section (3) of ORS 199.519 which disallows such delay when the territory contains no voters.

PORTLAND METROPOLITAN AREA LOCAL GOVERNMENT
BOUNDARY COMMISSION

DATE:

March 7, 1991

BY:


Temporary Chairman

Attest:

Kentel L. Lott

FINDINGS

Based on the study and the public hearing the Commission found:

1. The territory to be annexed contains 6.35 acres, is vacant, and is assessed at \$2,160.
2. The petitioners propose to annex 6.35 acres to the City of Wilsonville. Petitioners also own 17.6 acres already within the City. Petitioners propose to include the annexed territory to facilitate development of their property and to facilitate dedication of a realigned right of way for Wilsonville Rd. The petitioner plans to: 1) dedicate the northwesterly 1 acre for a realignment of Wilsonville Road; 2) develop about 2.75 acres for dwellings together with the adjoining 17.6 acres; and, 3) establish 2+ acres as an open space and drainage tract. The residential density that would be permitted on the area dedicated for road and open space purposes is to be transferred to the remainder or the petitioner's land.
3. The subject property is used predominantly for an agricultural purpose in conjunction with the adjoining 17.6 acres to the west. The parcels contain a filbert orchard.
4. The territory is located outside the boundary of the Metropolitan Service District and outside the acknowledged regional urban growth boundary. Metro has made the decision to amend the urban growth boundary. The Metro Council adopted a resolution of intent to amend the UGB to include the Subject Property on December 13, 1990. Metro Resolution No. 90-1351. Upon annexation to the City the land is automatically annexed to Metro under ORS 199.510(2)(c). Once the territory is within its jurisdiction Metro will adopt an ordinance amending the UGB.
5. The territory is designated GAD, General Agricultural District. Lands to the south, east, northeast and north are also designated GAD.

The county's Comprehensive Plan land use element divides the county into five land use categories: urban, rural, agriculture, forest and rural centers. Urban areas are defined to include all land inside Urban Growth Boundaries.

County Plan policy 6.0 provides: "Use the following guidelines for annexations having the effect of converting Future Urbanizable to Immediate Urban land:

- a. Capital improvement programs, sewer and water master plans, and regional public facility plans should be reviewed to insure that orderly, economic provision of public facilities and services can be provided.
- b. Sufficient vacant Immediate Urban land should be permitted to insure choices in the market place.
- c. Sufficient infilling of Immediate Urban areas should be shown to demonstrate the need for conversion of Future Urbanizable areas.
- d. Policies adopted in this Plan for Urban Growth Management Areas and provision in signed Urban Growth Management Agreement should be met.

The Metro record includes testimony from the City Engineer that public facilities and services can be provided to the Subject Property, and this testimony is reflected in the findings by the Metro Hearings Officer. This proposal will increase the amount of Immediate Urban land by adding 6.35 acres and, thus, add to the choices in the market place. The last two policies do not apply to this proposal.

6. The City of Wilsonville's Comprehensive Plan has been acknowledged by LCDC. The City has annexed all other lands within the urban growth boundary surrounding the city. The adjacent land within the city is designated Residential on the Wilsonville Comprehensive Plan Map and are zoned RA-1 (Residential-Agriculture, 3 to 5 dwellings per acre). The property inside the city can be developed for up to 88 dwelling units, based on existing zoning. The City expects to apply the City's residential 5-7 units per acre zoning to the property. The City's ordinances allow density to be transferred from open space and dedicated lands to developable portions of a site. The attorney representing the applicants estimates that total development allowed on this property including density transfer allowed to other portions of the development inside the City would be 17 units.

The territory is not included within the Wilsonville Comprehensive Plan. However, the Master Street System and Function Classification Map in the City Plan provides conceptually

that Wilsonville Road is to be realigned as illustrated on the attached figure 3 map. This will eliminate a "jog" created by two 90 degree turns in a 1/10-mile section of road where Wilsonville Road and Stafford Road now join. The Clackamas County Plan also provides for realignment of Wilsonville Road.

Wilsonville Zoning Ordinance section 4.167(f) requires, prior to issuance of a building permit or recording of a final plat, an applicant to dedicate right of way in accord with the Street System Master Plan and to file a waiver of remonstrance against formation of a local improvement district. It also requires a minimum setback of 55 feet from the centerline of a street or 25 feet from the edge of the right of way whichever is greater.

The following information was provided by the petitioners:

"According to preliminary figures from the 1990 census, the City of Wilsonville is one of the most rapidly growing cities in Oregon, with a population of 7,225 on 6/30/90. Recent residential developments to the south of the Subject Property have added approximately 360 dwelling units to this area of the city, and outstanding approvals for these projects allow for an additional 840 units. During 1990, 695 units were constructed in the City of Wilsonville (434 apartments, 260 single family and duplex units). Of the approximately 4,400 dwelling units in the city, roughly 42% are single family and duplexes, 48% are apartments, and 10% are manufactured and mobile homes. The city has 1,158 acres currently planned for residential development, of which 484 acres are undeveloped (42%).

"These figures are indicative of a very rapid growth rate for the City of Wilsonville. While the addition of the Subject Property to the city would add only one-half of one percent to the city's residential land area, it is nevertheless important in that it will allow the improvements to Wilsonville Road, described above, to be completed. With the city's rapid growth, particularly in the area immediately to the south of the Subject Property, this infrastructure improvement is critical to assuring that an already serious safety hazard does not become even worse."

7. A sanitary sewer line has been extended to within 800 feet of the Subject Property as part of a recent development immediately to the south. The cost of extending a sewer line along the new Wilsonville Road alignment is included in the city's estimate of \$795,400 for realigning Wilsonville Road.

The area is served by an existing pump station which needs to be upgraded in capacity. There is an approved development immediately west of the territory to be annexed, a Robert Randall project. The Robert Randall development approval was conditioned upon the installation of the upgraded sewage pump. Thus the pump capacity will be in place after the Robert Randall development. If the subject property desires development prior to the Randall development the developer will be required to upgrade the pump.

The primary elements of the City's Sanitary Sewer System, including the first phase of the treatment plant were built in the early 1970's. The hydraulic capacity of the plant is 2.5 million gallons per day (MGD). The City has recently let a design and construction contract to upgrade the biological oxygen demand (BOD) capacity of the plant.

8. The nearest sewer and water lines are located about 800 feet southwest of the property in the Wilsonville Road right-of-way south of the stream at the southwest corner of Tax Lot 1800. Tax Lots 1800, 400, and 500, inside the Wilsonville city limits and the UGB, also are not served by public water or sewer. To provide water and sewer to those properties and to the subject property, the City would have to extend lines across the stream at the southwest corner of Tax Lot 1800.

The Metro hearings officer findings contains the following determination:

"Water and sewer lines that were extended as part of recent development were sized to accommodate service to all properties in the urban area, based on testimony from City Engineer Richard Drinkwater. Mr. Drinkwater concluded the incremental impact of service to these properties on capital facilities of the City is negligible, although the system would not accommodate further expansion to the north, and, at some undetermined time, the City will have to expand its capital facilities to provide sewer service to all developable land in the City."

The City's existing water supply is provided by five wells capable of supplying 3.8 million gallons per day. In July of 1990 the average daily demands on the City water system were 2.41 MGD.

Testimony from surrounding property owners at the hearing indicated there have been some local draw down problems and they questioned the effects of additional development in the City. The City is currently drilling an additional well (it has acquired permits for two additional wells from State Water Resources Dept.) which is specifically located so as not to exacerbate that local draw down problem. The property owner of the territory to be developed within the City has indicated that his well, while located near the wells which are experience draw down problems, has not exhibited draw down problems.

In addition the City has approved the construction of an additional reservoir.

9. The territory is not served by an improved public storm water drainage system. There is a roadside ditch along Boeckman/Advance Road at the north edge of the property. Also a natural drainage channel that enters the territory near its northeast corner and extends southwest diagonally through the territory to its southwest corner before continuing off-site to merge with a drainageway south of TL 200.

The City Plan Policies 3.4.3 and 3.4.4 provide: "Major natural drainageways shall be established as the backbone of the drainage system and designated as open space. The integrity of these drainageways shall be maintained as development occurs... Developers shall be required to retain and protect existing vegetation in steeply sloped (15 percent or above) and landslide prone areas to decrease the amount of surface runoff, to preserve areas of natural percolation and to help stabilize landslide prone areas..."

10. The north edge of the territory adjoins Advance/Boeckman Road. That road is identified as a collector street on the Wilsonville Master Street System Plan. It has a 20-foot paved section between gravel shoulders and drainage ditches. Stafford Road terminates at a 90 degree intersection with Boeckman/Advance Road at the northwest corner of the territory. It is identified as an arterial road. It has a 20-foot paved section between gravel shoulders and drainage ditches. Wilsonville Road is about 475 feet west of the ter-

ritory. It is designated as an arterial road on the Wilsonville Master Street System Plan. It has a 90 degree intersection with Boeckman/Advance Road. It has a 20-foot paved section between gravel shoulders and drainage ditches adjoining TL 1800 and 200, but has been improved to full urban standards adjoining recent development further south.

The right of way for realigned Wilsonville Road will be 64 feet wide with 6-foot wide permanent easements on both sides. The existing right of way of Wilsonville Road may be vacated once the road is relocated; however, at least a portion of the road is likely to continue to be used for access to TL 400 on the west side of the road because it will not adjoin relocated Wilsonville Road.

The City of Wilsonville will require the petitioner to dedicate the realigned Wilsonville Road right of way as a condition of approval of development permits. The City also will require the petitioner to improve the street before occupancy of structures on the territory.

11. Wilsonville contracts with the Clackamas Co. Sheriff for protection at a level of 1 officer 24 hours a day 7 days a week.
12. The portion of Wilsonville north of the Willamette River is within the Tualatin Valley Fire and Rescue district. The part of Wilsonville south of the Willamette River is in the Aurora RFPD. The subject territory is within the Tualatin Valley Fire and Rescue district. Since the City is already in the District, this service will not be altered by the annexation.
13. Land use Planning, Building Administration, and general governmental services are currently provided by Washington County. Upon annexation these services will be provided by the City.
14. According to the petitioner the financing of the realignment of Stafford/Wilsonville Road and associated water and sewer line extensions is projected to cost \$785,400. Including the Subject Property within the City of Wilsonville will make it possible for this project to be managed by a single jurisdiction. The land necessary for the improvements will be dedicated by the Wagners as a condition of any land use approval for the development of their property. . .

There are several alternatives for financing the improvements. The city is currently reviewing whether to proceed with a proposed Urban Renewal District and project list, which would include these improvements. In the event Urban Renewal moves forward, the improvements would be financed by tax increment. In the event the Urban Renewal District is not pursued, the improvements will be financed through a Local Improvement District (LID), by the developer, or by some combination of the two.

Including the entire project area within the city will avoid the need to coordinate city and county financing. The city has indicated that the improvement to Stafford/Wilsonville Road is a higher priority than the county has in its Comprehensive Plan. The two jurisdictions also have somewhat different improvement standards, and these inconsistencies will also be obviated by the proposed annexation.

REASONS FOR DECISION

Based on the Findings the Commission determined:

1. The Proposal is consistent with regional, county, and city planning.

METRO has reviewed the amendment to the urban growth boundary and found that this land should be included within the UGB. Once that decision on urbanization is decided the Boundary Commission's concern is with the adequacy of services, not with whether this land should develop to urban uses. The City's comprehensive plan has not yet been amended to reflect the METRO decision on the UGB.

Clackamas County has responded in favor of the annexation. Upon annexation the existing planning and zoning designations will remain applicable to the property according to ORS 215.

After annexation the City will consider amending its plan to apply appropriate urban planning and zoning designations to the property. These amendments must be adopted prior to development approvals for the proposed development. These amendment and zoning hearings will be required to provide notice and an opportunity to be heard to interested parties.

2. The City has an adequate quantity and quality of service available to serve the area.

The City's water source has capacity to produce 3.8 MGD. This well has been specifically sited to avoid exacerbating an acknowledged local draw down problem in the area of the city's existing well and the area of the proposed annexation. An additional well has been drilled and will soon be on line. The July demand on the water supply system last summer was 2.41. Thus the supply capacity exceeds current demands.

The sanitary sewer plant (STP) has adequate hydraulic capacity according to the City engineer. The STP has been close to its BOD capacity but the City has let a construction contract to increase this capacity. There is an existing constraint in the sanitary sewer system serving the area -- a pump station needs to be upgraded. A development proposal immediately adjacent to the proposed annexation was conditioned to require that developer (Robert Randall) to upgrade the pump station. If this development wishes to proceed prior to the upgrading by Robert Randall, this developer will be required to upgrade the pump station.

The proposal will provide for improvement of the alignment of the road system in the area. There is a natural drainageway on the site that will provide storm drainage services. The City receives adequate police protection services from the Sheriff via a contract.

LEGAL DESCRIPTION
ANNEXATION TO
City of Wilsonville

Tax Lot 2200, being a part of the northwest quarter of the northwest quarter of Section 18, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as follows:

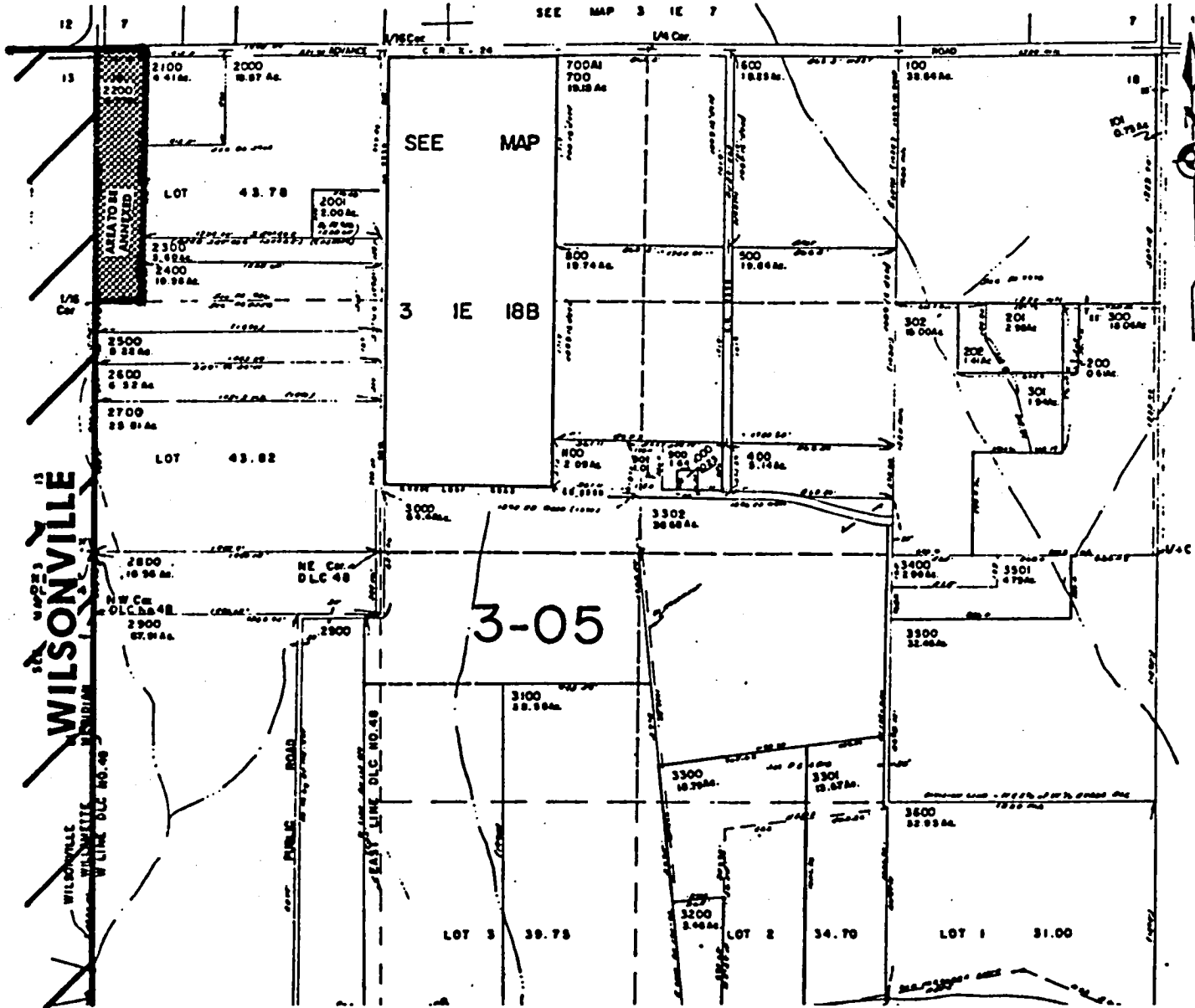
BEGINNING at the northwest corner of Section 18, T3S, R1E of the W.M.; THENCE South on said section line 1,318.02 feet, m/l, to the 1/16th section corner; THENCE East 215.16 feet to a stone; THENCE North 1,316.54 feet, m/l, to a point in the north line of said Section 18 and the centerline of Advance Road (Co. Rd. X-24); THENCE West 215.16 feet, m/l, to the Northwest corner of said Section 18 and the POINT OF BEGINNING.

PROPOSAL NO. 2909

SECTION 18 T3S R1E W.M.
Clackamas County

3 1E 18

Scale: 1" = 800'



PROPOSAL NO. 2909
CITY OF WILSONVILLE
ANNEXATION
FIGURE 2

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ADOPTING A FINAL ORDER) ORDINANCE NO. 91-395-A
AND AMENDING THE METRO URBAN)
GROWTH BOUNDARY FOR CONTESTED CASE)
NO. 90-1: WAGNER)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY
ORDAINS:

Section 1. The Council of the Metropolitan Service District (the "Council") adopted Resolution No. 1351, attached as Exhibit C of this Ordinance and incorporated by this reference, on December 13, 1990, which stated its intent to amend the Metro Urban Growth Boundary for Contested Case 90-1: Wagner pending annexation of the subject property to the City of Wilsonville and/or the Metropolitan Service District within 6 months of adoption of the resolution.

Section 2. The Portland Metropolitan Area Local Government Boundary Commission acted on March 7, 1991, to annex the petitioners Wagner's property, the subject of Contested Case No. 90-1: Wagner, to the City of Wilsonville and the Metropolitan Service District. The action of the Boundary Commission is attached to this Ordinance as Exhibit D, which is incorporated by this reference.

Section 3. The Council conducted a public hearing on contested Case Number 90-1 on December 13, 1990. At the hearing, the Council considered the Hearings Officer's Report and Recommendations, as well as Exceptions to and additional testimony given at the hearing on the Report and Recommendations. Based upon the Hearings Officer's Report and Recommendations, and the other testimony in the record, the Council finds that it is appropriate to consider the subject property as a single unit, and that the inclusion of the entire subject property will result in a superior Urban Growth Boundary. Accordingly, the The Council of

the Metropolitan Service District hereby accepts and adopts as the Final Order in Contested Case No. 90-1 the Hearings Officer's Report and Recommendations in Exhibit B of this Ordinance, which is incorporated by this reference.

Section 4. The District Urban Growth Boundary, as adopted by Ordinance No. 79-77, is hereby amended as shown in Exhibit A of this Ordinance, which is incorporated by this reference.

Section 5. Parties to Contested Case No. 90-1 may appeal this Ordinance under Metro Code Section 205.05.050 and ORS Ch. 197.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

ES/es
5/20/91

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ADOPTING A FINAL ORDER) ORDINANCE NO. 91-395
AND AMENDING THE METRO URBAN)
GROWTH BOUNDARY FOR CONTESTED CASE)
NO. 90-1: WAGNER)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY
ORDAINS:

Section 1. The Council of the Metropolitan Service District adopted Resolution No. 1351, attached as Exhibit C of this Ordinance and incorporated by this reference, on December 13, 1990, which stated its intent to amend the Metro Urban Growth Boundary for Contested Case 90-1: Wagner pending annexation of the subject property to the City of Wilsonville and/or the Metropolitan Service District within 6 months of adoption of the resolution.

Section 2. The Portland Metropolitan Area Local Government Boundary Commission acted on March 7, 1991, to annex the petitioners Wagner's property, the subject of Contested Case No. 90-1: Wagner, to the City of Wilsonville and the Metropolitan Service District. The action of the Boundary Commission is attached to this Ordinance as Exhibit D, which is incorporated by this reference.

Section 3. The Council of the Metropolitan Service District hereby accepts and adopts as the Final Order in Contested Case No. 90-1 the Hearings Officer's Report and Recommendations in Exhibit B of this Ordinance, which is incorporated by this reference.

Section 4. The District Urban Growth Boundary, as adopted by Ordinance No. 79-77, is hereby amended as shown in Exhibit A of this Ordinance, which is incorporated by this reference.

Section 5. Parties to Contested Case No. 90-1 may appeal this Ordinance under Metro Code Section 205.05.050 and ORS Ch. 197.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

ES/es
5/13/91

STAFF REPORT

CONSIDERATION OF AN ORDINANCE ADOPTING A FINAL ORDER AND AMENDING THE METRO URBAN GROWTH BOUNDARY FOR CONTESTED CASE 90-1: WAGNER

Date: May 23, 1991

Presented By: Ethan Seltzer
Larry Shaw

BACKGROUND

On December 13, 1990, the Metro Council held a public hearing and approved Metro Council Resolution Number 90-1351 (attached), expressing its intent to amend the Metro Urban Growth Boundary, as requested in Contested Case 90-1, pending annexation of the subject property to the City of Wilsonville and/or the Metro District. When the Metro Council wishes to amend the Urban Growth Boundary to add property not currently within the Metro District Boundary, it states its intent to do so in the form of a resolution, with final action on an ordinance delayed until the property is brought under its territorial jurisdiction.

On March 7, 1991, the Boundary Commission approved the annexation of the subject property to the City of Wilsonville and the Metro District. Therefore, Ordinance Number 91- is now before the Metro Council to complete the amendment consistent with the Council's earlier statement of intent.

Contested Case No. 90-1 is a petition from Marvin and Bonnie Wagner of Wilsonville for a locational adjustment of the Urban Growth Boundary in Clackamas County. The property proposed for inclusion in the UGB is an approximately 6.35 acre parcel located east of Wilsonville, as shown in Exhibit A. The City of Wilsonville has gone on record in support of the amendment. Clackamas County has taken a position in support of an amendment to accommodate the proposed road realignment, but had concerns about the compatibility of making the total amendment with the County's comprehensive plan.

Metro Hearings Officer Larry Epstein held a hearing on this matter on September 25, 1990, in Wilsonville. Testimony was received from both the petitioner and from concerned citizens. The Hearings Officer's Report and Recommendation, attached as Exhibit B, concludes that the petition meets the applicable standards and should be approved. A number of exceptions were filed to the decision, and were included with the staff report to the resolution at the time that it was considered by the Council.

At its meeting on the 13th of December, 1990, Council heard from parties to the case, reviewed the record, reviewed the report and recommendation of the Hearings Officer, and approved the resolution. The petitioner was given 6 months from the date of

adoption of the Resolution No. 90-1351 to complete the annexation. Petitioner has successfully completed this step, and final action by the Metro Council is now requested.

EXECUTIVE OFFICER'S RECOMMENDATION

The Metro Council should approve Ordinance No. 91-395, consistent with its intent as stated in Resolution No. 90-1351.

ES/es
5/13/91

METRO

Planning and Development
2000 S.W. First Avenue
Portland, OR 97201-5398
(503) 221-1646

Memorandum

DATE: May 20, 1991

TO: Metro Council

FROM: Ethan Seltzer, Land Use Coordinator

SUB: Amendments to Ordinance No. 91-395, An Ordinance Adopting A Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 90-1:Wagner

In order to more accurately reflect both the nature of the Council's previous discussion on this matter and the basis for its decision in support of Resolution No. 1351, the petitioner has proposed several amendments to Ordinance No. 91-395 as submitted for first reading. The proposed amendments are included in the attached Ordinance No. 91-395-A. Material proposed to be added is shown as underlined.

The proposed amendments do two things. First, they reflect, accurately, that the Council based its decision on Resolution No. 1351 on more than simply the Report and Recommendations of the Hearings Officer. Council considered not only the Report and Recommendations, but written exceptions filed prior to the hearing and testimony, both pro and con, presented at the hearing. Second, a critical issue in the case was whether to accept the Hearings Officer's recommendation to consider the subject property as a unit, rather than splitting it into the portion needed for the road realignment and the remainder. The proposed amendments note that the Council did consider that issue and decided to accept the recommendation of the Hearings Officer.

Staff considers these amendments to be clarifying in nature, and to improve the accuracy of the findings. Staff recommends that the Council substitute Ordinance No. 91-395-A for Ordinance No. 91-395 when it considers that ordinance for adoption at second reading.